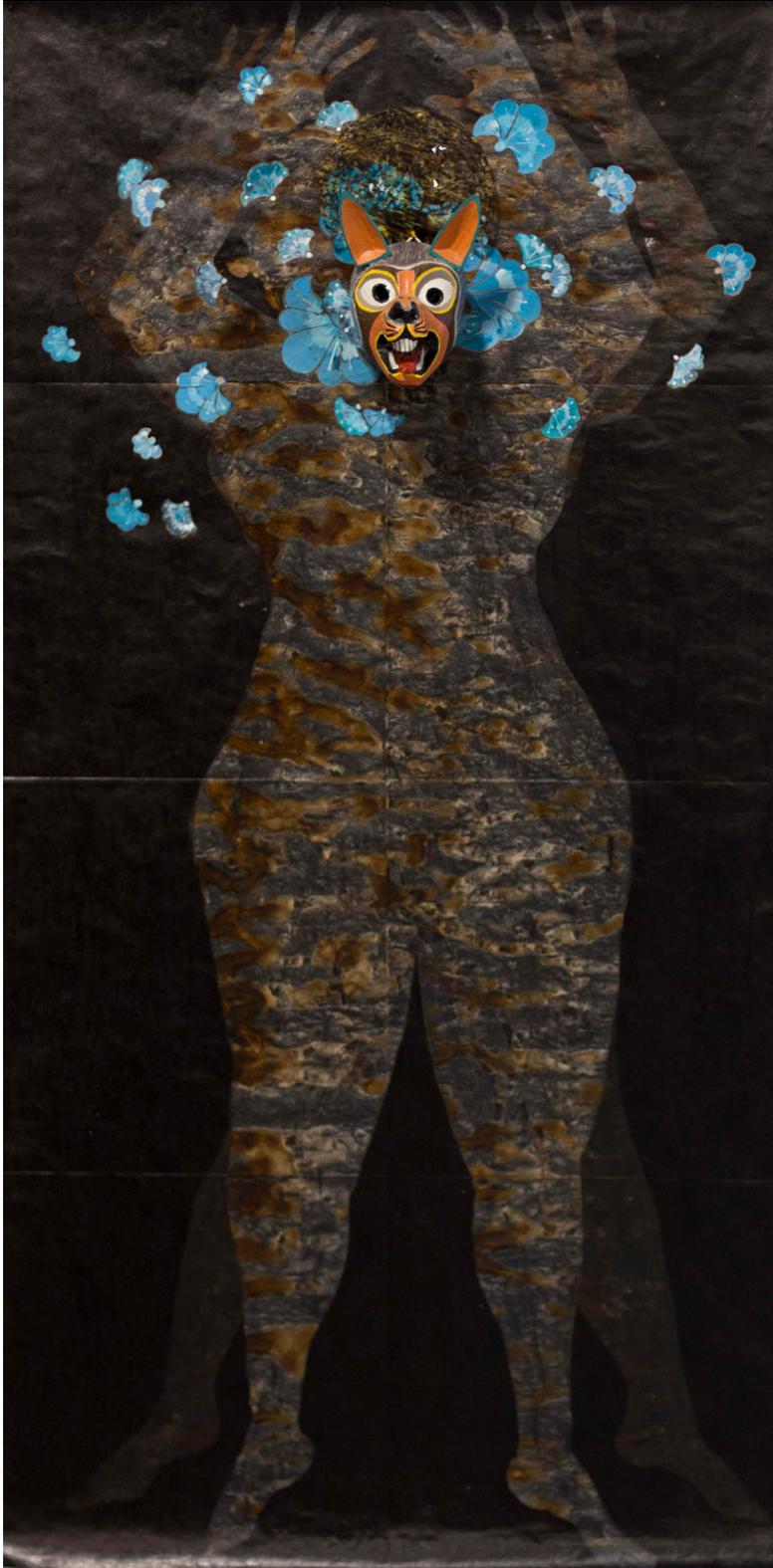


Colombia's Portal to Justice for Women Victims of Violence: The Family Commissioner Office and Its Institutional Challenges

Greta Friedemann Sánchez & Margaret Grieve



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Table of Contents

Acknowledgements	XII
Executive Summary	XIII
Recommendations	XXV
Methodology	XXXV
1 Setting the Stage: Colombia's Progressive Laws on Violence Against Women	1
1.1 Civil and Criminal Laws	1
1.2 Civil Protective Orders: A Judicial Administrative Process	3
1.3 Measures in Civil Domestic Violence Protective Orders	3

2	Setting the Stage: Populations Served by Family Commissioners and Demand for Their Services	5
2.1	“Populations” Served	6
2.2	Demand	7

3	Colombian Men’s Violence Against Women in the Family: How Family Commissioners Characterize the Populations They Serve	9
3.1	The Conflict’s Enduring Legacy: The Most Dangerous Place for Colombian Women and Children is the Home	9
3.2	Ex-Combatants and the Displaced	10
3.3	Civil Protective Orders: A Judicial Administrative Process	12
3.4	What Reintegration Meant in One Small Town Family	14
3.5	Boyacá’s Pájaros: Extreme Violence; Economic Dependence, Threats to Family Commissioners	14
3.6	Displacement: A Way of Life	15
3.7	Medellín: Complexity and Danger	16
3.8	The <i>Sayayín</i> of the Bronx	19
3.9	Social Strata: The Non-Conflict Criteria Category Employed to Signify Domestic Violence Characteristics	20

4	The State’s Flawed Institutional Design for Family Commissioners	21
4.1	Placement Under the Local Executive Branch of Government	23
4.1.1	Tyranny and Reality of Local Mayor’s Control	24
4.1.1.1	Labor Harassment	25
4.1.1.2	Obligation to be Available 24/7	27
4.1.2	Lack of Judicial Oversight	28
4.1.3	Reinventing the Wheel; Inconsistent Application of Law	28

4.1.4 Voiceless, Invisible and in Individual Spheres	29
4.2 Funding and Budget Control Issues	29
4.3 Too Many Responsibilities	30
4.4 Law 1098 Rules Regarding Family Commissioner Creation and Staffing are Riddled with Illogical Assumptions and Loopholes	33
4.5 Dysfunctional Relationship with ICBF Must Be Addressed	36
4.6 Day-to-Day Family Commissioner Operations: A Window into “Many Colombias” and Institutional Dysfunction	37
4.6.1 Bogotá	38
4.6.2 Medellín	41
4.6.3 Beyond Bogotá and Medellín	42
4.7 Reversing the Dysfunction, Eliminating Design Flaws and Building Strong Family Commissioner Offices for the Future of Colombia	44
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Appendix 1 Glossary and Abbreviations	47
<hr/>	
Appendix 2 Table of Family Commissioner Responsibilities: Nature and Description According to Accidental Congressional Commission for Family Commissioner Evaluation and Family Commissioners in our Sample	53
<hr/>	
Appendix 3 Summary List of ICBF "Subsidiary" Duties of Family Commissioners Who Must Act as Family Defenders	55
<hr/>	
Appendix 4 Tables Reflecting Bogota's <i>Ruta Interna</i> and Service Model Innovations	57

Appendix 5 Monitoring Domestic Violence Protective Orders Considerations and Recommendations	61
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Endnotes	67
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Figures

Figure 1: Overburdened with Responsibilities	XVI
Figure 2: Impossible Institutional Structure	XVIII
Figure 3: Interlocking Structural Barriers Faced by Family Commissioners	22
Figure 4: Timeline of Key Laws	23
Figure 5: Distribution of Cases by Type of Action, Bogotá 2015	32
Figure 6: Distribution of Cases by Type of Action, Medellín 2013-2015	33

Maps

Map 1: Departments Included in Our Sample	XXXVII
Map 2: Geographic Concentration of Cases Processed in Medellín 2013-2015	7
Map 3: Ranking of Bogotá Family Commissioner Offices by Cases Processed and Geographic Location	8
Map 4: Location of Criminal Organizations, Ex-FARC, Mafia, and ELM 2017	11

Tables

Table 1: Number of Municipalities at Each Level in the Sample, by Department	XXXIX
Table 2: Distribution of Municipalities by Category	24
Table 3: Population and Ranking Office by Number of Cases, Medellín	35
Table 4: Distribution of Cases Processed by Bogotá Family Commissioner Offices, 2015	40

**Colombia's Portal to
Justice for Women
Victims of Violence:**

**The Family Commissioner
Office and Its
Institutional Challenges**



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Two handwritten signatures in black ink. The first signature is 'Greta' followed by a stylized name. The second signature is 'M Grieve'.

Greta Friedemann-Sánchez and Margaret (Peggy) Grieve

Executive Summary

This report aims to provide Colombia's national, territorial, and local government officials, as well as members of civil society, with findings and recommendations based on a multi-year study on the principal structural barriers that impede implementation of Colombia's laws that address men's violence against their intimate partners.ⁱ ⁱⁱ It also highlights the changing nature of domestic violence in the Colombian family as ex-combatants who have demobilized bring the brutal and terroristic violence of the armed conflict into the home.

Post-Peace Agreement State-Building Must Address Intimate Partner Violence

Colombia's weak institutions outside the largest cities, entrenched cultural schemas that normalize patriarchal gender stereotypes, and over 60 years of internal armed conflict

-
- ⁱ Measures included in Family Commissioner civil domestic violence protective orders depend on institutions other than the Family Commissioner for their implementation. The barriers to effective implementation of these measures by other institutions are beyond the scope of this report.
- ⁱⁱ We make extensive use of endnotes. In many of the Colombian policy and other reports that were part of our literature review, references, particularly if to a law or decree, often failed to indicate the relevant article or section, forcing a reader to hunt for the correct article or section. We wanted to remove any doubts about the sources our data, particularly because, as will be explained, laws and decrees relevant to Family Commissioners often set forth contradictory or ambiguous mandates.

As the country struggles to find its path toward political peace, it must come to terms with men's violence against their intimate partners and within the family. Without peace in the family, political peace and security will remain elusive.

- Family Commissioner, Medellín

have had profound effects on violence within the Colombian family and on men's violence against their intimate partners.

Research has long documented that violence against women and others in the family surges in post-conflict.¹ For more than a decade through waves of formal and informal demobilizations, parts of Colombia have been experiencing post-conflict transition even as others have been in the midst of armed conflict. Parts of the country have been living with post-conflict demobilization for more than ten years. Others covered by the 2016 Peace Agreement with the FARC have yet to realize the promised post-conflict environment. And in other areas the conflict continues unabated and has even intensified. As ex-combatants demobilize, be they AUC paramilitaries, FARC, ELN or even ex-military, they carry the conflict's notoriously brutal tactics into their familial relationships. This appears to be the case especially with ex-AUC, FARC or ELN combatants even if they do not subsequently join one of the many criminal organizations that employ the rigid command structure and extreme terroristic violence that have been hallmarks of Colombia's armed conflict. Family dynamics come to replicate war tactics. Socialization of Colombia's future generations thus becomes tied to terroristic violence against women, children and other family members.

Research also has long documented that the conditions of displacement such as unemployment, loss of housing and livelihoods are risk factors for increased intimate partner and other domestic violence.² Our interview data reveals that living in cramped quarters, children and adolescents replicate adult behaviors they witness and/or may have suffered. Adolescent boys, victims of sexual abuse by adult relatives, may initiate sex with younger female cousins without a full appreciation of their acts. A complex legal picture arises as minors are simultaneously victims and perpetrators of violence. And Colombia's conflict has created the second largest internally displaced population in the world.³ Post-Peace Agreement internal displacement continues at an alarming pace even as Colombia faces new challenges from the influx of Venezuelan refugees fleeing Venezuela's humanitarian crisis, which some estimates place as high as four million.⁴

Yet, the importance of addressing intimate partner and other domestic violence has not been part of the peace-seeking discourse nor of the post-Peace Agreement discourse on State-building. It must be.

Civil protective orders are the entry point to safety and access to justice for women victims of intimate partner violence.⁵ In Colombia, the Office of the Family Commissioner is the principal portal to the judicial power to issue provisional and permanent protective orders.⁶ It also is the Colombian governmental institution, according to a 2015 Accidental Congressional Commission, with the greatest presence throughout the country.⁷

This report provides examples of how the socio-cultural-economic-political problems faced by the country, especially those tied to ex-combatants and criminal organizations, reverberate within the family. It shows how the violence that ex-combatants bring into the family is particularly terroristic and brutal and becomes the “bread and butter” of many Family Commissioner Offices. Most importantly, the report dissects the State-created institutional structure of Family Commissioner Offices and highlights how the institutional design erects insurmountable barriers to effectiveness and women’s access to their constitutional and human rights.

“We are like a christmas tree. They decorate us with one mandate after another”.

The study upon which the report is based is unique. It is the first conducted from the perspective of service providers, especially Family Commissioners and their team members from across the country. While significant challenges exist throughout Colombia, compared to the other municipalities in our study Bogotá and Medellín show the greatest institutional development, innovation and professionalism. Outside of Bogotá and Medellín, the challenges multiply. In many municipalities the local mayor engages in improper harassment and otherwise ignores, with impunity, the civil service requirements intended to insulate Family Commissioners from political clientelism.⁸

Deficits in Family Commissioner Office Institutional Design: Too Many Responsibilities Under Different State Powers

Family Commissioners have too many time-consuming responsibilities, many of which have little to nothing to do with fulfilling the State’s obligation to combat domestic violence against women, girls or other family members. Taken together, they defy principles of logical government organization and separation of powers. They reflect the relative unimportance the State places on protecting the constitutionally guaranteed rights of women and children to lives free of violence and undercut the effectiveness of Colombia’s progressive laws on violence against women and in the family that generally accord with internationally accepted best practices.

We count 17 different principal responsibilities. The judicial administrative responsibility to issue civil law protective orders in cases of domestic violence against women, girls, and other family members is only one of four major administrative proceedings Family Commissioners must handle.⁹

Figure 1: Overburdened with Responsibilities



Source of Governmental Power for Assigned Responsibilities



The State also has charged a single institution, the Office of the Family Commissioner, with the impossible task of acting not only as the portal to justice within the judicial system for women victims of domestic violence but simultaneously acting as the lynchpin for child and adolescent protective services in approximately 88% of Colombia's 1,101 municipalities.ⁱⁱⁱ

By law, Family Commissioners must prioritize addressing the re-establishment of rights of children over any other matter, including domestic violence against an adult woman.

In municipalities without a Family Defender on the staff of the Instituto Colombiano de Bienestar Familiar (ICBF), Family Commissioners are assigned the so-called “subsidiary” responsibility to be a Family Defender.¹⁰ This entails protecting all rights of children and adolescents and representing adolescents accused of a crime. It is a second full-time job.^{iv} By law, protecting children and adolescents

has priority over violence among adults, including intimate partner violence. By having the same institution discharge both roles, the State effectively demotes the importance of protecting women against their intimate partners' violence.

Family Commissioner responsibilities were created over three decades and under a multitude of ambiguous and conflicting laws whose public policy goals often diverge. Family Commissioners must apply un-harmonized laws that regulate the same subject such as the laws involving support, custody, and visitation. The individual Family Commissioner is left to sort out practical implementation and interpretation that the State failed to address. The consequence? Interpretation and application of the laws varies widely.

Family Commissioner responsibilities also rest on an astounding number of different State powers—police powers, executive administrative powers, judicial administrative powers, and judicial police prosecutorial powers. Due to concerns regarding effectiveness and potential conflicts, these powers normally are not combined in a single institution, let alone one that exercises judicial branch administrative powers.

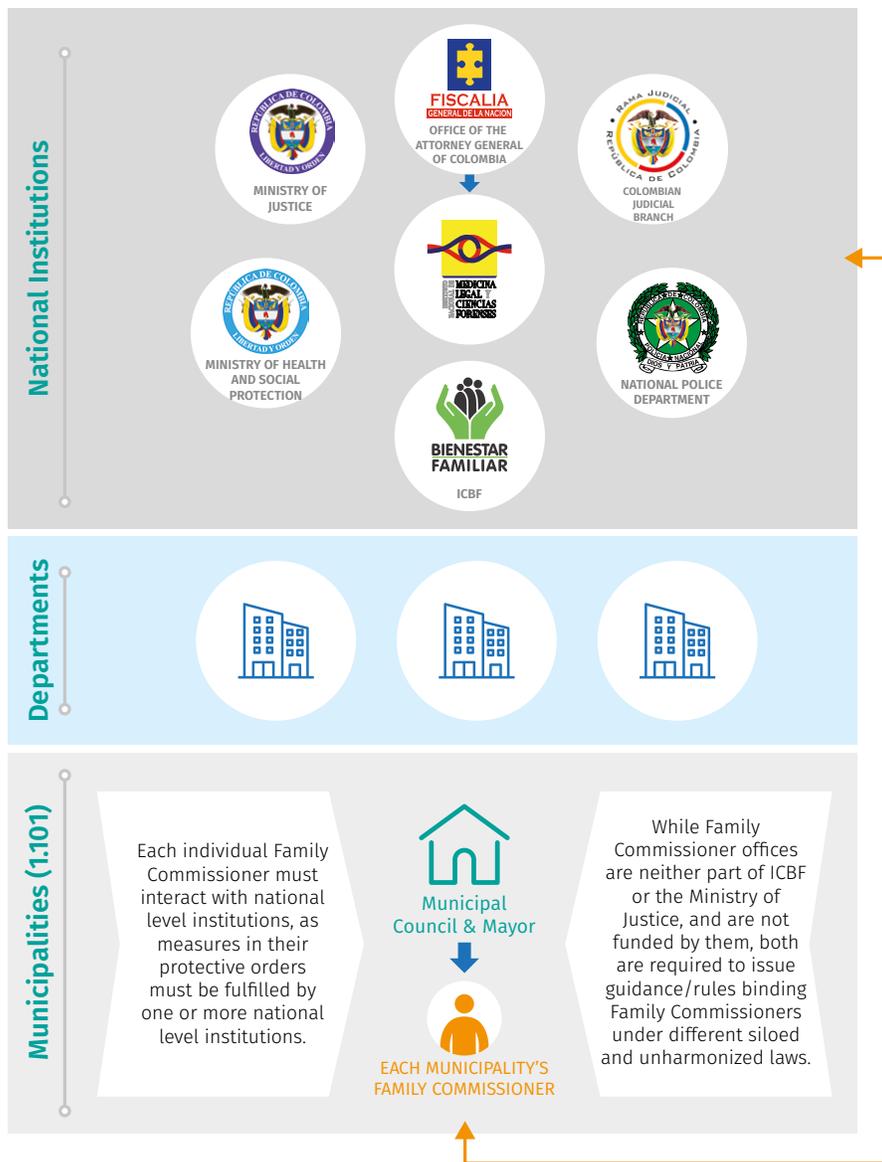
ⁱⁱⁱ The number of 1,101 municipalities is taken from *Contaduría General de la Nación* 2016 classification of municipalities. 2016 numbers are used because that is the year most interviews took place. The number of municipalities that have an ICBF Family Defender presence is determined based on the ICBF website showing offices with Family Defenders (134 by our count), with the result that approximately 12% of Colombia's 1,101 municipalities (as of 2016) have both a Family Commissioner Office and an ICBF Family Defenders Office. In the remaining 88%, Family Commissioners must also act as Family Defenders. *Contaduría General de la Nación*. “Categorización de Departamentos, Distritos y Municipios.” Bogotá, Colombia.

^{iv} See Appendix 3 for ICBF's list of these subsidiary duties.

Family Commssioners Under the Local Executive

Placement of the Family Commissioner Office under the local executive branch of government is another critical defect in Family Commissioner institutional design. In each of Colombia's 1,101 municipalities, the Family Commissioner Office is directly (or indirectly) under the local mayor.¹¹ This creates many downstream negative effects that include political clientelism, non-observance of civil service requirements and impermissible labor harassment from many local mayors who appear to enjoy total impunity for their malfeasance. It gives local mayors in smaller municipalities an outsized influence on women's access to justice, protection and services.

Figure 2: Impossible Institutional Structure



For all Family Commissioners, it means lack of direct oversight by the judiciary or the judicial branch of government of their performance. There also is no centralization of procedures, templates, interpretative issues, data collection or systems. Every municipality's Family Commissioner

Office(s) operates independently of all others. This assures inconsistent application of law.

The State's system to combat violence against women provides that Family Commissioners issue domestic violence protective orders and other institutions (e.g., *Ministerio de Salud y Protección Social*, *Medicina Legal*, *Policía Nacional*, ICBF) have the legal responsibilities to fulfill the measures ordered by Family Commissioners to protect women against violence and deliver services to them and their children.¹² All institutions, except the Family Commissioner Office, are centralized, national institutions funded at the national level. It is unrealistic to think an individual Family Commissioner responsible to his or her local mayor can compel coordination or cooperation from these national level institutions or force them to fulfill protective order measures.

Placement of Family Commissioners under the local executive branch of government has spawned a counterproductive institutional dynamic with ICBF, which is a centralized institution headquartered in Bogotá and housed under the national executive branch of government. ICBF is incented to label matters as "domestic violence" so they fall outside ICBF Family Defender jurisdiction and under the jurisdiction of Family Commissioner

Offices.^v Every "domestic violence" matter transferred to a Family Commissioner Office transfers the matter's burden and expense from ICBF's personnel and budget.¹³

Family Commissioners who are also Family Defenders are unanimous: "ICBF is their worst enemy."

The institutional structure also incents ICBF, which controls access to State facilities that house children and adolescents who have had to be removed from their parents custody due to domestic violence or other causes or have been abandoned, to deny places (*cupos*) at such institutions when requested by a Family Commissioner unless a local municipality contracts with ICBF to pay for the *cupo*. Reflecting the vast differences between Bogotá and Medellín and the rest of the country, access to *cupos* is not as big of an issue in Bogotá or Medellín (although there are other issues with ICBF). Elsewhere it looms as a major obstacle. Dual Family Commissioner/Family Defenders report they have had to resort to *tutelas* against ICBF to secure a place in an ICBF-controlled State facility for a child who

domestic violence or other causes or have been abandoned, to deny places (*cupos*) at such institutions when requested by a Family Commissioner unless a local municipality contracts with ICBF to pay for the *cupo*. Reflecting the vast differences between Bogotá and Medellín and the rest of the country, access to *cupos* is not as big of an issue in Bogotá or Medellín (although there are other issues with ICBF). Elsewhere it looms as a major obstacle. Dual Family Commissioner/Family Defenders report they have had to resort to *tutelas* against ICBF to secure a place in an ICBF-controlled State facility for a child who

^v Press reports state the Technical Working Group was formed by agreement among the Ministry of Justice, the *Procuraduría*, the *Fiscalía*, the *Defensoría del Pueblo*, the ICBF and representatives of Family Commissioners in February 2019 to create a draft law and administrative measures to address jurisdictional conflicts between ICBF and Family Commissioners among other issues. The ICBF issue of *cupos* is not among the announced issues to be addressed.

has come into their custody and care. These challenges lead to the dual Family Commissioner/Family Defender assertion: “The State has abandoned the family”.

Placement under the local executive further assures that Family Commissioners' extensive knowledge of violence in the family and service delivery challenges are not considered in setting Government policies and priorities relating to violence against women or in the family or in developing new laws. Family Commissioner knowledge also is not considered when national level bodies issue technical guidance or create tools for Family Commissioners, resulting in technical guides and tools that cannot be used in the field. This top-down approach only succeeds in creating policies, priorities and tools that fail because it excludes the Family Commissioners who are the most knowledgeable on how violence against women in the family manifests in daily life.¹⁴

We believe placement under the local executive demonstrates the State's lack of commitment to combatting violence against women and girls and child and adolescent protection. Only with Bogotá and Medellín, the cities with the highest level of professional municipal management in our study, do the benefits of placement under the local executive outweigh the detriments.

The Child and Adolescent Code Regulates the Family Commissioner Office

The creation, structure, funding and operation of Family Commissioners, this critical judicial institution, is controlled by Law 1098 on children and adolescent protection and family wellbeing.¹⁵ Law 1098 sets forth numerous illogical and contradictory assumptions and places ICBF in charge of issuing guidance to Family Commissioners on all tasks except those under Laws 294 and 1257.¹⁶

Law 1098 establishes legal loopholes that result in rules on family office creation that (1) mandate fewer Family Commissioner Offices per capita in special cities with populations over 500,000 than those cities with populations between 101,000 and 500,000, reflecting an erroneous assumption that larger cities are less violent than smaller ones,¹⁷ and (2) assign responsibilities to Family Commissioner offices on the assumption that each office has an interdisciplinary team comprised by a psychologist, a social worker and a secretary and then legally permits all municipalities in levels 6-2 (having populations of up to 100,000 or approximately 97% of all Colombian municipalities) to avoid this responsibility.¹⁸

Funding is made the responsibility of local municipalities who can use a category of transfers (called participations) from the national government to fund municipal general expenses including those of the Family Commissioner.¹⁹ Unlike other categories of participations, such as those for health or education, the participations that can be used

A Family Commissioner in a level 3 Boyacá municipality explains that her “prayer” during the annual two month period when she loses most of her interdisciplinary staff due to short-term contracting is “Please don’t fight, don’t get upset, don’t request anything until contract renewal.

for Family Commissioners are not earmarked. Smaller, poorer municipalities rely entirely on national government participations to fund their Family Commissioner Offices.²⁰

Financial Incentives Limit Family Commissioner Office Creation

Municipalities seek to keep overhead under government accounting rules low. This incents keeping Family Commissioner Office creation to a minimum to limit overhead. It also incents municipalities to use short-term contracts for Family Commissioner staff. Short-term contracts must be under a year but may be as short as a week. In many municipalities, the time between a contract ending and a new one being approved is two to three months. During this time, the Family Commissioner Office must operate without critical personnel. It creates great instability in Family Commissioner Office staffing. Services to women, girls and children victims of violence suffer. Short-term contracts also become a tool in small town mayors’ political clientelism management. When a contract ends, another person, chosen by the mayor, can be appointed under a new short-term contract.

Too Many Colombias, Too Little Understanding

The foregoing institutional design flaws means Family Commissioner Offices are far from uniform. Each Office is highly dependent upon the circumstances of its individual municipality and mayor. Individual Family Commissioners interpret and apply the law differently. Other socio-demographic-cultural factors, such as conflict status, status under the Peace Agreement, rural location, criminal organization presence and strength of political clientelism, create meaningful differences in Family Commissioner operations. A woman’s access to justice and ability to secure her constitutional and human rights to a life free of violence therefore becomes dependent on the accident of geography. Colombia’s constitutional guarantees to abused women are a function of the particular “many Colombias” in which she lives.

Government officials in various branches of government recognized that there would be differences between urban and rural Family Commissioner Offices but were unaware of their breadth, depth and diversity. More surprisingly, government officials were unaware of the enormous scope of Family Commissioner responsibilities or the institutional barriers the State has erected to their effective operation. We found an astonishing lack of

knowledge at all levels of government, including by institutions within the justice system that interact with, issue guidance to, and/or prepare training for Family Commissioner Offices regarding the legal scope of their responsibilities.

The two earlier government studies charged with reviewing Family Commissioner responsibilities with a view to recommending changes failed to identify the full range of tasks assigned to Family Commissioners. This lack of knowledge was accompanied by a lack of understanding of (1) the types of violence against women, girls and other family members that Family Commissioners²¹ must handle, particularly involving ex-combatants/criminal organization members or the displaced and (2) the daily operating challenges, which vary significantly depending on geography.

Family Commissioner Office placement under the local executive branch of government accounts for much of this ignorance. It leaves Family Commissioners powerless and voiceless at the national level and without influence on elected officials at the local or national level. We believe the widespread ignorance also reflects the relative lack of importance given to issues primarily perceived to affect women and children, especially those from lower strata. It also shows the strength of the cultural schemas in Colombia which, despite progress, normalize and accept violence in the home against intimate partners and children.

Recognition and Redesign is Essential

The current structure of the Family Commissioner Office and the State's failure to acknowledge in public discourse the conflict's enduring legacy of violence in the family against women and children must change. We may be among the first to urge public discourse concerning the enduring post-conflict legacy of extreme violence being brought by ex-combatants into the family and inflicted on their intimate partners and children but we are not the first to urge Family Commissioner Office redesign, especially a reduction of Family Commissioner responsibilities. A 2013 Study on Family Commissioners under the Departamento Nacional de Planeación recommended materially decreasing Family Commissioner responsibilities to improve effectiveness in combatting violence against women.²² Several years ago the then Minister of Justice called for elimination of the Family Commissioner obligation to mediate family matters under Law 640.²³ The staff of the disbanded 2015 Accidental Congressional Committee to restructure Family Commissioner responsibilities recommended removing responsibilities, including that of acting as Family Defender, so Family Commissioners could concentrate on serving women, girls and other victims of domestic violence.²⁴ The recently formed Technical Working Group on Family Commissioners created after the *Procuraduría's* 2019 First National Audience for Family Commissioners is welcomed but its scope does not include Family Commissioner redesign.²⁵ The 2018 proposed Law 033 to create a national level Ministerio de Familia, on the other hand, appears to contemplate making Family Commissioner Offices

accountable to the Ministerio de Familia but does so in a way that magnifies dysfunction and uncertainty. It also fails to address the existing structural design flaws.^{26, vi}

The Committee on the Elimination of Discrimination Against Women (CEDAW) recently reviewed Colombia in February and March of 2019. It considered Family Commissioners in the context of Colombia's commitment to protect women from gender-based violence, including that from intimate partners and other family members. The Committee recognized the importance of Family Commissioners to Colombia's women. As one of its four priority recommendations, the Committee recommended that the Government "Consider restructuring the family commissioners under the Ministry of Justice, streamline their mandates and allocate sufficient human, technical and financial resources to strengthen them in their work" and requested Colombia report on the steps taken to implement the recommendation within two years.²⁷

If Colombia is to fulfill its promises under its Constitution and international treaty obligations to women and girls who are victims of violence, Family Commissioners must be freed of diverse responsibilities to allow them to focus on the central issue of domestic

A top-down redesign effort by officials in national offices who lack firsthand experience in confronting intimate partner and domestic violence from inside a Family Commissioner office will fail.

violence. Removing many tasks from the Family Commissioner portfolio should be achievable because the respective laws already empower other institutions to perform these tasks (e.g., Law 640 on family law matter mediations). Solving the "subsidiary" problem of Family Commissioners' "subsidiary" responsibility of acting as a Family Defender in approximately 88% of Colombia's municipalities will be more difficult, require careful

planning and must assure the protection of children and adolescents. Dealing with the problem created by placing Family Commissioners under the local executive branch of government with its political and funding implications will be far from easy, especially because there may be one solution for Offices in the largest cities where it is important to preserve their superior institutional management practices, innovations, and funding and another solution for Family Commissioner Offices in municipalities levels 1-6

^{vi} In this report, we express no opinion on the proposed scope and mission of the Ministerio de Familia or the desirability of its creation beyond its failure to adequately address the flawed institutional design of the Family Commissioner Office and to, in fact, create a new level of dysfunction. Article 4 of the draft law provides that jurisdictional responsibility for Family Commissioners Offices will pass to the Ministerio de Familia. This adds yet another national institution with the power to tell Family Commissioners what to do. The extent to which local executive branch of government is stripped of its responsibility for the Family Commissioner Office is unclear. The financing structure appears unchanged as do the various laws that give different ministries and local executives different forms of jurisdictional authority over Family Commissioners.

where placement under the local executive within the context of the Colombian system has proved a failure.

There always will be multiple paths to achieve a set of identified public policy goals. Colombia is fortunate because it has many highly qualified, professional and experienced civil servants well versed in public administration principles and its finance. It may be possible, for example, to create a framework under the judicial branch of government that allows Family Commissioner Offices in special cities to remain part of the local executive, but subject to unified standards, interpretations and oversight for their judicial and non-judicial responsibilities, while allowing all other Family Commissioner Offices to be absorbed as part of and subject to the direct control of the judicial branch of government or the Ministry of Justice, which would become responsible for funding these Family Commissioner Offices, their staffing, and overall operations.

Any redesign process, however, will fail if it does not include Family Commissioners from the “many Colombias” in the Republic. Redesign calls for creativity. It requires a thoughtful process so that the “solution” does not result in even greater dysfunction. It must be grounded in an in-depth knowledge of the current laws and their various (and at times divergent) public policy goals and applications in practice not only in cities categorized as special but in small municipalities from throughout the country. Most importantly, it must include full participation at all stages by Family Commissioners from municipalities of different level municipalities and departments and the municipal executives who oversee their operations in special cities. Their participation must be mandated by law and funded at the national level. Otherwise, many local mayors will erect insurmountable barriers to their Family Commissioner’s involvement.^{vii}

^{vii} For example, in connection with a 2017 conference for Family Commissioners from parts of the country that until recently had been sites of the conflict or were still experiencing conflict, USAID needed to secure permission from the mayors in each municipality for their Family Commissioners to attend, make all travel arrangements and assume all the costs of Family Commissioner attendance. Otherwise it would have been impossible for the Family Commissioners to attend. There is an Association of Family Commissioners whose sole source of funding is fees paid by members. Family Commissioner must pay membership fees from their own pockets. Many of the Family Commissioners we interviewed were not members of this organization.



Recommendations

Institutions Responsible for Implementation of Recommendations

THE GOVERNMENT OF COLOMBIA under its Constitution, international treaties and own laws has the obligation to act to eliminate violence against women and girls in their own homes from family members. The responsibility rests with the Government of Colombia and its officials to act on the below recommendations, calling on its resources to implement the necessary measures.

CONGRESS, too, is critical because additional legislation is needed to redress the design flaws embedded in the structure of existing laws. Drafting and adoption of the necessary legislation should become a formal part of their agenda.

INTERNATIONAL DONOR INSTITUTIONS that support programs and policies that seek to address peace building, construct a strong post-conflict society that does not rely on violence as a normalized dispute resolution mechanism or end violence of all types against women and girls from their intimate partners and family members should assist the Government in implementing the below recommendations and assure that their programming does not unintentionally reinforce the existing Family Commissioner Office design flaws.

CIVIL SOCIETY ORGANIZATIONS and their advocacy have been critically important to advance efforts to combat violence against women and girls in their homes from family members as well as violence during the armed conflict that targeted women and girls. They identify steps the Government should pursue to create a lasting peace and can play a key role in advocating for the below recommendations.

MUNICIPAL COUNCILS, LOCAL MAYORS, SECRETARIES OF GOVERNMENT AND THOSE APPOINTED BY LOCAL MAYORS TO OVERSEE FAMILY COMMISSIONERS are responsible for implementing enacted laws and understanding the legal mandates applicable to the

civil officials in local government, including Family Commissioners. They should immediately cease all acts related to the Family Commissioner Office that are contrary to existing law and fulfill all requirements of existing law and new legislation as it is enacted.

PROCURADURÍA AND PERSONERÍA have the responsibility to assure that government officials, including those in local municipal government, fulfill their legal responsibilities. These officials need to be alert to and act to the extent that the local executive branch of government in many municipalities flouts the civil service laws related to Family Commissioners, terminates Family Commissioners without cause and engages in other improper labor harassment to trigger Family Commissioner resignations.

Recommendations Tied to Recognition of Public Policy Issues and Fostering Public Conversations on These Issues

- 1.** Recognize as a public policy issue and begin the necessary public dialogue on the issue of the brutal and terroristic violence that demobilizing ex-combatants, even if not part of a criminal organization, bring back to the Colombian family and their relationships with their intimate partners and children and the impact this has on the Colombian family and the country's future generations.
- 2.** Bring the issue of ongoing domestic violence within the displaced to public consciousness and keep it at the forefront of debate surrounding the impact of displacement and how to address it, including the domestic violence that is arising among displaced Venezuelans who are beginning to seek assistance in Family Commissioner Offices.
- 3.** Bring the issue of the flawed Family Commissioner Office institutional design that impedes the ability with varying impacts for women's access to justice and Family Commissioner Offices throughout all the "many Colombias" to effectively fulfill their obligations to issue domestic violence protective orders to the forefront of discussions regarding intimate partner violence and other violence in the family.

Failure to take the foregoing actions means a perpetuation of the current system – a system that fails and will continue to fail Colombia's most vulnerable: its women and children abused in their homes. It means perpetuation of differential access to justice and services depending in which of "the many Colombias" a woman resides.

Recommendations Tied to Family Commissioner Office Institutional Design That Can Be Promptly and More Readily Implemented

Family Commissioner Representation in Setting Public Policy and National Priorities, Providing Input into Redesign Efforts and Proposed Legislation

- 1.** The National Executive Government of Colombia must develop and fund a mechanism that allows Family Commissioners from rural and urban areas, from conflict zones, from zones where the Peace Agreement is in the process of implementation, from zones dominated by criminal organizations, from zones with paramilitary presence, from neighborhoods in cities where Family Commissioners have high caseloads and for the municipal officials in special cities dedicated to Family Commissioner management to have a place at the table as national priorities in combatting violence against women and girls and domestic violence are set, efforts to address the design flaws in the Office are undertaken and new legislation is proposed.

Establishing and funding a formal mechanism at the national level is essential. Without it, the local executive to whom Family Commissioners report will not give them permission to be absent from the office or pay any necessary travel, internet or telephone expenses. Local executives also may threaten disciplinary sanctions (including termination) against the Family Commissioner for dereliction of duty if the Family Commissioner spends any office time considering/commenting on national priorities and legislative efforts.

Immediately Enact a Legislative Moratorium on Adding New Responsibilities to Family Commissioner Offices and Set Minimum Requirements for Future Legislation.

- 1.** Impose an indefinite legislative moratorium sponsored by the Government of Colombia and adopted by Congress on further laws that add responsibilities to the Family Commissioner Office portfolio.
- 2.** Require all new legislation involving Family Commissioner Offices after the moratorium is lifted to expressly:
 - a)** Clarify how the new legislative responsibility fits with the public policy mission of the Family Commissioner Office to address domestic violence through issuance of judicial protective orders and how the new responsibility furthers that mission or identify if there is a different missional goal.
 - b)** Identify additional financial or other resources needed by the Family Commissioner Offices to assume and execute the new responsibility.
 - c)** Include a mechanism for funding additional financial resources.

- d) State that Family Commissioners and their teams cannot be held accountable for failing to fulfill a new law's responsibilities until the resources necessary to execute the responsibility are provided to the Offices.
- e) Before rolling out a new responsibility to all Family Commissioner Offices, require a pilot program in a large city and a rural Family Commissioner Office to confirm that the resources needed to execute the new responsibility are sufficient and that public policy outcomes sought to be achieved by addition of the new responsibility in fact are achieved.

Promptly Enact Legislation to Reduce Family Commissioner Responsibilities

1. The Government of Colombia should work with Congress, the Ministry of Justice, and relevant Family Commissioners, among others, to draft and enact legislation that will:
 - a) Eliminate the Family Commissioner responsibility to mediate family law matters under Law 640 as recommended by a former Minister of Justice and Law unless it is appropriate in the context of a request for a protective order in cases of domestic violence. Many other institutions can and do handle mediations under Law 640.²⁹ This responsibility is not core to protecting women, girls and other family members from domestic violence except in the context of a request for a domestic violence civil protective order.
 - b) Eliminate the requirement under Law 1098 for Family Commissioners to mediate support payments unless it is appropriate in the context of a request for a protective order in cases of domestic violence. This responsibility is not core to protecting women, girls and other family members from domestic violence except in the context of a request for a domestic violence civil protective order.
 - c) Eliminate the Family Commissioner responsibility to set support payments for elders under Law 1850 unless it is appropriate in the context of a request for a domestic violence civil protective order involving an elder family member.
 - d) Eliminate the ability of local mayors and municipalities under Law 1098 to require Family Commissioners to handle infractions of law involving minors that involve underage drinking, driving or access to pornographic materials. These tasks are a drain on Family Commissioner resources, often requiring them to accompany police conducting late night weekend raids. They can be handled by other institutions and are not core to protecting women, girls and other family members from domestic violence.
 - e) Eliminate the provision in the “Ley de fútbol” and associated regulations requiring Family Commissioner mandatory attendance at soccer matches to deal

with unruly youth. This is a time-consuming task able to be performed by others. It is not core to protecting women, girls and other family members from domestic violence.

- f)** Eliminate the Family Commissioner responsibility to manage “family conflicts”. This is an antiquated remnant from the 1989 Code of Minors and the period before adoption of Colombia’s current Constitution in 1991 and before the 2000 transfer of judicial administrative responsibility to issue civil protective orders in the case of domestic violence to Family Commissioners. While managing family conflicts is a psychosocial task, Family Commissioner psychologists and social workers (where present) are needed to play three critical roles in connection with civil protective order hearings and re-establishment of rights: triage when a woman or child or adolescent arrives in crisis, legal education/sensitizing which involves advising a woman of her many legal rights and also helping to transform her ingrained understanding of her cultural role that normalizes violence from an intimate partner so she can see herself as a holder/exerciser of those rights, and providing the essential forensic evaluations that are necessary evidence in Law 294 hearings and to assist in crafting remedies. Managing Law 1098 family conflicts is not core to protecting women, girls and other family members from domestic violence.
- 2.** The Government of Colombia should undertake a review to determine whether Family Commissioners are the most appropriate institution to verify whether a displaced family continues to be headed by a couple or if the couple has separated to support payments. This task is not core to protecting women, girls and other family members from domestic violence and it is possible that it can be performed more efficiently by the Victim’s Unit.
- 3.** The *Fiscal General de la Nación* should (1) undertake a review, with the assistance of legal academics as appropriate and the input from a variety of Family Commissioner Offices, of the decision to have Family Commissioners also act as judicial police and the outcomes where Family Commissioners have discharged this prosecutorial role, and (2) determine whether it is desirable to continue or rescind this Family Commissioner role considering the potential conflicts that arise in an adversarial system of justice where prosecutorial powers and judicial powers are vested in the same institution, the differences in standards for proof needed for issuing a civil domestic violence provisional or permanent protective order (the civil standard applicable to Family Commissioners) and for securing a conviction for the crime of domestic violence (the standard applicable to the *Fiscalía*). If the *Fiscalía* is to continue to designate Family Commissioners as judicial police we would urge that consideration be given to limiting it to cases of child or adolescent sexual abuse from a family member or third party where the potential conflicts could be justified in the interest of not re-traumatizing the child. We also urge the *Fiscalía* to clarify that Family Commissioners cannot be held accountable for fulfilling the responsibility of acting as judicial police unless and

until the *Fiscalía* provides them with the personnel, infrastructure, training and tools to do so (access to systems, internet connectivity, evidence bags, video cameras and training in the specific procedures to be followed in order for evidence to be admitted in a criminal proceeding).

Hold Local Mayors Accountable to Follow Civil Service Laws, Refrain from Engaging in Improper Harassment and Labor Practices, and Refrain from Assigning Family Commissioners Tasks Not Contemplated by Law

1. The Government of Colombia should assume responsibility to:
 - a) Train local mayors and other municipal personnel on the roles and duties of the Family Commissioners, the structure of their office, and inappropriate labor practices by municipal officers that will attract sanction.
 - b) Identify an institution, and hold it accountable, to create a review and enforcement mechanism, with clear sanctions, that ensures local mayors are not assigning tasks to Family Commissioners not contemplated by law. Sanctions for noncompliance are to be levied and enforced.
 - c) Require the civil service administration or another suitable institution to create a review and enforcement mechanism to ensure that local mayors cannot circumvent the requirement that the Family Commissioner position be a civil service position. Sanctions for noncompliance are to be levied and enforced.
 - d) Identify an institution, and hold it accountable, to create a review and enforcement mechanism to ensure that local mayors cannot engage in improper labor practices involving Family Commissioner personnel. Sanctions for noncompliance are to be levied and enforced.
 - e) Create a national hotline for Family Commissioners to report harassment and improper labor practices or failures to act by *Procuraduría* or *Personería*. Hotline reports to be investigated by the institution identified for review and enforcement of harassment and other improper labor practices.
1. *Procuraduría* and *Personería* should be alert to identify and take appropriate action to the extent that the local executive branch of government in a municipality does not adhere to the civil service laws related to Family Commissioners, seeks to terminate Family Commissioners without cause or engages in other improper labor harassment acts to trigger a Family Commissioner resignation.

Eliminate Illogical Legal Criteria and Assumptions on Family Commissioner Office Creation

1. The Government of Colombia should work with Congress, the Ministry of Justice, ICBF and relevant Family Commissioners, among others to amend Law 1098 and related decrees as necessary to:
 - a) Recognize special category cities are not less violent than smaller cities and currently require the same population criteria for special and level 1 municipalities for Family Commissioner Office creation.
 - b) Mandate use of criteria in addition to population in requiring creation of Family Commissioner Offices. Additional criteria should include service demand, prevalence and incidence data from *Medicina Legal* and information showing geographic concentrations of violence and service demand especially in special and level 1 cities.
 - c) Require municipalities to equip the Family Commissioner Office with a complete interdisciplinary team. Because Family Commissioner (and Family Defender) tasks are assigned by law on the assumption that the Offices will have complete interdisciplinary teams, the Law 1098 provision that allows mayors in municipalities levels 6 to 2 to escape the obligation to provide a complete interdisciplinary team must be eliminated.
 - d) Identify an institution charged with assuring the Family Commissioner Offices have complete interdisciplinary teams with the power to set clear sanctions for failure to comply with this law and the responsibility for enforcement.

Adequately Fund Family Commissioner Offices; Earmark Participation Transfers for Family Commissioners, Exempt Family Commissioner Overhead from the *Contaduría General de la Nación's* Fiscal Ratios for Municipal Classification; Require Management of Short-Term Contracts

1. Adopt, through the Government of Colombia, measures to earmark the funds intended for Family Commissioner Office operations transferred by the national government as participations to local municipalities for Family Commissioners so these transfers can be used only for the purposes of Family Commissioner operations.
2. Establish with the *Contaduría General de la Nación* a provision that overhead associated with Family Commissioner operation, including the overhead arising from the Family Commissioner position and those of the interdisciplinary teams, will not count negatively against financial ratios used to determine a municipality's classification category (e.g., special or levels 1-6).

3. Set minimal terms for the use of short-term contracts that standardize permissible terms for short-term contracts for Family Commissioner Office personnel and fix a standardized reduced period between the end of one contract and the start of a new contract (e.g., one week but in any event no more than one month).

Eliminate Destructive Incentives for ICBF to Favor its Own Personnel to the Detriment of Family Commissioners (Especially When Family Commissioners Act as Family Defenders) and to the Detriment of the Children, Adolescents, and Women They Serve

1. The Government of Colombia should review and control the destructive incentives that lead ICBF, which controls access to state-sponsored institutions for children and adolescents, to deny Family Commissioners *cupos* for abandoned or removed minors, especially when Family Commissioners must also act as Family Defenders. While municipalities have a co-responsibility to provide *cupos*, if they will not or cannot, the public policy answer cannot be to saddle the Family Commissioner with the entire system's failures, particularly when that burden involves the individual Family Commissioner becoming solely responsible for the care of a minor who has been abandoned or removed from the home for his or her protection. Under the current system the child/adolescent and the Family Commissioner are at risk.
2. The Government of Colombia should act to end the jurisdictional ping-pong between ICBF and Family Commissioners related to their respective jurisdictions that has been going on since 2006 when Law 1098 provided that Family Commissioners have exclusive jurisdiction for matters of domestic violence under Law 294 involving minors. Clarification of Law 294's definition of family will ameliorate but not entirely solve this issue. Resolution further requires political will at the ICBF national level backed with a process that discourages bickering at the local level and carries some sanction for frivolous fighting. Because Family Commissioners are isolated and have no national presence, representation or leadership it is harder to identify who on the Family Commissioner side should play the same role. In the larger cities it could be the respective city management of the Family Commissioner Offices. In the smaller more rural offices, thought will need to be given to creating the appropriate representation.

Create a National Data Collection System on Domestic Violence Protective Orders

1. The Government of Colombia should require the design (or redesign the proposed data collection system) and implementation of a national standardized data collection system under the *Departamento Nacional de Estadística* (DANE) that includes information on all proceedings and matters handled by the Family Commissioner Office with input from Family Commissioners from both large cities that already collect data and smaller rural cities that face unique challenges in data collection and reporting.

Recommendations Tied to Proper Institutional Placement of the Office of the Family Commissioner

The Government of Colombia should transfer Family Commissioner Offices in municipalities for most of the country to a national institution, with a centralized structure, headquartered in Bogotá, funded by the national government and a role in the judicial system. This is necessary to end the current dysfunction created by the current placement of the Family Commissioner Office under the local executive branch of government. The Government should begin to consider how to achieve and financially support this.^{viii}

The special cities of Bogotá and Medellín in our sample, have dedicated management resources and funding to their Family Commissioner Offices with the result that these Offices institutionally are far stronger than the other offices in our sample and reflect many innovative and best practices, particularly in Bogotá. There are flaws and room for improvement, but in comparison to other municipalities in our sample, they are light years ahead and their strengths must be preserved in any redesign. Redesign requires room for the “many Colombias” to deliver women and girls the rights promised them under the Constitution. We recognize this is a complicated undertaking and its execution requires careful planning, a level of financial and human resources, and a staged implementation.

Approximately 33% of Colombia’s population lives in special cities.³⁰ Therefore, a rapid inquiry can ascertain whether the four special cities not included in this study and report (Cali, Barranquilla, Cartagena and Bucaramanga) have dedicated management resources and funding comparable to Bogotá and Medellín making it feasible to keep them under the local executive for management purposes.

2. The Government of Colombia should set a reasonable goal establishing a date by which it will have a draft plan that includes a timetable for execution.

Recommendations Tied to the Subsidiary Responsibility of the Family Commissioner Office to Act as a Family Defender

1. The Government of Colombia should work to develop and solve the problem that its child welfare system throughout much of the country is underfunded and relies on overworked, underfunded and understaffed Family Commissioner Offices whose primary responsibility is to address domestic violence in the family and issue protective orders under Law 294.

The Family Commissioners’ “subsidiary” role of Family Defender in approximately 88% of Colombian municipalities is anything but subsidiary or easy. The law makes this “subsidiary”

^{viii} The 2018 proposed legislation to create a Ministerio de Familia does not address these concerns effectively and it is not an institution with a role in the judicial system.

responsibility the Offices' primary responsibility because protection of children and adolescents takes precedence. Family Commissioners/Family Defenders become the representatives and guardians of children who they have removed from their homes due to domestic violence, other acts constituting maltreatment under Law 1098 or found abandoned, but they are unable to access ICBF-run state institutions created for such children and adolescents. The Family Commissioners/Family Defenders lack the staff set by law for the Family Commissioner Office and they lack the staff set by law for offices of Family Defenders.

In addressing this issue, the Government should ensure that it does not worsen the circumstances for Colombia's most vulnerable, its children and adolescents suffering from domestic violence, other acts constituting maltreatment under Law 1098 or abandonment. We recognize this is a complicated undertaking and its execution requires careful planning and a level of financial and human resources and may need to be staged over time.

- 2.** The Government of Colombia should set a reasonable goal establishing a date by which it will have a draft plan that includes a timetable for execution.

Methodology

Background and Aims

This project began in 2014 with a literature review tied to Law 1257 of 2008, which addresses men’s violence against women in Colombia, and Law 294 of 1996, which governs issuance of civil protective orders in cases of domestic violence, government and civil society documents reviewing the Laws’ implementation, and academic articles. Feminist civil society organizations in Colombia that have played and continue to play an important role in monitoring the State’s implementation of Law 1257 and chronicling implementation shortcomings have been critical of Family Commissioners. Criticism focuses on family-oriented views that prioritize the interests of “family unity and harmony” above the protection and rights guaranteed to women physically, psychologically, economically and sexually abused by their male partners.³¹ A 2010 *Procuraduría* study concluded that the lack of state investment contributed to Family Commissioner Offices’ mission failure under Laws 1257 and 294.³²

The methodological approach of past studies is narrow. Data sources are limited to Law 1257 and related laws and decrees, information secured through exercising petition rights (*Derechos de Petición*, the rough equivalent of a freedom of information request under U.S. law), the selection of typical cases advocated in the legal system, and close-ended surveys of Family Commissioners by the *Procuraduría*. While very much needed during the initial phases of Law 1257’s implementation, these monitoring studies are insufficient to fully understand the context and realities under which Family Commissioner Offices operate. A further critical gap is the lack of in-depth qualitative information obtained directly from judicial providers serving women. Such information would illustrate the barriers and facilitators to implementing the laws designed to address men’s violence against women.

Our methodology addresses these shortcomings. In 2015, we conducted exploratory research in Colombia with academics, lawyer advocates, individuals from civil society organizations providing shelter and legal services to survivors of intimate partner violence,

Family Commissioners and judges, to establish a clear scope for the study and assess, from a local academic and practitioner standpoint, the usefulness of the study. The answer we received was resoundingly positive. We were advised to focus on civil orders of protection, as they are the entry point to accessing justice and safety. Our aim was and is to produce information helpful to Colombia and the individuals who work within Colombia's system to improve women's security and safety.

Design

For this evaluation study, we adapted assessment process methodology.³³ We triangulated several data sources including (1) Colombia's laws addressing violence against women, (2) the laws that regulate the Office of the Family Commissioner, (3) related government policy and technical reports, and (4) face-to-face semi-structured interviews.

Interview categories included many stakeholders: civil society, advocates, academics; judicial service providers (Family Commissioners and their interdisciplinary team members, administrative personnel from "special" cities administering Family Commissioner offices in the respective cities, Family Judges, a few police, and prosecutors); administrative personnel in institutions related to the justice system and issuance of domestic violence civil protection orders (from the *Fiscalía General de la Nación*, the Ministry of Justice and the Office of the *Consejería Presidencial para la Equidad de la Mujer*); directors of *Secretaría de la Mujer* at the city level; and victims.

The study's design allows us to compare the implementation of the laws and municipalities with high and low levels of institutional infrastructure. Annually, Colombia's *Contaduría General de la Nación* divides its municipalities into six levels plus a "special" category. The classification based on population, also considers fiscal aspects indicative of strong institutional development.^{ix}

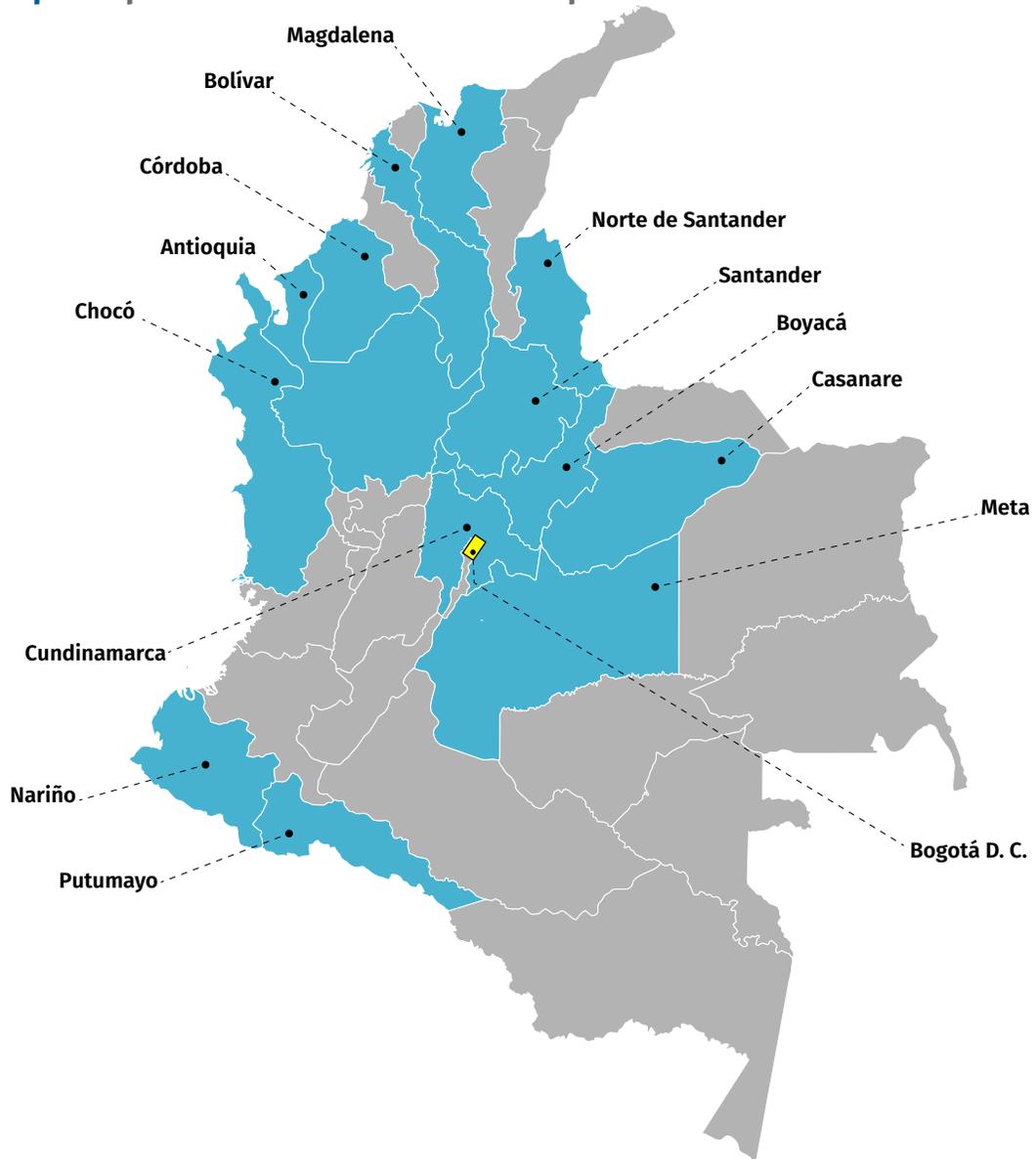
Cities classified as "special" have the greatest population (more than 500,000) and the greatest level of institutional development. Level 1 municipalities have populations between 101,000 and 500,000. Populations in cities classified between levels 2-6 descend with level 6 municipalities having populations under 7,000 individuals. We use this classification as a proxy for institutional development for sampling purposes.

^{ix} Because the classification includes consideration of factors deemed to indicate strength of institutional development, a municipality may be classified at a level higher or lower than would be the case if only population were considered. The classification is done annually and remains in effect for the next calendar years. This means municipalities can change their classification level year over year based on either population changes or strength of institutional development.

Sampling and Data Collection

We selected Bogotá and Medellín, “special” cities under the national classification system, as the cases with the highest institutional development and municipalities classified from level 1-6 from across the country. In the department of Boyacá, we selected municipalities at almost all levels in the classification system. Also, we conducted interviews with Family Commissioners from level 5 and 6 municipalities in former and/or current conflict zones. The map shows the 13 departments represented in our sampling.

Map 1: Departments Included in Our Sample



Source: Authors

Table 1 shows the number of municipalities in our sample for each department and the municipality's categorization based on the national municipal classification system. Including Bogotá and Medellín, 42 municipalities were included in the sample.³⁴

We conducted 128 semi-structured interviews between 2015 and 2017. Of those 62 were with Family Commissioners and their team members. Half of interviews with Family Commissioner Office personnel were with providers serving Bogotá (N=15) Medellín and its metropolitan area (N=16). We conducted the other half with Family Commissioners and their teams: Boyacá (N=10), other departments (N=21). We preceded every interview by obtaining informed consent, which included an explanation that information is treated anonymously unless the position of the interviewee in the government is unique, in which case anonymity is not possible. All interview data is kept in a secure server at the University of Minnesota.

The large volume of data and results prohibit its presentation in one publication. In this report, we present high-level institutional structural barriers to implementing Law 1257 as it pertains to civil orders of protection issued by Family Commissioners. We anticipate further publications covering the results of other aspects of our research. All errors of interpretation and omissions are our own.

Table 1: Number of Municipalities at Each Level in the Sample, by Department

13 Departments + Bogotá D. C.	Municipal Classification Categories per the Contaduría General de la Nación 2016							Total # of Municipalities
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Special	
Antioquia	2		1		2	2	1 (Medellín)	8
Bolívar						2		2
Bogotá, D. C.*							1 (Bogotá)	1
Boyacá	1	1	1		1	7		11
Casanare					1	3		4 (1 circuito) **
Cundinamarca	1	1				1		3
Chocó						1		1
Córdoba						1		1
Magdalena						1		1
Meta						2		2
Nariño						3		3
Norte de Santander				1				1
Santander						2		2
Putumayo						2		2
Total	4	2	2	1	4	27	2	42

* Bogotá, D.C. is considered a department, but for the purposes of Family Commissioner Office creation and operation, Bogotá is considered a municipality falling within the special category.

** Small Municipalities, subject to certain conditions, can enter into an agreement to collectively hire one family commissioner to serve them all. This is referred to as a Family Commissioner "de circuito". (Article 84, Law 1098)



Mestiza



1 Setting the Stage: Colombia's Progressive Laws on Violence Against Women

1.1 Civil and Criminal Laws

Colombia has adopted progressive laws on violence against women that stack up favorably against best practices for legislation addressing men's violence against women.³⁵

Colombia's Constitution protects a woman's right to security, health, access to justice and other human rights, and the State is a party to various international conventions on the rights of women and girls.³⁶ These include the 1979 Convention on the Elimination of all Forms of Discrimination Against Woman (CEDAW) and the Inter-American Organization of States' Convention on the Prevention, Punishment and Eradication of Violence against Woman (Belem do Pará).³⁷

Colombia's 2008 Law 1257 is exceptional for the number of human rights it guarantees women subjected to violence, including intimate partner violence. Law 1257 of 2008 contemplates a holistic coordinated approach to protection, attention, and prevention, mandating protection and services for victims.³⁸ It also amended provisions of Law 294 of 1996 on the measures includable in a domestic violence civil protective order.³⁹

The cornerstones of the State's response to intimate partner and other domestic violence are:

- » The ability of a victim to secure a comprehensive civil protective order from a Family Commissioner that responds to a woman's need for safety, security, health and that of her children. This response is a judicial administrative function, contrary to popular belief.
- » Extensive measures that can be included in civil protective orders that address violence traps: temporary room and board, economic support, employment, education, and health services that can enable women and their children to live independently. Family Commissioners can order these measures but protection and services to be delivered are the responsibility of other State institutions such as the *Policía Nacional*, the *Ministerio de Salud y Protección Social*, and *Medicina Legal*.⁴⁰
- » No-drop mandatory prosecution of the crime of domestic violence to hold perpetrators accountable.

Family Commissioners are the quickest way for a woman to secure a provisional or permanent protective order. Even a criminal court judge cannot issue a permanent protective order, they must refer a woman to a Family Commissioner.⁴¹ Prosecutors tell us they regularly redirect women to Family Commissioners for an immediate provisional protection order due to the several months' delay associated with scheduling a hearing before a criminal judge for a woman to secure a provisional protective order in the case of intimate partner violence. Likewise, when police catch an aggressor in the act of committing the crime of domestic violence, they must arrest the aggressor and bring him before a Judge of *Control de Garantías* who confirms the appropriateness of the arrest and determines whether pre-trial detention is warranted. A Judge of *Control de Garantías* explained that he and others also redirect women to the Family Commissioner for protective orders due to the several months' delay in schedule availability for hearings before a criminal court judge.

Colombia's approach deviates from best practices because it does not sever the process for a civil protective order from the criminal justice system. Family Commissioners must provide information received from women requesting a protective order to prosecutors for review and, as appropriate, initiation of criminal proceeding against the alleged aggressor for the crime of domestic violence. Family Commissioners confirm this link has a chilling effect. Many women refuse to request a temporary protective order once they learn that the information they provide will be sent to prosecutors and could result in a criminal proceeding against their intimate partners. Also, sending all temporary orders to prosecutors overwhelms their offices and proves a barrier to quickly identifying cases where women are at risk of femicide or grave injury.^x

^x We recommend that the consideration be given to ending this practice and coming into line with best practices.

The economic, social, cultural and physical characteristics of a community and its sociodemographic profile, including how it constructs family life and relationships, impacts the way violence manifests itself in the family, in the community, and in the Family Commissioner's Office.

1.2 Civil Protective Orders: A Judicial Administrative Process

Civil protective orders are issued in a judicial administrative proceeding presided over by a Family Commissioner, who is required to be a lawyer.⁴² The Family Commissioner must comply with due process and other requirements of procedural law, including serving the alleged aggressor with notice, allowing him to appear, defend himself and present evidence, meeting the standard of proof for issuance of the protective order, documenting in writing the judicial decision and order, and serving the parties with the decision and order.⁴³

Family Commissioners are to issue civil protective orders within four hours of a woman requesting an order and can do so based on the word of the woman.⁴⁴ A hearing for a permanent protective order is to be scheduled within five to 10 days thereafter and the protective order must be based on reasonable proof.⁴⁵ Parties can appeal a Family Commissioner protective order to a Family Court judge.⁴⁶ Sanctions can be imposed against an aggressor for violation of an order.⁴⁷

1.3 Measures in Civil Domestic Violence Protective Orders

Family Commissioners are empowered by law to include, as circumstances warrant, a host of measures in their protective orders. These include ordering special protection from the *Policía Nacional*, psychological and medical support for a woman who has experienced violence from her intimate partner, psychological counseling for the aggressor, participation in any local parenting or other support programs, orders preventing removal and disposition of assets, and ordering provisional support, custody and visitation. All these measures are critical. Research and best practices support that the ability to order provisional support, custody and visitation improves women's capacity and willingness to request a protective order.⁴⁸ If a woman and her children lack the means of support or the aggressor can control the woman by, for example, threatening to remove and hide the children or harm them, she will not seek a protective order.



Española



Tente en el aire (detail)

2 Setting the Stage: Populations Served by Family Commissioners and Demand for Their Services

There is a generalized misperception that issuing protective orders is straightforward once victims request one. Another misperception is that all intimate partner violence, or domestic violence for that matter, is the same. The truth is far more complex.⁴⁹ Intimate partner and other domestic violence in Colombia manifests in different ways in different socio-economic-cultural groups. While domestic violence is universal, the Colombian context for domestic violence has special characteristics presenting with tremendous variation across the “many Colombias”. Family Commissioners and the municipal executives who manage them in the largest cities are acutely aware of these distinctions. It is part of their individual and institutional knowledge based on extensive field experience.

A recent research study by *Medicina Legal* using incidence data for 2017 called for further research to understand the causes for the variation in concentration of domestic violence cases within one city.⁵⁰ Our study and this report supply the answer. The population served in Family Commissioner offices affects the type, intensity, frequency, complexity, and volume of violent cases processed. It also affects every step of the case, including its investigation, strategy to communicate with clients and witnesses, and during hearings, strategies to follow due process requirements including notifications, mandated follow-up, and more, as detailed in the next section. It is important to amend Law 1098 to mandate consideration of population sociodemographic characteristics in addition to population numbers.

2.1 “Populations” Served

Family Commissioners share a general recognition of the depth of cultural schemas in Colombia that not only normalize violence against women by their intimate partners but also normalize often extreme physical violence and the obligation of the women to submit and accept this violence, at times reinforced by inaccurate beliefs on Catholic Church teachings regarding marriage and separation. “This is how it was for my grandmother, this is how it is for me”, “Until I die I will not separate. If he has to kill me, so be it” or “Only death will separate us” are often heard refrains according to a Family Commissioner psychologist and social worker. This also means that Family Commissioner psychologists and social workers, where present, play an invaluable role in “sensitizing/educating” women on their rights to live lives free of violence. They educate women on their legal rights and facilitate the transformational process that allows women to see themselves as holders of these rights and empowered to exercise them.

Family Commissioners, particularly in large cities, classify the citizens they serve into three “population” groups. The divisions serve as likely indicators of severity, nature and volume of intimate partner violence that a Family Commissioner Office will face, whether Family Commissioner personnel themselves could be at risk of violence in retaliation for decisions taken, and the magnitude of time, personnel and emotional resources needed to resolve a case. The principal classifier is social strata. Social “strata” roughly correlates to different socio-economic-cultural groups. Colombia divides its population into six strata 1-6 plus an unofficial strata 0 representing extreme poverty. The two other population groups, ex-combatant/criminal organization status and displacement, are direct consequences of the armed conflict. They testify to the conflict’s enduring impact on the nature of violence inflicted on women from their intimate partners and in the family. We consider these three population groups in the next section.

“We are the inexpensive justice provided by the State. The whole world comes here: the crazy, the ancient, the mothers from the countryside and barrios, but nobody invests”

- Family Commissioner Antioquia Municipality

Drug and alcohol abuse and untreated mental illness (due to the lack of mental health services) are risk factors for domestic violence throughout the country.^{xi} Family Commissioners also cite the overarching factor of women’s economic dependence on their partners

^{xi} Ironically, Mother’s Day is, according to all Family Commissioners we interviewed, the worst day of the year. Extended family come together to celebrate. Fueled by high alcohol intake and pre-existing unresolved animosities among family members, the “celebration” inevitably ignites increased violence in the home against women by their intimate partners.

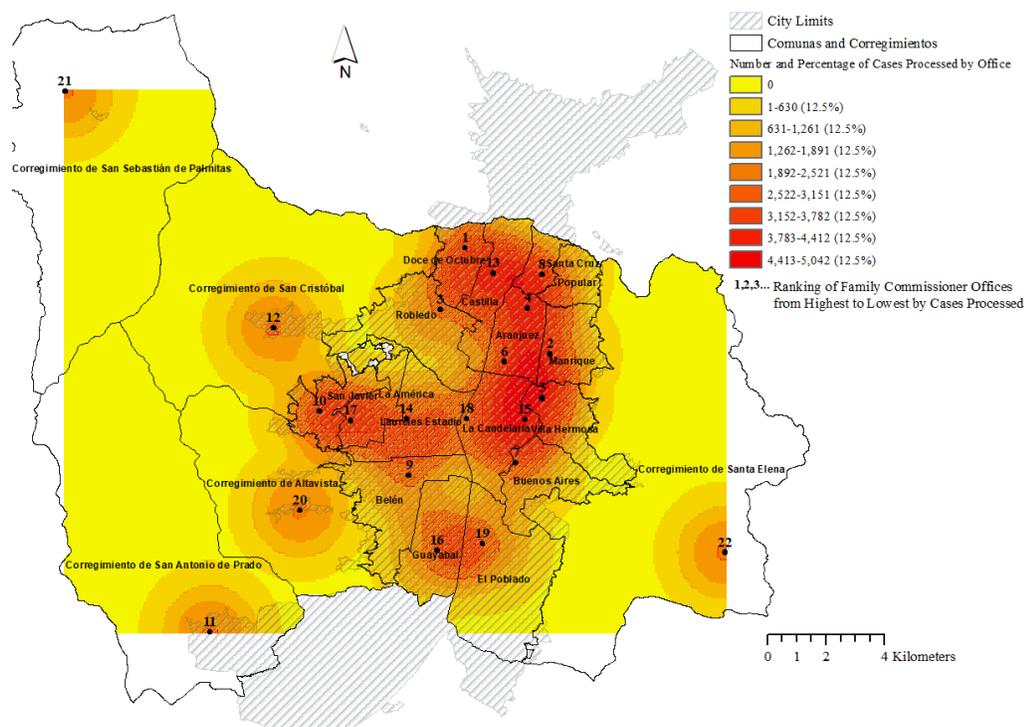
as the principal reason Colombian women will refuse to seek a protective order or return to abusive partners.

2.2 Demand

The demand for domestic violence protective orders due to intimate partner violence is staggeringly high in the largest cities. In Medellín, Family Commissioners cannot keep pace. Many are forced to schedule hearings for permanent protective orders two, three or even four months into the future. Although Medellín has the legally required number of Offices for its population, they are not enough to meet service demand. Demand is distributed unevenly across the city as the geospatial concentration map of matters (referred to as cases) processed by Family Commissioners between 2013 and 2015 shows.

Seven out of 22 Family Commissioner Offices processed 50% of the cases between 2013 and 2015; twelve offices handled 75% of the cases.

Map 2: Geographic Concentration of Cases Processed in Medellín 2013-2015



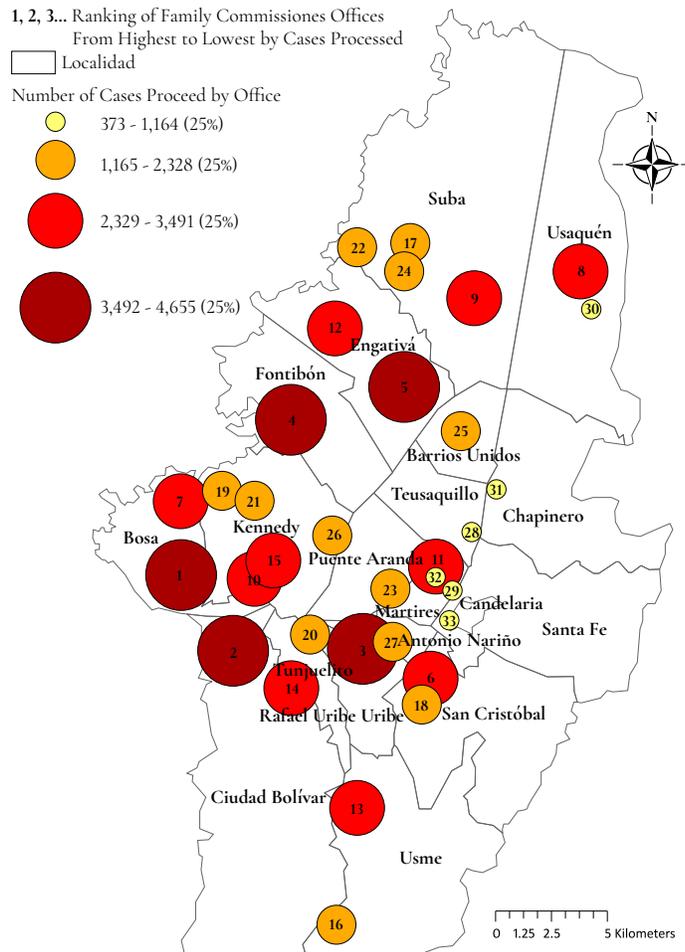
Source: Secretaría de Integración Social. Map: Authors.

While Bogotá has adapted its service model (see Section 4.6.1) to better meet demand, the number of Family Commissioner Offices is still insufficient to allow Family Commissioners

a reasonable workload. Family Commissioner Office Bosa 1, a *diurnal* (7 am to 4 pm) office, processes a higher number of cases than any other office in Bogotá. The map below provides an idea of the volume of cases processed by Office.

In cities within levels 1, 2 and 3 we learned there also is high demand for civil domestic violence orders requested by women to protect themselves from their intimate partners. In more rural areas, that is municipalities in levels 4-6, Family Commissioners tell us that violence by men against their intimate partners is high, but those who live in the *veredas* outside of the city center that have been controlled by the FARC, the paramilitary, or former AUC-dominated criminal organizations are often reluctant to seek protective orders. They do not believe in the State's ability to enforce them, particularly when they see their intimate partners engaged in far more lethal crimes for which they are not punished. All report increasingly sexual and other violence against children and adolescents, often resulting in pregnancies including in girls under 14. There is no data available to make caseload comparisons with special cities.

Map 3: Ranking of Bogotá Family Commissioner Offices by Cases Processed and Geographic Location



Source: Secretaría de Integración Social. Map: Authors.



3 Colombian Men's Violence Against Women in the Family: How Family Commissioners Characterize the Populations They Serve

3.1 The Conflict's Enduring Legacy: The Most Dangerous Place for Colombian Women and Children is the Home

Family Commissioners know what the State has yet to acknowledge: ex-combatants bring the brutal and terroristic violence of the conflict with them into the home, causing Family Commissioners to place ex-combatant/criminal organization violence against their intimate partners and children in a category all its own.

In 2003, AUC paramilitaries begin demobilizing. Since then there have been waves of formal and informal demobilizations even as the internal conflict continued and expanded to add combat against the criminal organizations whose leadership and ranks are comprised of ex-AUC, FARC and ELN combatants. And with demobilization, Family Commissioners have seen an increase in intimate partner violence and its severity and intensity. Paramilitary ex-combatants and criminals in drug gangs exercise brutal physical violence such as imprisoning women in sheds or chaining them to toilets in city apartments for

weeks at a time; hacking women with machetes, burning them with acid; shooting them with firearms; stabbing them multiple times; whipping or branding with tools used on farm animals. Death threats, like “I will cut you into pieces and feed you to the dog” are routine, as are death threats at gunpoint issued against a woman and her children. At the time of the interviews, Family Commissioners were holding their breath waiting for the anticipated post Peace Agreement surge of violence and service demand.

The conflict also has created the second largest internally displaced population in the world and, with it, increased intimate partner and domestic violence including sexual violence against children and adolescents, triggering Family Commissioners to create a second category for violence in the family among the displaced.

3.2 Ex-Combatants and the Displaced

Ex-combatants (male or female) in Colombia resort to violence as a normalized means of conflict resolution in their intimate relationships. For many ex-combatants “reintegration into society” means a change of allegiance to a criminal organization that embraces the conflict’s ruthlessly violent tactics. As they find new intimate partners or return to former partners and children their “work’s” violent culture becomes the organizing principle for family relationships. According to Family Commissioners, proceedings involving ex-combatants, whether members of a criminal organization or not, differ in their complexity, the intensity and severity of the violence, and may even involve danger to the Family Commissioner and his/her team.

A Bogotá Family Commissioner summarized what we heard from many:

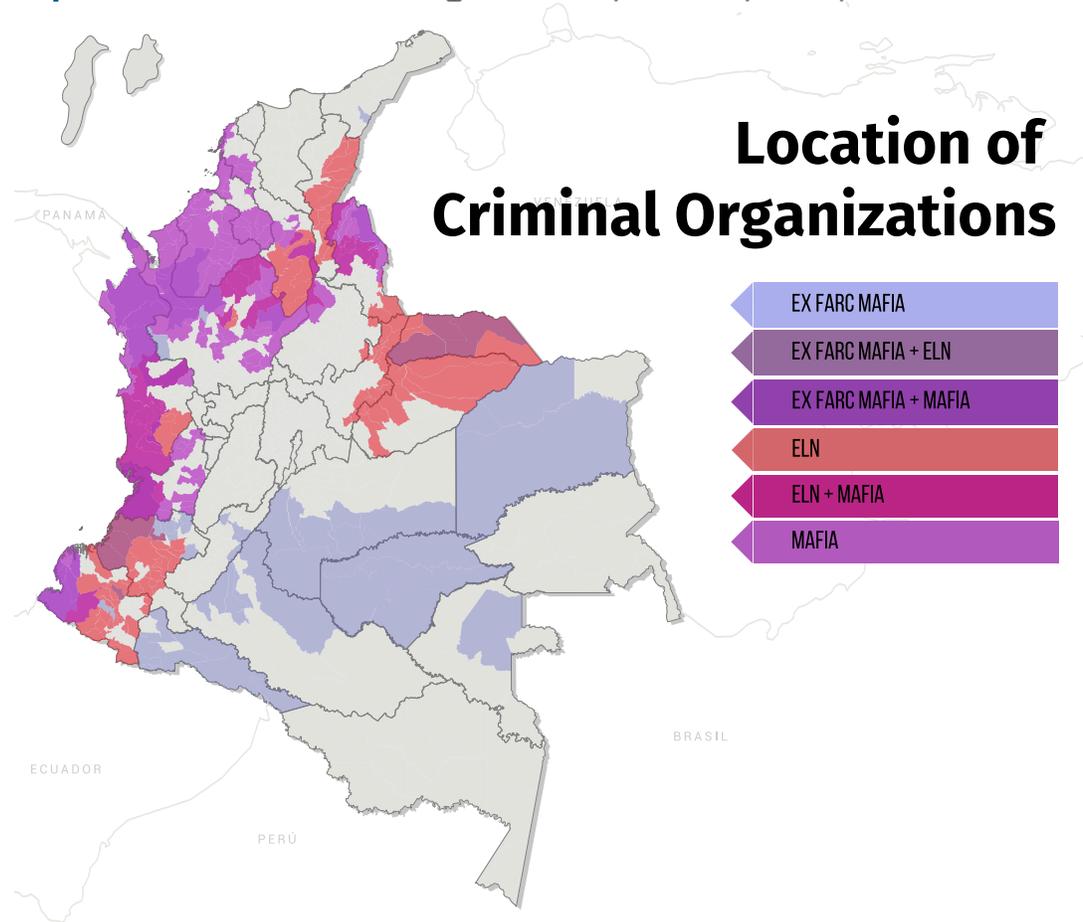
The topic of the demobilized is very complex. Due to their life practices, these are individuals who do not respect the law, or the State, its entities or officials as common people do, who are respectful of and follow (the law, the State, its institutions and officials). Sadly, a demobilized individual uses high levels of violence in his verbal expression, attitudes, and behaviors. These are individuals that use the strategies of war at home against their partners, spouses and children.

The conflict’s strategies used to force confessions and so on, such as torture, dismemberment, and making the victim suffer for a long time, stays with them. The language of war and its practices stay in their mentality and behavior and, tragically, they find it very difficult to let them go and acquire other behaviors in other contexts. These (tactics of the conflict) are practiced on their families.

Domestic violence is a special type of violence due to how it is generated and the reality that victims experience because these aggressors use knives, firearms, hammers, machetes, peinillas (long machetes for farming) and even screwdrivers. Generally, more than 80% of the protection orders here (in this Family Commissioner

Office) come with death threats. (Demobilized) aggressors tell family members ‘I’m going to kill you’, ‘I’m going to chop you up’, ‘I’m going to dismember you and feed the pieces to the dog’, and ‘I am going to rip your head off’.

Map 4: Location of Criminal Organizations, Ex-FARC, Mafia, and ELM 2017 ⁵¹



Source: Insight Crime

Proceedings involving ex-combatants and members of criminal organizations share the following characteristics:

- » The violence is likely to be extreme, brutal and physical.
- » Death threats are common and must be taken seriously.
- » Cases likely have layers of complexity. Due to the danger from gang patrols, special care and procedures must be followed for home visits and delivering required due process notices. In some cases, permission must be acquired from the block gang leader to access

a home. In extreme cases, police or military protection may be needed. A woman's safety often can only be assured if she will go to a shelter, but in many parts of the country there are no shelters or the woman may refuse a shelter, underestimating the danger.⁵² If children are involved, the above and other problems arise making cases intricate and long.

- » The safety of Family Commissioner Office personnel may be at risk. Special care needs to be taken in who to speak to and how to convey legal messages.
- » Women may decline to seek a protective order even after being urged to do so by the Family Commissioner and his/her interdisciplinary team, reasoning that if their intimate partner, without legal consequence, has acted as an enforcer maiming and executing others, trafficked in drugs, guns or people, or controlled those who perform these tasks, a protective order from a Family Commissioner is no more than a piece of paper.⁵³
- » Many ex-combatants, even if they originally were from rural regions, move to a large city after demobilization, so larger cities like Bogotá and Medellín have substantial populations of ex-combatants/criminal organization members who exercise frequent and intense violence against their partners.

The below cases coming from Family Commissioners across the country exemplify the reality of demobilization and displacement on violence in the family.

3.3 Civil Protective Orders: A Judicial Administrative Process

The impact of the conflict in rural areas is ever present, even in areas where fighting ended more than a decade ago. Nuances, however, are important: even in the countryside, there are “many Colombias”.

A Family Commissioner from the Bajo Cauca near a designated demobilization zone explained that in his experience demobilized ex-combatants who return no longer know how to communicate or behave outside of a combat command environment. They are brusque, impatient, and aggressive. They shout orders, anger easily, and unleash physical violence, which can be extreme, on their intimate partners and children. Other factors, like excessive drinking or being unemployed, act as detonators for violence against women and other family members. The Family Commissioner was concerned that as re-integration continues, his municipality would see a large influx of ex-combatants who will re-enact the conflict's brutal and extreme physical violence in relationships with their intimate partners and children.

A Family Commissioner shared that it is common for every family in her small level 6 Cundinamarca municipality to have a relative who disappeared, murdered husbands, children taken to be combatants, girls from eight years old being taken to work in the guerilla camps, and kin lost due to displacement. Families have normalized mistreatment

and sexual abuse. A Boyacá population from nearby conflict-ridden zones, which has become itinerant, periodically arrives when there is work in a natural resource mine near the municipality. It is normal for girls as young as 12, 13 or 14 to trade sex for money, a present, or food. Mothers and fathers arrange for their daughters as young as 13 to receive money for sex. The Family Commissioner said a thirteen-year old child had been sexually abused but because the parents had given their permission for the sex, the parents refused to lodge a complaint with the prosecutor.^{xii}

Another Family Commissioner in a municipality high in the Andes dominated by a military bunker due to the continuing presence of the FARC in the mountains and accessible by a single road reported how traditional family bonds were being destroyed. The Family Commissioner explained:

There are many young women with older men, many adolescent mothers who do not know the identity of the father of their child. Since the town has a heavy presence of police and military, many girls and women have relations with men in the armed forces hoping to be able to leave the town.

A Family Commissioner from Meta explained in February 2017 that the conflict continues to dictate the reality of daily life and her work as a Family Commissioner. Her level 6 municipality, like many in remote rural areas consists of a town center surrounded by kilometer after kilometer of *veredas*. The town center might be under “State” control, but the *veredas* belonged to the FARC where *The FARC orders daily life*. In the past, she would receive matters where FARC justice had determined the outcome and the parties would be sent to her so the State could endorse FARC’s decision.

Years of FARC combatant presence outside the municipality means roads that once existed have degraded or been destroyed. Travel outside the town center still was, as of February 2017, possible only with military protection. When she and her psychologist receive word that a child is being physically or sexually abused or a girl age 14 or younger has become pregnant (which Colombia law deems per se sexual abuse) she calls the mayor who calls the military. A time and transport are arranged for a site visit and removal of the child if warranted. Travel is with eight armed soldiers and three vehicles, a motorcycle in the front, another in the rear and a large military vehicle in the middle. In the front of the vehicle sit the driver and the commander. The Family Commissioner and psychologist sit in the middle of the back seat, flanked on each side by a soldier, with four more soldiers on benches in the back. All soldiers are heavily armed.

Other Family Commissioners explained that years of FARC control of the *veredas* has meant that women rarely seek Family Commissioner assistance for the domestic violence they suffer, no matter how severe. Women distrust the ability of the State to protect them.

^{xii} The Family Commissioner would still have an independent obligation to report sexual abuse of a child to the prosecutor, but it is preferable for the family to make the report and support the prosecution.

A Family Commissioner order is just a piece of paper. They live in regions where the State has failed to establish an institutional presence that could protect them or their children.

3.4 What Reintegration Meant in One Small Town Family

A Family Commissioner serving a municipality in the Andean region provides a case that exemplifies the intersections between political, family and gender-based violence, specifically of individuals who have been victims of the guerrilla as children.

The case concerns three brothers now ages 15, 19 and 21 whom the FARC “recruited” when each was eight years old. The boys remained with the FARC for five years. The mother came to the Family Commissioner for help after the middle brother told her that his older brother was abusing him sexually. While with the FARC, the oldest boy told an officer he and others were being sexually abused. The officer lined up the children, took hold of the abuser, cut off his penis and stuffed it into his mouth. The children, already traumatized by the sexual abuse, were re-traumatized by the sanction’s viciousness.

The Family Commissioner issued a protective order on behalf of the middle brother, who at the time was still a minor. What has happened? The older brother who was 21 years old at the time of the interview shortly thereafter was charged and convicted of femicide after murdering his sixteen-year-old girlfriend. The youngest brother, who is now 15, remains so traumatized that he cannot control his sphincters and the Family Commissioner recently placed him under state custody for treatment.

The Family Commissioner noted the extensive press coverage of the femicide never raised the fact that the murderer and his brothers were the victims of violence in the context of war.^{xiii}, ^{xiv} Neither the political discourse on political violence, child sexual and other abuse by kin and non-kin, or violence against women nor the media coverage of the femicide acknowledges the cycles of violence engendered by the conflict.

3.5 Boyacá’s Pájaros: Extreme Violence; Economic Dependence, Threats to Family Commissioners

Rigid cultural schemas supporting violence and extreme gender stereotypes combine in particularly toxic form with private armies hired as mine security by private emerald mine owners. The emerald mine private armies are locally known as “*pájaros*” and the role of a “security enforcer” is called an “*escolta*”, a term that literally means bodyguard but means

^{xiii} We verified this account and found the newspaper and television reporting. We do not provide the citation to keep the interviewee anonymous by not identifying the municipality.

^{xiv} We verified this account and found the newspaper and television reporting. We do not provide the citation to keep the interviewee anonymous by not identifying the municipality.

“hit man” in rural Colombia. Because of his occupation, the *escolta* carries a gun, and may be away from home at the mines for extended periods. As with criminal organization members and demobilized paramilitary, the brutality of intimate partner violence and child sexual and other abuse is extreme.

A Family Commissioner recounted one of her domestic violence cases involving an *escolta*.

In her 22 years of marriage to an *escolta* for one of the owners of a significant emerald mining operation, the woman had experienced endless brutal physical, emotional, and financial violence. In the past her *escolta* husband shot her. Because the woman depended upon him for her survival, she stayed with him and withdrew her complaint to the prosecutor who dismissed the case.

Hungry, and with insufficient financial support from her absent spouse to even purchase groceries, the woman found menial work in the office of a transportation company. Furious upon learning this, the *escolta* went to his wife’s male boss and demanded that he fire her. The reason for termination? A reason, according to the Family Commissioner, that reflects the depth and destructive patriarchal stereotypes in Boyacá: because she was, according to him, “whoring around,” sleeping with many men. Her boss immediately fired her.

After losing her job, the woman became overwhelmed, stressed, lost weight, and could not sleep. Only when she was at the verge of nervous breakdown did she seek help from the Family Commissioner, but she did not explain that her husband was an *escolta*. At the hearing for a permanent protective order, the aggressor appeared, declaring “I am an *escolta*...and an *escolta* for XXX”, a well-known, important, influential mine owner. He tells his wife “I am going to mince you into little pieces” a reference to the brutal practice of “mincing houses” or *casas de pique*, establishments where a person is killed and chopped into small pieces or dismembered alive and then chopped up. The *escolta* then extended his threat to the Family Commissioner. Having no further use for the hearing, he left.

The Family Commissioner reports this to the police and prosecutors, seeking the *escolta*’s immediate arrest and pretrial detention. The police readily agree. They know that the *escolta* can carry out his death threats. The *escolta* eluded police capture for five months. At the time of the interview, he was in custody awaiting trial.

3.6 Displacement: A Way of Life

A Family Commissioner from a small Atlantic coast municipality explained a barrio for the displaced was created more than a decade ago and the displaced became trapped in cycles of poverty and increased drug use. Domestic violence is rampant. Echoing what we heard from many and what *Medicina Legal*’s statistics show, the Family Commissioner highlighted that sexual abuse of children, both girls and boys, is increasingly at an alarming

rate. The Commissioner summarized a recent situation made complex because an adolescent was both the victim and the perpetrator.

An eight-year old girl is brought to the local hospital because she has vaginal itching. The exam shows she has the human papilloma virus, which only can be transmitted sexually. The hospital calls the Family Commissioner. As part of the investigation, the Family Commissioner needs an official report from *Medicina Legal*, which is specialized in sexual abuse cases. The mother cannot afford the bus fare to the closest city with a *Medicina Legal* office so the Family Commissioner makes the trip with the child, paying from her own pocket. *Medicina Legal* reports that the child is no longer a virgin and concludes that she has been sexually abused for some time because her papilloma lesions are large and extensive, covering her entire genital area. The Family Commissioner has the girl's sister tested. She tests positive for the virus. A fifteen-year-old male cousin also is infected. The investigation shows he initiated sex with his young cousins. At the time of the interview, the Family Commissioner had not ascertained the identity of the original virus transmitter who passed it to the boy through intercourse, but it appeared that the likely abuser was the father or the mother. The two girls were removed from the home temporarily as the investigation continued.

3.7 Medellín: Complexity and Danger

Medellín is a hub for many ex-combatants. Many become involved with criminal organizations. The criminal drug picture is complex. Intimate partners of top criminal organization members and enforcers may not seek Family Commissioner assistance out of fear and the conviction that a Family Commissioner protective order will not protect them. Intimate partners of many lower level gang members and others involved in localized (usually covering no more than a few blocks) drug distribution, however, do seek help from Family Commissioners.

A Family Commissioner who regularly dealt with cases involving the BACRIM (the term still used colloquially in Medellín to describe criminal organizations) provided an example demonstrating the complexity and the danger to which Family Commissioners and their teams may be exposed.

The BACRIM did not threaten me, they ordered me killed due to a child protection case.

- Family Commissioner, Medellín

An anonymous call reported that a mother was abusing her six-year-old son, burning his hands on a hot stove. The Family Commissioner team immediately verified that the six-year-old's hands had been badly burned. They removed the child from the home, pending the investigation necessary to re-establish the child's rights. They searched for a safe relative with whom to temporarily place the child. They found a grandmother who said she would take the child. When it turned out that the child was not her blood grandson, the "step" grandmother

immediately re-delivered the six-year-old child, leaving him in the Family Commissioner's waiting room. The Family Commissioner, after a great deal of effort, found the maternal blood grandmother who agreed to take the child.

Meanwhile, the Family Commissioner's social worker and psychologist conducted a home visit and other interviews. Their investigation showed a mother with two children, a six-year-old son by a former partner and a three-year-old son by her current partner. The current partner, the father of the youngest child, was a low-level drug dealer, responsible for sales in a square block, and often away. His brother was the neighborhood's gang/drug leader, the *"jefe máximo del barrio"*.

They confirmed that the mother burned the six-year-old and the same risk factors were present for the three-year-old. It was only a matter of time before he, too, was severely abused. The younger child had to be removed from the mother's care and other living arrangements found. While the youngest's blood grandmother would take the child, she was unsuitable. She had been convicted of a crime and released subject to conditions, including wearing a security-monitoring anklet. Since a suitable relative could not be found, the Family Commissioner secured a place for the child in an ICBF state-sponsored children's home.

When the Family Commissioner and psychologist arrived in a city vehicle to collect the younger child, the entire neighborhood assembled to see how the gang members would handle the situation. A gang member directed traffic and told them where to park. As they were leaving with the child in the car, the *jefe máximo* appeared, the brother of the child's drug-dealing father. "Do you know who I am? I don't care what you do with the other child, but I want you to return the younger one, my nephew, today and I won't take further action".

Shortly after placing the second child under state custody, a community leader alerted the Family Commissioner that gang members were on their way to the Office to end the lives of the Family Commissioner and the interdisciplinary team: "They are coming your way. They are going to kill you. You don't have time for anything. Take the people and get out of the building". They left immediately, closing the office and calling the police who told them to stay in hiding away from the office.

It was learned that grandmother of the youngest child had told the community leader that her son, the gang leader and uncle of the child, had ordered gang members to storm the Family Commissioner Office. They were on their way to kill the Family Commissioner and all office personnel. If the community leader had not warned the Office, the Family Commissioner and the full interdisciplinary team would have been at work in their Office, with clients, when the *sicarios* or hitmen arrived.

The Family Commissioner office closed for three days while the Family Commissioner worked with *Personería* to find a solution. There was no question: the child could not be

returned to the abusive mother or the often-absent drug-dealing father. Every time the father visited his child in the ICBF children's residence, he was high on drugs and issued death threats to the institution's personnel. The proposal: they would return the child to the custody of the *jefe máximo* uncle provided that the uncle secured an appropriate identification number for the child (e.g., got the child a valid birth certificate by forcing the parents to take the necessary steps to do so),^{xv} guaranteed the child's education and health, agreed that a great aunt also would live in the home with the uncle to care for the child, and guaranteed that the father would not have access to the child.

They then strategized a negotiation plan that would not put the Family Commissioner or *Personería* at risk. The Family Commissioner and a representative from *Personería* went to the ankle bracelet wearing grandmother's house. She called her son to the house. The proposed solution was made and accepted. The *jefe máximo* uncle was given custody of the child who now lives with him and a great aunt in his home. No other action was taken.

The case remains painful to the Family Commissioner, the team and the city officials. A Family Commissioner psychologist summarized what many interviewees said about working with these difficult populations and the difficulty of navigating BACRIM's parallel system of justice:

“When we make a decision, we have done extensive investigation. But there are laws outside of the legal codes that end up affecting the dynamic and that make the processes complicated ... We have had this dynamic all our lives”.^{xvi}

^{xv} One of the complications of the case, which is representative of the obstacles that the Family Commissioner's team often must surmount and the large time expenditures they must spend, is that the Family Commissioner's team must verify that a child has been appropriately registered with the government (this critical for enrollment in school, access to health care, etc.) and received an identification number. The Family Commissioner office was given one identification number from the family and another from the nursery school for the child. They then tracked through both the mother and the father's registration to see if the child had been registered by either parent. The mother was registered with two numbers, the father was not registered, and the child had never been registered. To register the child, the parents had to first straighten out their own registrations. Every time the social worker set up an appointment for them to do so with the appropriate official, the parents failed to appear.

^{xvi} The Family Commissioner and team were moved to a new comuna. The Family Commissioner, at the Family Commissioner's own cost, purchased and installed a video-recording security system covering the entire Family Commissioner office. There are now cameras facing the street, at the entrance of the Family Commissioner office, in the waiting room, the hallways, and the offices of psychologist and social worker that can be visually monitored from the Family Commissioner's office. The Family Commissioner has played forward the prior community's help. The Family Commissioner demonstrated gratitude to his prior community for saving his life and those of his team members by informing his new neighbors when the system picks up someone breaking into a parked car.

3.8 The *Sayayín* of the Bronx

In Bogotá, four parts of the city are on permanent alert for femicide. They are home mostly to the poor. Among them are ex-combatants especially those engaged in criminal activities.

In Bogotá, the *sayayines* are the “strong men”, the criminal gang leaders. *Sayayín* refers to the immortal warriors from Dragon Ball Z, a Japanese manga show popular in Bogotá in the early 2000s. *Sayayines* sell drugs and arms and protect themselves and their business with ruthless violence. They are known for torture, murder, and dismemberment. They are extraordinarily brutal with their intimate partners.

“It is clear that he wanted to destroy her essence as a woman,” explained the Family Commissioner. “She was his property and he believed he could do what he wanted with her”.

A young woman of 24 came to a Bogotá Family Commissioner Office to secure a protective order. She explained that her companion, the father of her three-year-old toddler, was verbally violent with her. Because of his line of work in a criminal gang she had left him, gone to live at the house of her father, and was seeking a protective order.

As a child she lived in the Bronx, the seediest Bogotá neighborhood where people are held captive, tortured before being dismembered, and dismembered. It is known as a drug, arms, and human-trafficking hub. As a young child, a family member sexually assaulted her. By nine years of age, she was drug addicted and living on the street. By age 15, she was unkempt, bald, and sick.

The man she called her “savior,” 20 years her senior, moved her into an apartment, made her get off drugs, and took care of her. They had a son. The young woman then explained that her companion was a *Sayayín* of the Bronx.

When the Family Commissioner heard this, she urged the young woman in the strongest possible terms to leave her father’s house and go to a *Casa de Refugio*, a shelter operated by Bogotá’s Secretaría Distrital de la Mujer, for her own safety and that of her child, but could not convince her.⁵⁶

Armed with a provisional protective order, the woman returned to her father’s house. Soon thereafter, she opened the door and her ex-partner began his attack. He started by repeatedly kicking her in the vagina. Next, he grabbed a switchblade. Starting at her pubic bone he carved straight up through the abdomen. As he attacked, he kept repeating, “I didn’t make you beautiful so another could fuck you”. Then he moved on to her face.

The father turned to the child who was clamoring for his attention. Somehow the woman escaped through the front door. The commotion attracted others who called for medical assistance and the police. Her injuries were so severe that *Medicina Legal* said she needed

over 50 days of disability.⁵⁷ Later she told the Family Commissioner she could no longer bear to look in the mirror. Once she was beautiful; now she no longer recognizes herself.

3.9 Social Strata: The Non-Conflict Criteria Category Employed to Signify Domestic Violence Characteristics

Colombia officially divides society into six social strata, with 6 being the most affluent. There is also an unofficial category 0 for the desperately poor. Particularly in Bogotá and Medellín identifying the population a Family Commissioner Office serves by reference to social strata becomes meaningful shorthand to convey likely challenges an Office will face and staffing considerations in a way that merely listing the number of residents served by an Office does not.

Most cases that come to a Family Commissioner Office are from stratas 0 to 4. The normalization of violence is so complete that aggressors often readily admit to their violent acts, not perceiving them as problematic. The volume of cases is high, and workload can be crushing. Violence almost always manifests as physical violence, which is likely accompanied by psychological, economic and possibly sexual violence.^{xvii} A Bogotá *Secretaría de Integración Social* study of Family Commissioner administrative data between 2013 and 2015 concluded that the strata with highest percentage of domestic violence cases is strata 2 (46.16%) followed by strata 3 (31.52%), followed by strata 4 (5.54%).⁵⁸

Domestic violence in strata 5 and 6, at least that which is brought to the Family Commissioner's Office, most often involves economic and psychological violence and may not always include physical violence. These cases are highly contested because a Family Commissioner issuance of a reasoned decision including findings of fact regarding violence as the necessary support for a domestic violence protective order can become important evidence in a subsequent divorce. Parties are represented by lawyers and the Family Commissioner must be a consummate jurist. These cases can take months and result in mountains of files, as the photo in the beginning of this section demonstrates.

Regardless of whether domestic violence manifests in culturally expected ways in the different socio-economic stratas of Colombian society or is of the newer, more virulent, destructive and terroristic violence arising with demobilizations of combatants, the State's institutional design for the Office of the Family Commissioner is so deeply flawed that it is surprising that these Offices are able to fulfill their mandate to issue protective orders to women, girls, and other family members experiencing violence in the home.

^{xvii} Family Commissioners tells us that most of the women they see will not officially raise the issue of an intimate partner's sexual violence. Because there is always physical violence, this becomes the basis for a protective order.



4 The State's Flawed Institutional Design for Family Commissioners

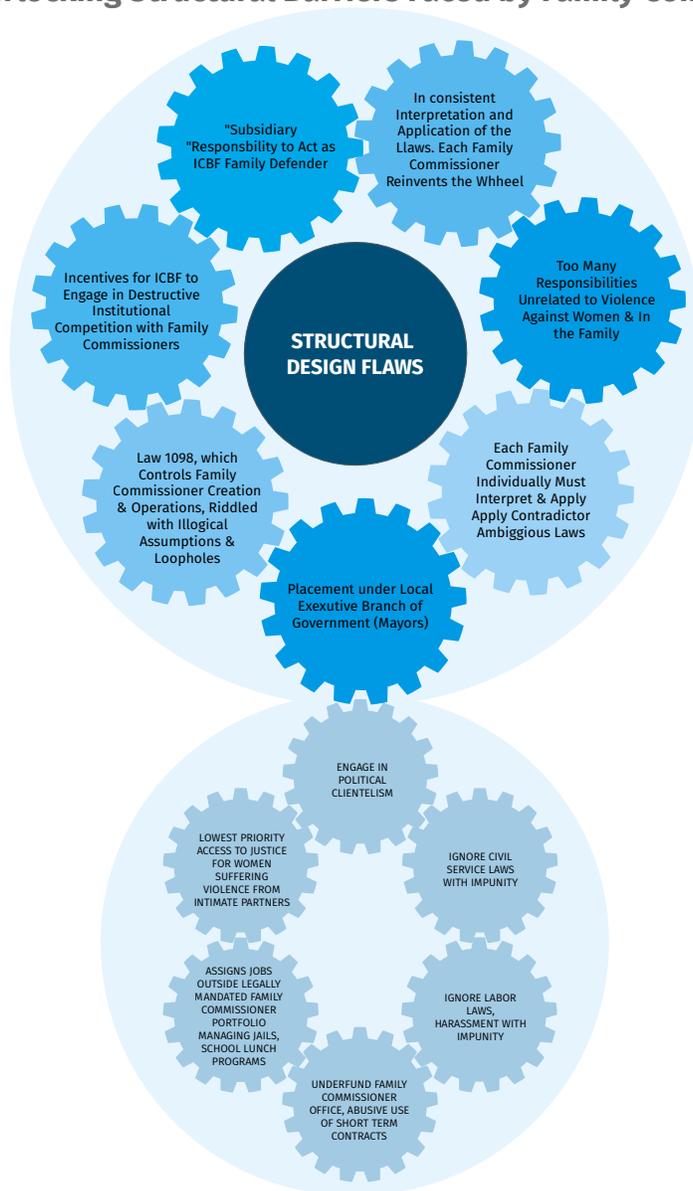
Through the years, layers of responsibility have been added to the Office in a haphazard illogical fashion. The Office has never been configured in a logical mission-driven way.

Family Commissioner Offices were never intended to form part of the judicial system to address violence against women. They were created under the 1989 Code of Minors as part of the local executive branch of government (e.g., under local mayors) as an element of the national system for child and family welfare and assigned the tasks of informally resolving family conflicts and handling infractions of law (e.g., underage drinking) committed by minors.⁵⁹ In 2000, in response to judges' complaints that women's demands for protective orders were congesting their judicial dockets, the judicial power to issue civil protective orders was removed from judges and transferred from the judicial branch of government to Family Commissioners and the local executive branch of government.⁶⁰ In so doing, Colombia demoted the importance of domestic violence and of violence against women as a national public security and justice priority.

Colombia had a chance to redress this grave institutional mistake six years later but instead amplified the institutional dysfunction when it adopted Law 1098, the Code of Children and Adolescents in 2006, which replaced the Code of Minors almost entirely and dramatically expanded Family Commissioner Office non-judicial responsibilities. Once again, men's violence against their intimate partners was downgraded.

Law 1098 firmly embeds Family Commissioner creation, funding and responsibilities within a law whose goal is to promote the welfare of children and strives for family unity and harmony—a *philosophy that as put into practice diverges from that of Colombia's laws addressing violence against women*. Child welfare laws and their philosophy regulate the Family Commissioner Office whose principal role is to address violence against women. Law 1098 imposed a host of new responsibilities on Family Commissioners, including the re-establishment of the rights of minors in cases of domestic violence. Significantly, this law added the “subsidiary” role of fulfilling the role of an ICBF Family Defender, a second full-time job with a long list of duties, for Family Commissioners in approximately 88% of Colombian municipalities. See Appendix 3.

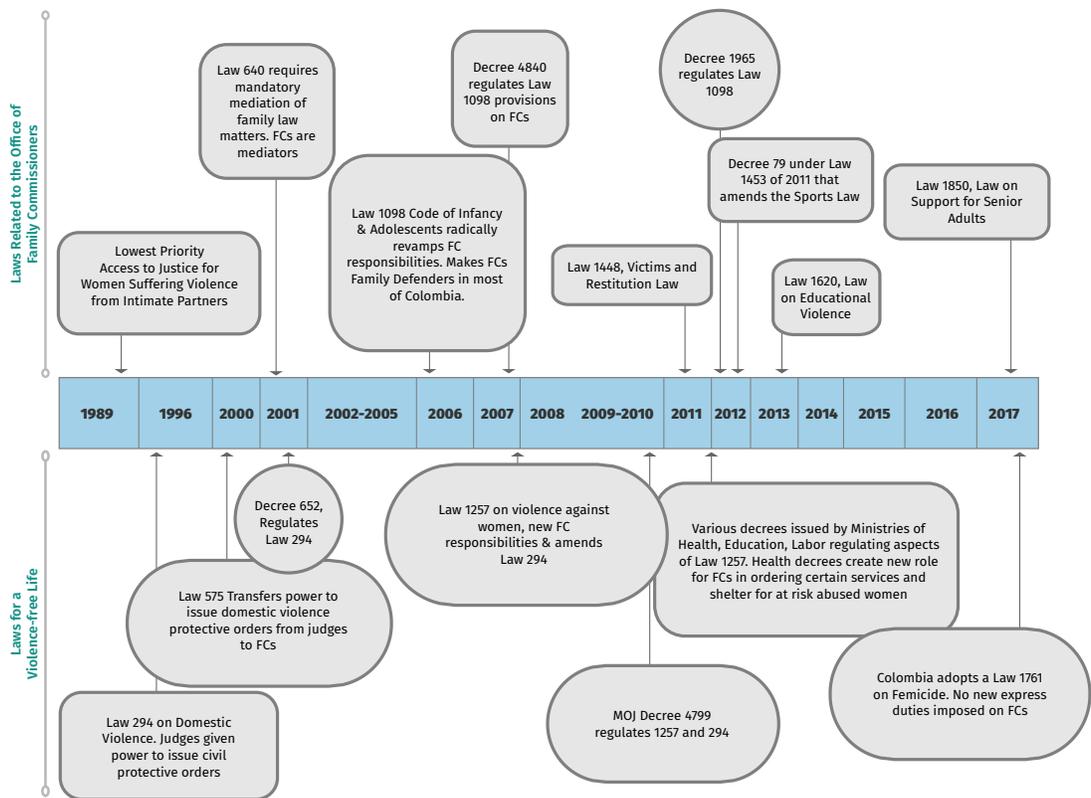
Figure 3: Interlocking Structural Barriers Faced by Family Commissioners



Source: Authors

Since 2006, national laws have heaped further responsibilities on Family Commissioners – the sports law, the education law, the law relating to support of seniors, etc. – without an assessment of fit with other responsibilities or impact on Family Commissioners’ ability to issue provisional and permanent protective orders in response to requests from women experiencing violence in their home at the hands of their intimate partners, teenage or adult children or other family members. Reflecting the true lack of priority for issues of violence against women, meaningful consideration is not given to how the vast array of diverse Family Commissioner responsibilities negatively affects their ability to be the justice systems “first responder” for women and girls in cases of intimate partner or other domestic violence.

Figure 4: Timeline of Key Laws



Source: Authors

4.1 Placement Under the Local Executive Branch of Government

Of all the deficiencies in the Family Commissioner’s institutional design, the most serious is placement of Family Commissioners under the local executive branch of government. While in some systems delegating authority down to the local level encourages innovation and cooperation resulting in more effective service delivery, with rare exceptions, this has not been the case for Colombia’s Family Commissioners.

4.1.1 Tyranny and Reality of Local Mayor's Control

Colombia is a country of small municipalities. Placement of the Family Commissioner under local mayors outside of the largest cities gives local mayors extraordinary control. These mayors' actions can, and based on our sampling do, undermine the Colombian laws to protect women against violence from their intimate partners.

The *Contaduría General de la Nación* annually classifies municipalities in seven levels, as detailed in the methodology section. Classification criteria is based on population, but then adjusted for certain fiscal and other factors reflective of strong institutionality and fiscal management, which results, especially for smaller municipalities, in receiving a lower classification than would be the case if only population were considered. Table 2 shows the 2016 *Contaduría* municipal classification of Colombia's 1,101 municipalities and the percentage of municipalities in each classification level.

Approximately 97% of Colombian municipalities' populations do not exceed 100,000 residents.⁶¹ Most of these, 971 municipalities or approximately 88% of Colombia's 1,101 municipalities, are classified as level 6, which means they are the smallest, poorest and suffer from lack of professional management. Based on population criteria alone, the population of each of these 971 municipalities should not exceed 7,000. Many municipalities in our sampling, particularly in recently controlled FARC areas, have much larger populations of between 12-20,000 but are rated level 6 instead of level 4 due to factors associated with low institutionality.

Table 2: Distribution of Municipalities by Category⁶²

Municipal Population Criteria	Clasificaciones de categoría municipal	# of Municipalities & Bogotá, D.C. in Each Category, 2016	# of Municipalities in Each Category, 2016
Above 500.000	Especial	6	0,5%
100.001-500.000	1	23	2,1%
50.001-100.000	2	19	1,7%
30.001-50.000	3	16	1,5%
15.001-30.000	4	27	2,5%
7.001-15.000	5	39	3,5%
Under 7.000	6	971*	88,2%
Total		1.101	100%
*Incluimos en la sexta categoría un municipio del que no hay información suficiente.			

Source: table prepared by the authors based on the *Contaduría General de la Nación 2016 Categorización de Departamentos, Distritos y Municipios*.

A random internet search of Colombian municipal websites produces a startling result and confirms what we heard from Family Commissioners outside of Bogotá and Medellín: violence against women from their intimate partners is not a priority. The responsibility of Family Commissioner to issue civil protective orders in cases of domestic violence against women and other family members is not even listed among Family Commissioner responsibilities on small municipalities' websites.⁶³

Some local mayors assign tasks for which we could not find legal authority: managing the municipal jail, managing the contracting for and operation of schools' lunch programs; acting as transit police, and being charged to act as technical secretary for several municipal level committees, often being required to create and recommend municipal policies.

“I am a lawyer fulfilling a judicial function, not a jailor.”

-Putumayo Family Commissioner

Even in Medellín, local mayors take advantage of Law 1098's authorization to assign matters relating to child and adolescent infractions of law to Family Commissioners: underage drinking or being at bars, consuming porn, engaging in rowdy behavior at sporting events or traffic violations. Due to the volume of intimate partner domestic violence cases, some Medellín Family Commis-

sioners were scheduling permanent protective order hearings three or four months out instead of the required five to ten days after issuance of a provisional protective order. A frustrated Family Commissioner asks: *What does going to sporting events and fining parents of teens who get drunk or take drugs at a (soccer) match have to do with our (domestic violence) responsibilities?* These responsibilities can and should be assigned to other institutions.

4.1.1.1 Labor Harassment

Outside the larger municipalities, local mayors also often treat the Family Commissioner as if he or she were a political appointee, subject to replacement at the mayor's whim, instead of a career civil servant. Stories of harassment and forced resignations are commonplace.

A small Boyacá level 6 town's Family Commissioner explained “Labor harassment is part of the instability that comes with being named a Family Commissioner.” With a change of administration, she found herself without paper, a computer, a printer and otherwise lacking the supplies to operate the office. When she requested supplies “the entire world fell in on me”. The administration asked her to resign several times (but never in writing). She wrote a letter by hand (she had no computer) to the Municipal Council, the Procurador and the Personero, detailing the harassment. While orders to resign ceased, harassment continued.

The mayor's office now inundates her with letters inquiring “provide information of your whereabouts at 8:30 am (or 10:30 am, 3 pm, etc.)”, which, by law, she must answer within 24 hours. She was denied permission to attend a two-day Family Commissioner training conference even though it would be at her own expense. Her request to be absent

for several hours to attend a family funeral was denied as an unjustifiable request, “no es procedente.” Through tears, the Family Commissioner recounted her despair standing at the window in the Family Commissioner’s cramped poorly equipped office, watching the funeral procession pass.

One of the first acts of a new mayor of a level 3 Bolivar municipality was to fire the experienced Family Commissioner. “What could I do?” asks the Family Commissioner. The new mayor’s brother was a well-known AUC paramilitary member who continued to operate in a group on the margins of the law. “I was told by an anonymous caller ‘if I was going to begin any sort of procedure contesting the mayor’s action, I had to be ready to face the consequences.’” “There was,” he said, “nothing to be done... I love my children.” Four years later when a new mayor was elected, the new mayor reappointed him.

Another case, this time in a level 6 municipality in the southeastern part of Colombia, involves a Family Commissioner who was a single mother supporting her only child. When the mayor terminated her (in writing) without providing a reason, she contested the decision by initiating a *tutela*. She could not afford to be without a paycheck for the two years that a standard administrative claim would take and a *tutela* requires a speedy resolution. An appeals court agreed that the termination was improper because the mayor lacked the power to terminate her without cause and she was reinstated. She was systematically excluded from meetings and hampered in her work until a new mayor won in the next election cycle. The Family Commissioner believes the mayor fired her because he resented the high level of her formal education and misinterpreted something she said at a committee meeting.

A Family Commissioner in a Cundinamarca level 2 municipality of over 50,000 residents must request and receive the mayor’s permission to be absent from the office to accompany the police when executing the Family Commissioner’s protective order for eviction of an aggressor. Without the mayor’s “out of office pass”, the mayor will accuse the Family Commissioner of dereliction of duty due to the absence. The Family Commissioner in a level 6 Boyacá municipality explains that he was singled out for different (and worse) treatment from others in the mayor’s administration because he had not worked on the mayor’s political campaign. A Magdalena Family Commissioner explained that Family Commissioners are given judicial powers, of the same nature as judges, but do not have the same protections “We want the same labor and judicial autonomy enjoyed by judges”. The stories are endless.

A long-time Medellín Family Commissioner rightly observed that provisional Family Commissioner appointments weaken the institution: the position is not held because of competitive application and merit by individuals committed to careers in public service, and those who hold them may have no intention of pursuing a long-term career as a Family Commissioner.

Family Commissioners are permanently under “provisional” appointments.

Family Commissioners have been designated as career civil servants since 1997⁶⁴ because of the important non-partisan governmental administrative roles assigned to them, a designation that should protect them from political clientelism and improper harassment. Clearly it does not. Neither the national nor territorial^{xviii} governments sanction local mayors for their improper acts. Many Family Commissioners do not report harassment because they fear retaliation. Others who have reported harassment to the *Procuraduría*, *Personería* or the local *Fiscal* say it is a waste of time. Nothing even changes.

Startling, outside of the largest cities, most Family Commissioners have not passed the civil service exam because they want to work in their hometown, but their local mayor will not take the legal steps required under the civil service law to inscribe the municipality as requiring a Family Commissioner. Most Family Commissioners we interviewed

held their appointment “provisionally”, which means they satisfied all legal requirements to be a Family Commissioner except successfully passing the civil service exam. In this case Colombian law provides that at end of six months, the provisional Family Commissioners become entitled to certain labor law protections—that their termination must be for cause. This explains the success of the Family Commissioner in her *tutela*.

“Please, create a public policy for the mayors. Place us under the Ministry of Justice or ICBF, it does not matter.”

Family Commissioner, Medellín

4.1.1.2 Obligation to be Available 24/7

The impunity enjoyed by local mayors even extends to an improper interpretation and application of Law 1098—an interpretation implicitly supported by ICBF. The law provides that Family Commissioners and Family Defenders (meaning the Office, not the individual) must provide their services 24/7 “to assure the protection of children and adolescents and re-establish their rights” (the rights of abused women apparently are not important enough to be mentioned). The law provides that “the State” must implement the necessary measures required to fulfill this legal requirement.⁶⁵

ICBF whose legal office interprets Law 1098 requires Family Defenders and its staff to be available outside of normal office hours for emergencies but compensates them for their extra time either in cash or extra bonus days. Local mayors insist that their Family Commissioners (including those who also are Family Defenders) must be available 24/7 with no additional compensation because the law says it is part of their job description to be available 24/7. When a Family Commissioner/Family Defender asked the ICBF legal office for an interpretation of this provision, the office opined that it is for the “State”, which

^{xviii} The structure of the Colombian state divides the responsibility for government into three levels, the national, the departmental and the municipal.

in this case is the local territory or mayor, to decide what the law means. In other words, the law is what the mayor says it is.⁶⁶

Not surprisingly, Family Commissioners implored us to remind the national government of its responsibility to hold government officials accountable to fulfill the requirements of law and that the Family Commissioner Offices (funding, operations, management) be transferred to a national institution, as long as they were not under their local mayor.

4.1.2 Lack of Judicial Oversight

Family Commissioners are not part of the judicial branch of government even though they have been delegated the judicial administrative power to issue civil protective orders for domestic violence and are given a crucial role as the justice system's "first responders" to execute the State's commitment to combat domestic violence including violence against women.⁶⁷ Because the executive branch, properly, may not interfere in the decisions of the judicial branch of government,⁶⁸ there is no substantive judicial oversight of Family Commissioners performance of the judicial administrative responsibilities to issue domestic violence civil protective orders.

4.1.3 Reinventing the Wheel; Inconsistent Application of Law

Placement under each municipality's local mayor means there is no centralization with respect to intake, procedures, templates, data collection, training, interpretative issues or systems. Each municipality's Family Commissioner Office operates independently of all others. Best practices are not shared. The structure fosters inconsistent interpretation and application of the laws on men's violence against their intimate partners and other family members.

The proliferation of laws on Family Commissioners' many and diverse responsibilities tied to the family enhances confusion and inconsistency. Many laws related to mediation of certain family law matters, touch on the same subject but with different goals, requirements and procedures that, at best, are ambiguous and, at worst, contradictory. Rather than address the contradictions and inconsistencies, the State continues to adopt new laws and regulations, leaving it to each individual Family Commissioner to sort out the thorny questions of interpretation and implementation.

Each municipality struggles to interpret law, define the intake pathway in cases of domestic violence, and communicate it to officials and clients with meant-to-be didactic materials.

For example, Law 294 on protective orders in cases of domestic violence applies to violence by a family member against a child or adolescent while Law 1098 re-establishment of rights for children and adolescents covers the same subject. The two laws are

not reconciled nor is there a clear statement that Law 1098 should be used for sexual and other violence against children and adolescents. Every Family Commissioner is on their own in trying to decide how to apply the differentiated treatment to be afforded girls, victims of violence, under Law 1257 in the context of Law 1098 re-establishment of rights, and results vary considerably.

4.1.4 Voiceless, Invisible and in Individual Spheres

Every other institution with which the Family Commissioner must interact is a centralized institution, headquartered in Bogotá, and funded directly by the national government. National policy is made only at the national level with input from national level institutions like the *Ministerio de Salud y Protección Social*, ICBF, the Ministry of Justice,

“We are in the basement of the administration”

- Family Commissioner from Antioquia

the *Policía Nacional*, the *Consejera Presidencial para la Equidad de la Mujer*.^{xix} Family Commissioners are neither seen nor heard on matters of public policy involving domestic violence against women, girls and other family members because of their placement under the local executive branch of government. They have no national champion to represent their interests or viewpoint. The loser? Colombian

society. Family Commissioners, the institution with the greatest national reach, expertise, and most actual on-the-ground expertise on matters of domestic violence in the context of the armed conflict and demobilizations, including the formal post-AUC and post-Peace Agreement demobilizations, and urban and rural regions, are excluded.

Not only do Colombian families and society lose from the Family Commissioners' exclusion from policy development and prioritization, but it also means that legislative proposals adding more responsibilities to Family Commissioner Offices easily become law. How these additional responsibilities will impair Family Commissioner effectiveness as the portal to justice for women abused by their intimate partners is never considered.

4.2 Funding and Budget Control Issues

Regardless of the (in)adequacy of Family Commissioner overall funding levels, the institutional budgetary models generally disincentivize Family Commissioner creation and

^{xvii} The difficulty of including Family Commissioners is evident in the composition of the February 27 Primera Audiencia Nacional por las Comisarías de Familia organized by the *Procuraduría*. The focus was the need to reform Family Commissioners. There were 24 individuals spread across various panels taking place over a day and a half. Of them, two were members of Congress (8.3%), three were Family Commissioners (12.5%), five were from civil society (20.8%) and the remainder from various centralized Colombian national level institutions and one international donor organization. The event was held in Bogotá. Of the three Family Commissioners, one was from Bogotá. The municipalities of the two other Family Commissioners were not identified.

permanent staffing and in all level 6 municipalities facilitate use of funds transferred from the national government to the municipality to municipal expenditures other than the Family Commissioner Office.

Family Commissioner salaries, we are told, are counted as part of municipal overhead and are a relevant factor in the Contaduría's municipal classification system which reviews financial ratios, including ones that measure overhead in relationship to other factors. A municipality has an incentive to keep its overhead low, particularly if it is bumping up against its ratio limits. In these circumstances, it will not want to create more Family Commissioners (or other civil service positions) because the increased overhead would negatively affect its ratios. This disincentive could easily be reversed if Family Commissioner overhead costs were to be excluded from these financial ratios.

Further, to control overhead and hedge against contingencies, municipalities require that Family Commissioner staff be hired under short-term contracts (less than a year) that may be renewed. Family Commissioners and their staff report that often they never know whether a contract will be renewed or when, with the hiatus where the office must function without necessary staff being as long as several months. While we doubt we can reverse municipalities' use of short-term contracting as a fiscal management tool, stability and quality of service could be enhanced if Family Commissioner staff short-term contracts had to have a term of at least 350-360 days, and the hiatus period between contracts was limited to no more than one month.^{xx}

Finally, under Colombia's complex system of taxation and redistribution of centrally collected funds to municipalities, in the poorer municipalities Family Commissioner operations depend entirely on transfers of funds from the national government to the municipality.⁶⁹ Unlike funds transferred for health or education, amounts transferred to municipalities for Family Commissioners are not earmarked. They are included within a transfer for general purposes of municipal operation that includes paying salaries of other municipal officials. This issue could easily be resolved by earmarking funds intended for Family Commissioners.

4.3 Too Many Responsibilities

Family Commissioners have an excessive number of responsibilities set by national laws, many not tied to intimate partner and other domestic violence. Within our sample there

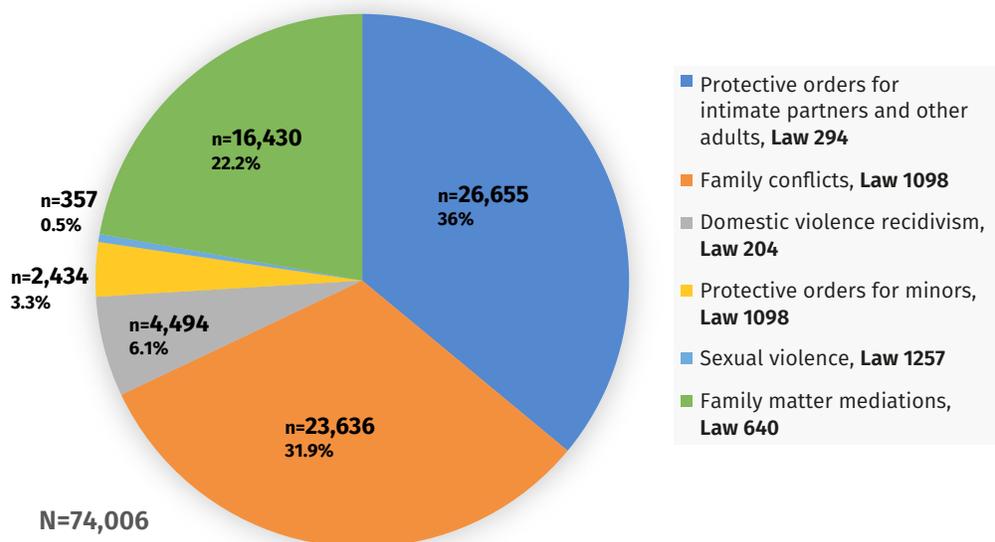
^{xx} Short-term contracts, for better or worse, are so embedded into the fiscal management of all Colombian municipalities that we believed a recommendation to forego their use in Family Commissioner Offices would fall on deaf ears. Instead, we recommend their standardization and that the hiatus between contracts be kept to a minimum and, in any event, no more than a month. This would provide stability and predictability to Family Commissioner operations, enhance the likelihood of keeping qualified trained personnel and, most importantly, facilitate access to justice and protective measures for Colombia's women, girls and other family members.

were a number of tasks, such as managing a municipal jail or a school lunch program, for which we were unable to find a basis in national law but nonetheless had been imposed by a local mayor. Many responsibilities can be or already are performed by other institutions. The excessive number of tasks means that abused women and girls may be forced to wait to be able to access the protection and services available through a Family Commissioner protective order. Recommendations from past governmental studies and recommendations to restructure Family Commissioners responsibilities so they can more effectively address violence within the families have faded away without action.⁷⁰

What are the responsibilities that should be jettisoned? First, and foremost, the responsibility to mediate family law matters under Law 640 or support under Law 1098 (which has its own provisions on support mediation) should be eliminated from the Family Commissioners' portfolio. Such responsibility is time-consuming. It comprised 22.2% of the caseload in Bogotá during 2015 and 37.3% of the caseload in Medellín from 2013-2015.⁷¹ Many other institutions are authorized by law to conduct these Law 640 extrajudicial mediations of family law matters (e.g., universities, mediation centers, licensed mediators at equity, Family Defenders and *Personería*). As provided in Law 294 and consistent with best practices, however, Family Commissioners would retain the ability in the context of domestic violence protective orders to deal with issues of custody, support and visitation.⁷²

Next, the responsibility under Law 1098 for handing infractions of law (underage drinking going to bars, rowdy behavior at sports events, traffic violations, etc.) by adolescents should be removed from Family Commissioners. Bogotá has done so. Bogotá's approach should become the legal norm for the country. The responsibility under Law 1098 to manage family conflicts also should be removed from Family Commissioners. This is a time-consuming psychosocial function, not a legal one, and in practice resembles a form of non-binding mediation. In Medellín for the period 2013-2015 it comprised 21.3% of their caseload.

Figure 5: Distribution of Cases by Type of Action, Bogotá 2015

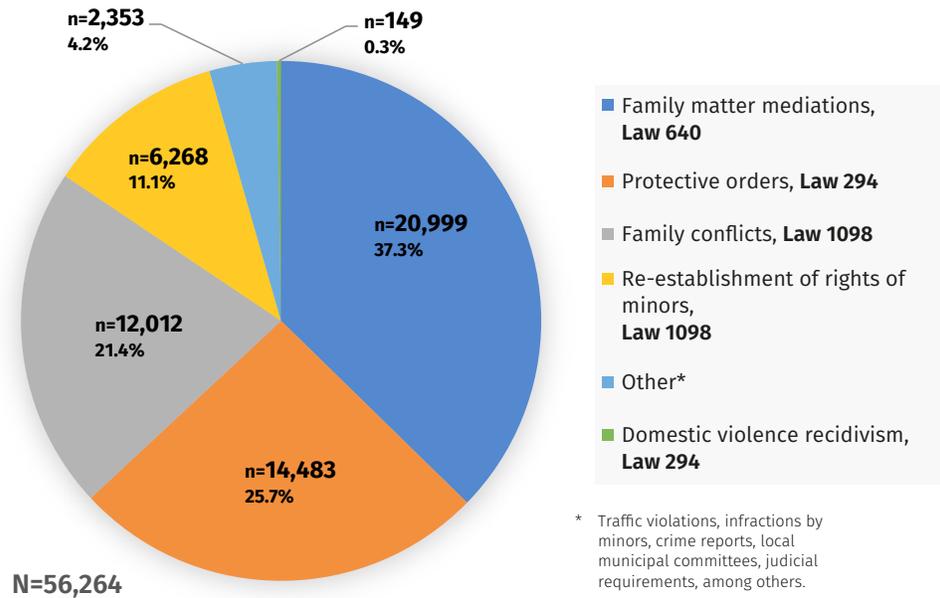


Source: figure prepared by the authors based on information provided by Bogotá's *Secretaría de Integración Social*.

Of all the Family Commissioner responsibilities that require another home, the most important and most difficult to restructure is that of the “subsidiary” responsibility of Family Commissioners to act as Family Defender in approximately 88% of Colombian municipalities. This is a full time second job^{xxi} and, by law, the rights of children and adolescents are to take precedence over all other matters.⁷³ Family Commissioners report that while they are required to perform all the duties of an ICBF Family Defender, ICBF provides no support to them and, worse, hinders their ability to provide required assistance to children and adolescents. We recognize that solving this issue may take time and expense and might not be able to be implemented as quickly as removal of other responsibilities.

^{xxi} See Appendix 3 for ICBF's full list of the many tasks that must be performed by a Family Commissioner in the “subsidiary” ICBF Family Defender role.

Figure 6: Distribution of Cases by Type of Action, Medellín 2013-2015



Source: figure prepared by the authors based on information provided by Medellín’s *Secretaría de Seguridad y Convivencia* office.

4.4 Law 1098 Rules Regarding Family Commissioner Creation and Staffing are Riddled with Illogical Assumptions and Loopholes

Family Commissioner Office creation must be tied to service demand, not just population, and Law 1098’s illogical legal population assumptions must be eliminated. The “loophole” must be closed that allows up to 97% of Colombian municipalities, those in categories 2-6, to avoid providing their Family Commissioners with the staff otherwise required by law. Even Colombia’s official statistics supplied by *Medicina Legal* show that four of the five cities with the highest incidence rate of violence against a female partner per every 100,000 individuals fall within municipalities classified in levels 2-6.⁷⁴ Further, Law 1098 assigns the Family Commissioner Office responsibilities on the assumption it is fully staffed.

All municipalities in levels 2-6, which constitute approximately 97% of Colombia’s 1,101 municipalities, must have one Family Commissioner office except (1) special cities must have one Family Commissioner for every 250,000, (2) level 1 cities must have one Family Commissioner for every 150,000, and (3) the smallest and poorest municipalities can band together and share one Family Commissioner among them.⁷⁵

It is hard to understand why a level 2 medium-sized city with a maximum of 60,000 residents merits one Family Commissioner but add another 80,000 residents for a total of

140,000 and the requirement is still only one Family Commissioner. Move to a special category city and quadruple the 60,000 for a total of 240,000 residents and the requirement is still one Family Commissioner. As between special category cities (required to have one Family Commissioner for every 250,000 individuals) and level 1 cities (required to have one Family Commissioner for every 150,000 individuals), Law 1098 implicitly embeds the false assumption that the “special” categories are less violent than smaller level 1 cities.

Taking Medellín as an example and mapping the number of administrative proceedings handled by Family Commissioners against the residents they serve, two things stand out. First, not one Family Commissioner serves 250,000 individuals. Medellín has 23 Family Commissioners (10 more than required by Law 1098). Of those we interviewed, all but one reported a crushing workload. The one reported only that the workload was “demanding”. At the time of our interviews, due to the crushing workload many Offices were scheduling permanent protective order hearings three to four months out instead of between five and 10 days after issuance of a provisional protective order required by law.

Secondly, our research shows that Family Commissioners with the greatest number of cases do not necessarily have the largest populations. Demand depends on the sociodemographic characteristics of the population served and case complexity, not merely the number of residents as reflected in Table 3 below.

Finally, Law 1098 assigns Family Commissioner Office responsibilities on the assumption each Office will have the legally mandated staff consisting of at least one psychologist, one social worker and one secretary, but then gives approximately 97% of municipalities, those in levels 2-6, the ability to avoid providing staff.⁷⁶ Failing to adequately staff Family Commissioners Offices is a critical deficiency. Based on our interviews, many municipalities, even municipalities classified as level 1, do not provide their Family Commissioners with complete teams and some Family Commissioners have no team. The situation is worse in small municipalities with the highest intimate partner incidence rate per each 100,000 inhabitants fall within levels 2-6.⁷⁷

Family Commissioner psychologists and social workers play three critical roles in connection with Law 294 protective order hearings. First, they provide triage to women who arrive in distress. Next, they educate women of their legal rights to a life free of violence and other specific rights under Law 1257 and victim protection laws. Simultaneously they work to sensitize women to see themselves both as holders of legal rights and entitled to exercise them. Finally, they provide evidence through forensic evaluations that assist the Family Commissioner in applying the law and formulating measures to include in a protective order. In case of ICBF re-establishment of rights, ICBF guidance requires the Family Commissioner’s psychosocial staff to verify all the rights of children and adolescents and emphasizes the importance of the forensic role of psychologists and social workers.⁷⁸

Table 3: Population and Ranking Office by Number of Cases, Medellín

Medellín Comuna by Number and Official Name	Name of Comuna in Medellín's FC Management System	2016 Population	Comunas Ranked Highest to Lowest # of Cases 2013 - 2015
<i>Comuna 06 - Doce de Octubre</i>	Same	194,239	1
<i>Comuna 03 - Manrique</i>	Same	160,378	2
<i>Comuna 07 - Robledo</i>	Comuna Siete	173,075	3
<i>Comuna 01 - Popular</i>	Comuna Uno	130,914	4
<i>Comuna 08 - Villa Hermosa</i>	Same	138,045	5
<i>Comuna 04 - Aranjuez</i>	Campo Valdés	162,596	6
<i>Comuna 09 - Buenos Aires</i>	Same	137,049	7
<i>Comuna 02 - Santa Cruz</i>	Villa de Socorro	111,992	8
<i>Comuna 16 - Belén</i>	Same	197,123	9
<i>Comuna 13 - San Javier</i>	Same	138,625	10
<i>Comuna 80 - Corregimiento San Antonio de Prado</i>	Same	113,202	11
<i>Comuna 60 - Corregimiento San Cristóbal</i>	Same	86,315	12
<i>Comuna 05 - Castilla</i>	Same	150,347	13
<i>Comuna 11 - Laureles - Estadio</i>	La Floresta	122,503	14
<i>Comuna 10 - La Candelaria</i>	Comuna Centro	85,587	15
<i>Comuna 15 - Guayabal</i>	Same	94,960	16
<i>Comuna 12 - La América</i>	Comuna Santa Mónica	96,613	17
<i>Apoyo</i>	Same	n/c	18
<i>Comuna 14 - El Poblado</i>	Same	130,206	19
<i>Comuna 70 - Corregimiento Altavista</i>	Same	37,478	20
<i>Comuna 50 - Corregimiento Palmitas</i>	Same	6,687	21
<i>Comuna 90 - Corregimiento Santa Elena</i>	Same	18,789	22

Source: prepared by authors based on information from Medellín's Departamento Administrativo de Planeación and the Secretaría de Seguridad y Convivencia office.

A secretary (and one or more administrative staff) is critical to scheduling and documentation and recordkeeping inherent in the legal requirements applicable to a Law 294 protective order proceedings as a judicial administrative function. We have seen that in many Offices other important duties, such as determining the specific legal proceeding to be followed based on a women's description of facts (a legal judgment) and preparing provisional protective orders, fall to secretaries, who in many municipalities receive no training.

Family Defenders, by law, are to have a team comprised by, at a minimum, a psychologist, a social worker and a nutritionist.⁷⁹ Logically the Family Commissioners in approximately 88% of Colombia's municipalities who must act as dual Family Defenders/Family

Commissioners should they have their staff doubled, but if they are in level 2-6 municipalities local mayors' control whether they have any staff at all. None of the Family Commissioners in level 6 municipalities we interviewed had full teams. Some had none, others a full or part-time psychologist, some a shared receptionist, and a lucky few had a secretary and a psychologist.

Law 1098 provides that in towns and cities where the Family Commissioner is not fully staffed, Family Commissioners can rely on the help of other professionals, such as from local schools, doctors and nurses and ICBF personnel in a municipality to take up the slack.⁸⁰ This is nonsense. Since ICBF lacks presence in all but approximately 12% of Colombian municipalities, it is illogical to think ICBF personnel can assist the Family Commissioner. Equally divorced from reality is the assumption that personnel in a small town with their own full-time jobs are going to be able to support Family Commissioner operations.

Dealing with ICBF over cupos, according to dual Family Commissioners/Family Defenders, is their “worst nightmare” a “no-win” situation and one of the greatest sources of work-related stress.

Equally divorced from reality is the assumption that personnel in a small town with their own full-time jobs are going to be able to support Family Commissioner operations.

4.5 Dysfunctional Relationship with ICBF Must Be Addressed

ICBF is an institution created by the national government, funded from the national government's budget and with its headquarters in Bogotá and offices in other parts of Colombia. Family Defenders who are not Family Commissioners are directly employed by and are part of ICBF. ICBF also is responsible for setting qualifications for state run institutions that are needed for abandoned children or children that have been removed from their parents due to domestic violence or other acts constituting maltreatment under Law 1098 and for whom the government has become responsible. Because Family Commissioners, even when they must discharge all the duties of a Family Defender, are part of the local executive branch of government and not part of the ICBF budget, the institutional structure creates an incentive for ICBF to classify as many cases as possible as domestic violence to be able to transfer the matter to a Family Commissioner. It also creates an incentive to deny Family Commissioner/Family Defenders spaces (*cupos*) for abandoned or maltreated children at state run institutions unless the Family Commissioner/Family Defender can get their local mayor to agree to contract with ICBF for the *cupo*. Costs thereby are transferred from ICBF. ICBF Family Defenders are free to handle other cases. Finally, ICBF reserves a scarce resource, *cupos* for children who have become the responsibility of the Government, for ICBF Family Defenders.

One Family Commissioner reports repeatedly instituting *tutelas* in the name of the minor child against ICBF for a space at an ICBF controlled state institution, which she consistently wins. But, she notes, mounting a successful *tutela* requires considerable effort. Others call on their personal networks and request “personal” favors to secure a needed *cupo*.

Family Commissioners express concern for the children whose welfare is supposed to be the State's priority.

4.6 Day-to-Day Family Commissioner Operations: A Window into “Many Colombias” and Institutional Dysfunction

Considering day-to-day operations in different Family Commissioner Offices starkly reveals the reality of “many Colombias” and through this lens shows many operational impacts of placing Family Commissioners under the local executive. Civil society and government discuss the “Family Commissioner Office” as if all offices were uniform, operating with similar personnel, policies, procedures and a standard (albeit minimal) level of resources. Nothing could be further from the truth. A woman's experience of government, access to justice, safety and security, and basic services when she has been beaten or her children molested is dependent upon the location of the Family Commissioner Office. Put another way, geography matters. Family Commissioner Offices in Bogotá and Medellín and, we suspect, other special category cities, are worlds away from Family Commissioner Offices not just in Colombia's smallest and poorest level 6 municipalities but also those in all other levels of municipality, including cities classified as levels 1 and 2.

What accounts for the differences? Many are the product of the flawed institutional structure that we have described, but this is not the full story. Differences in Bogotá and Medellín Family Commissioner Office operations also can be attributed to the skill and public management expertise of the public officials charged with overseeing the management of Family Commissioner Offices.

At the time of interviews in Bogotá, Family Commissioners fell under the Subsecretaría de Familia who reported to the Secretaría de Integración Social. In Medellín, the reporting line had just been changed to the Secretaría de Seguridad y Convivencia who created the management administration position within that Office (with some further support) to oversee the Family Commissioner Offices. Coupled with that management expertise is a level of recognition within these city governments that properly functioning Family Commissioner Offices are necessary to meet critical needs of their citizens supported by a level of funding, while perceived as inadequate to meet demand, is superior to that provided by other municipalities to their Family Commissioner Offices.

Just as Family Commissioners across the country in small cities and municipalities are re-inventing the wheel, so is management in larger cities. The established best practices and innovations are not shared among the larger cities. While doing fieldwork, Medellín was very interested in learning the management practices of Bogotá to improve its services.

The day-to-day operations of each of Bogotá and Medellín are briefly summarized below and then contrasted with the other cities in our sample.

4.6.1 Bogotá

Bogotá's Family Commissioner Offices are the largest, most innovative, and most professionally managed by an office with approximately 56 centrally located employees. Bogotá has 55 Family Commissioners that operate from 36 offices and two mobile units. Bogotá's service model looks at the size of the population each Family Commissioner Office serves, the nature of the "population" served (ex-combatants/criminal organizations, displaced, social strata), the volume of the different types of cases presented (domestic violence protective orders including for violence against intimate partners, children and elders, child/adolescent re-establishment of rights, Law 640 mediations, handling family conflicts), and the level of danger posed by the neighborhood where a Family Commissioner Office is located (which impacts the hours the office can be opened). It considers how to leverage the physical space of each Office to better meet the needs of the population served to avoid, wherever possible, the need to set up further physical offices with their attendant additional overhead.

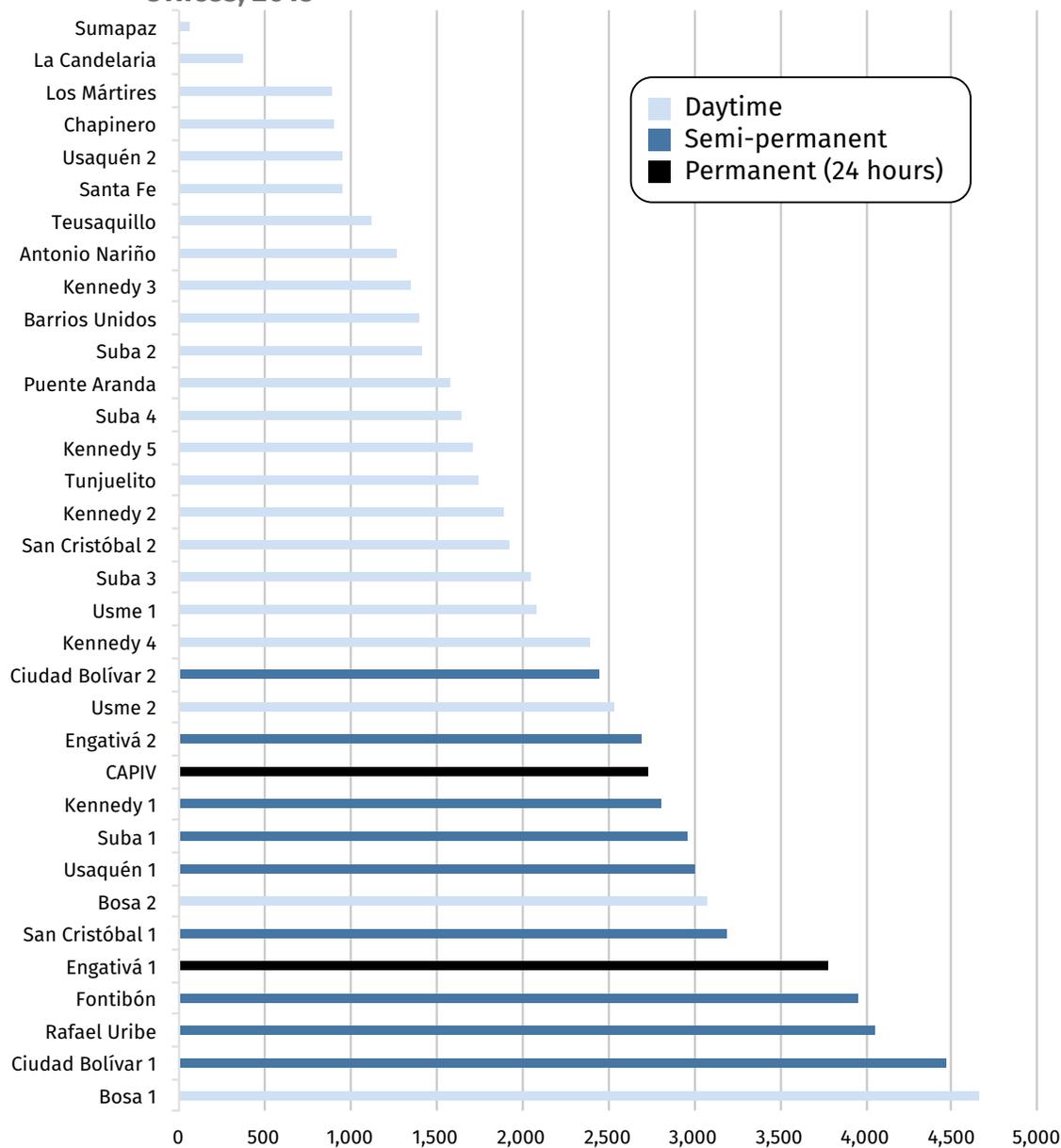
Bogotá employs the three below main office modalities, augmented by two mobile units.

- » A regular workday office (7 am to 4 pm Monday through Friday) called a *diurnal* office, which has one Family Commissioner with a large interdisciplinary team (typically 12 individuals, including a minimum of two social workers and two psychologists). There are 21 such offices, which are used when demand can generally be met within the regular workday and/or when necessary for the safety and security of Family Commissioner personnel.
- » An extended day office, referred to as a *semi-permanente* office, which has two shifts, one from 7 am to 4 pm and another from 4 pm to 11 pm, Monday through Friday. Each shift is staffed by a separate Family Commissioner with his/her dedicated interdisciplinary team consisting of 10-12 persons. Evening hours are a necessity and an innovation: demand is high and those served work during the day and cannot afford time away from their employment.
- » Two *permanente* offices, one serving North Bogotá and the other South Bogotá, that operate 24 hours a day, seven days a week. These offices operate as a semi-permanent office, with the addition of four further two-person skeleton crews each headed by a Family Commissioner (for a total of three on a team) which provides overnight, weekend, and holiday coverage. The Family Commissioners and personnel who staff the permanent office explains that their offices comprise "Emergency rooms for the family ... The dynamic is different from the rest of the offices because we provide services on holidays, weekends, and the early hours and in the middle of the night. What comes to us are the emergency situations. You have to take immediate measures. What we do is save lives. Although we have the same mandates as all the other offices, the situations we see are more complex and urgent."

There are two mobile units that can be moved from location to location as needed to assist a Family Commissioner Office experiencing a surge in demand. The units provide general support and are charged with prevention activities. The table below shows the volume of cases processed in 2015 by modality. Not all areas of Bogotá with extremely high demand can have a semi-permanent office due to concerns for security after dark, such as Family Commissioner Office Bosa 1.

Bogotá has developed a comprehensive set of standardized policies and procedures⁸¹ that ties together the different Family Commissioner responsibilities and their requirements into a workflow that starts when a person comes into an Office and continues through the different stages of each type of proceeding handled by the Office (e.g., a comprehensive *ruta interna*; see Appendix 4 for more information on Bogotá's *ruta interna*). Each person's function in a Family Commissioner Office and his/her responsibilities at each stage of the workflow is clearly described. In the case of Law 294 civil protective orders for domestic violence, the applicable procedural due process requirements are built into the workflow. In cases where there is or might be domestic violence, Bogotá has developed its own risk assessment tool whose questions must be completed by an interdisciplinary team member (psychologist or social worker) during a semi-structured interview that is a critical component of the initial intake process. The responses are used in tailoring the measures that should be included in a provisional protective order. The Family Commissioner is supported by a dedicated psychologist, social worker and secretary in gathering evidence for a permanent protective order hearing, who can participate and give evidence in the hearing (a forensic role) and provide input into the measures to be included in a permanent protective order.

Table 4: Distribution of Cases Processed by Bogotá Family Commissioner Offices, 2015



Source: prepared by the authors based on information provided by Bogotá's Secretaría de Integración social office.

These policies and procedures are supported by a case management system that includes modifiable templates for the different types of orders and notices that Family Commissioners must produce for each of the four principal types of proceedings they handle. This system is set up as a module within the software system employed by all personnel under the Secretaría de Integración Social.

While principally a case management system, the software is regularly modified to produce different types of management information that facilitates the management of Family Commissioner Offices.

The Subsecretaría de Familia staff is constantly looking at ways to enhance the effectiveness of the Offices, from working to transfer Law 640 mediations that do not involve domestic violence to other qualified institutions, to entering into an agreement with *Medicina Legal* to identify certain offices/personnel who would be available to perform the forensic physical and psychological evaluations that often are an essential element to proving the violence against a woman or girl to setting up a system with the *Fiscalía de la Nación*'s office to electronically transmit the original denuncia or information provided to the Family Commissioner Office to support issuance of a Law 294 domestic violence protective order.⁸²

Sadly, the superior management model developed by Bogotá is unknown in the rest of the country. There is no mechanism for managers of Offices in special or level 1 cities to share best practices, another consequence of the institutional dysfunction. Management offices also “reinvent the wheel” across the country.

4.6.2 Medellín

Medellín, at least at the time of our interviews in 2016, lagged behind Bogotá in the application of public management skills to oversight of its Family Commissioner Offices. The administration that had assumed office at the time of our 2016 interviews was committed to professionalizing the Family Commissioner Office management. We understand there had been years of underinvestment in Family Commissioner Offices who were severely understaffed and overworked, leading to a work stoppage in 2015 to demand the resources needed to meet the demand for services, particularly domestic violence civil protective orders.⁸³

A review conducted by the current administration found a backlog of matters, most of them Law 294 domestic violence protective order proceedings, which had risen to over 7,500 unresolved cases. Each case, according to the Secretaría de Seguridad y Convivencia, represented “A tragedy for a family” and “A bomb in citizen confidence in the State”. A plan to eliminate the backlog was put in place that included contracting additional lawyers and personnel and was executed.

Other steps taken included an assessment of strengths and weakness of different Offices and their personnel, assuring that Offices had complete teams, moving some personnel from one Office to another and the development of a standardized *ruta interna* for all Offices that requires, as a minimum, three secretaries, one psychologist, one social worker, and the Family Commissioner. At the time of our interviews, Medellín had not created a set of written standardized policies and procedures to reflect its *ruta interna*, something which is critical for management.

Medellín's case management system, which is a module within the software system selected for the municipality of Medellín, included a set of standard proceeding templates and notices, accessible by all Family Commissioner Offices. Medellín Family Commissioners include a wide variety of measures available under Law 294 in both provisional and permanent protective orders tailored to the circumstances of the individual case. As in Bogotá, adjustments were being made to the system to facilitate generation of management information on Family Commissioner Office operations, something that Medellín recognized as critical to effective management.

Against ICBF for a space at an ICBF controlled state institution, which she consistently wins. But, she notes, mounting a successful *tutela* requires considerable effort. Others call on their personal networks and request "personal" favors to secure a needed *cupo*.

Family Commissioners express concern for the children whose welfare is supposed to be the State's priority.

4.6.3 Beyond Bogotá and Medellín

Our sample included eight municipalities falling in levels 1, 2 and 3, all in Antioquia (3), Boyacá (3) and Cundinamarca (2). In one level 2 municipality the Family Commissioner was required to fulfill the dual role of Family Defender/Family Commissioner. We estimate that in most of the other thirty-two municipalities falling in levels 4, 5 and 6, the Family Commissioners also discharged the dual Family Defender/Family Commissioner roles.

In most cities and towns, the Family Commissioner Office reports to the Secretaría del Gobierno, who is a political appointment by the sitting mayor. Even in level 1 municipalities, there appeared to be no effort to apply public office management principles to the oversight of Family Commissioner Offices. Other categories of differences are described below.

Management Information Systems. A few municipalities required reporting of statistics regarding types of cases handled in excel spreadsheet format, but the information kept varied from municipality to municipality and the data collected did not lend itself to utilization as a management tool. Some Family Commissioner Offices, however, lacked basic software tools necessary to data collection and analysis. When we asked a Family Commissioner in a level 2 municipality for information regarding the volume and type of cases handled by the Office, the Commissioner pulled out a notebook, their only recordkeeping tool, and started counting. The municipality, the Commissioner explained, would not purchase an excel software package for them.

Office Procedures. A level 1 municipality had a two-page document that served as its guide for office procedures, from reception of a client, decision making as to what type of matter is involved, and how each different type of matter is to be handled. The secretary is given the major role of receiving the client, deciding what type of matter is to be

pursued and if it is Law 294 protective order, the secretary writes up the provisional protective order (the instructions provide that all provisional orders are to be the same; they include the measure of *conminación*, e.g., ordering that the violence immediately stop but nothing more and set the date for a hearing on a permanent protective order). Little appears to have changed since the *Procuraduría*'s landmark 2010 survey of Family Commissioner Offices when the *Procuraduría* identified the lack of written operation procedures specifying a *ruta interna* as a significant shortcoming.⁸⁴

Lack of Complete Interdisciplinary Teams. Some of the larger municipalities had complete interdisciplinary teams, but this appears to be the exception rather than the rule because Law 1098 allows municipalities in levels 2-6 to avoid providing a complete inter-

There must be a single integrated approach to overseeing all Family Commissioner responsibilities.

disciplinary team or even any interdisciplinary team members. Even level 1 municipalities ignore the requirement to staff their offices with complete interdisciplinary teams. A level 1 municipality heavily relied on nearby universities for psychology and law student interns to help man their offices. Intern rotations

matched the academic semester calendar and therefore were for three months stints. As soon as an intern is sufficiently trained, the rotation ends and the cycle begins again.

Offices in our sample demonstrated every possible staffing permutation. Some had only the lawyer appointed Family Commissioner. Others, and the more frequent pattern, involved employment of a full time or part time psychologist, but without a secretary. “The secretary is me” declared one Boyacá Family Commissioner. Other offices may have a full time or shared secretary as well as the Family Commissioner and possibly a psychologist.

Secretaries, where present, intentionally or unintentionally, are placed in decision-making roles because the Family Commissioner is called to perform tasks outside the office or Family Commissioner lack of oversight due to overwork, management skills, or interest. Secretaries may have little or no training on the law. Family Commissioners may be too overworked or disorganized to provide training or lack the inclination to spend time on training secretaries. Secretaries also are placed in the role of triage to women in crisis. While psychologists and social workers have professional training to perform this function, a secretary most certainly does not—particularly one on a short-term contract and who may be changed frequently by the municipal administration. Within our sample, the interdisciplinary team member that Family Commissioners most often lacked was a social worker.

In a larger city, the Family Commissioners may have an assistant lawyer on a short-term contract. The assistant lawyers are described as necessary due to the offices' high workload. In one office, the assistant lawyer holds four hearings a day. In another, the Family Commissioner says that on multiple days a week both he and the assistant lawyer hold six

hearings a day. A client ordered to pay support in a mediation presided over by the support lawyer complained to *Personería* that the Family Commissioner had not been present. A review by *Personería* was ongoing. The frustrated Family Commissioner asks if the support lawyer cannot assist her “then what do I have legal support for?”.

Standard Templates/ Measures in Protective Orders. Family Commissioners reported to us that when they took their positions, some of their Offices lacked standard templates. Because there is no centralized body overseeing Family Commissioner operations, templates are not readily available and differ from municipality to municipality. Family Commissioners in many level 5 and 6 municipalities rely on the generosity of more established nearby Family Commissioners for templates. Given the structure and staffing of the Offices we understand that there is little to no customization in most cases of a provisional protective order. Every person gets the same order.

All Alone, Reinventing the Wheel and Applying Their Own Interpretations of Law. Family Commissioners are on their own in most municipalities without access to other jurists working in similar areas of law with whom they can consult on difficult legal questions or issues, except perhaps through informal communications with other similarly situated Family Commissioners available through WhatsApp. Because there is no centralized institution of Family Commissioners charged with management and oversight, unlike ICBF there is no authoritative legal counsel from which they can seek answers to difficult questions of legal interpretation.

Variable Legal Abilities. Family Commissioner legal abilities vary considerably. We found many excellent jurists and in municipalities classified as levels 5 and 6, but this was far from universal, including in level 1 municipalities.

4.7 Reversing the Dysfunction, Eliminating Design Flaws and Building Strong Family Commissioner Offices for the Future of Colombia

Addressing the structural design flaws in the institution of the Family Commissioner highlighted in this report is key to remedying the dysfunction that stymies efforts of even the most qualified and dedicated Family Commissioner Offices to effectively fulfill their mandate in the judicial system to use the tools available through civil protective orders to facilitate women's rights to lives free of violence from their intimate partners and other family members. Some recommendations can be addressed rapidly. Others may require staging after careful consideration of the most effective implementation pathway.

Among the structural institutional flaws, remedying the placement of Family Commissioners under the local executive branch in level 1-6 municipalities is among the most complicated and difficult. Leaving aside the political complications with local mayors, it is complicated because Family Commissioners have judicial and non-judicial responsibilities.

Even if, as we recommend, many of the Family Commissioners' non-judicial responsibilities are eliminated there must be a single integrated approach to overseeing all Family Commissioner responsibilities that remain. This would include an integrated approach covering re-establishment of children and adolescent rights in cases of domestic violence so long as this responsibility remains part of the Family Commissioner portfolio. Contradictions and ambiguities between ICBF priorities, policies and procedures and those under Laws 294 and 1257 on the protection of women should be resolved and clear guidance provided to all Family Commissioners. Otherwise, the current situation will prevail where it is left to each individual Family Commissioner to navigate the contradictions between and among the laws and decide on his or her own interpretation and application, leading to an unacceptable proliferation of different interpretations of the same legal provision.

A remedy to the institutional dysfunction is further complicated because an approach that preserves the strengths, innovations and superior funding that we have seen in both Bogotá and Medellín (and that may exist in other special level cities) should be safeguarded. There are ways to do this while simultaneously making Family Commissioner Offices in municipalities levels 1-6 part of a national level institution with judicial expertise. They should be explored.

The suggested approach of creating a Ministerio de Familia merely magnifies dysfunction and uncertainty without addressing the underlying structural issues impacting Family Commissioners. As we understand the proposal, all the laws, responsibilities and funding obligations applicable to the Family Commissioner Office remain unchanged except (1) the "jurisdictional" responsibility for Family Commissioners is transferred to the Ministerio de Familia and (2) the Ministerio de Familia becomes one more national level institution that can impose responsibilities on Family Commissioners.⁸⁵

The work under the Technical Working Group being led by the Ministry of Justice is welcomed. The scope of their work, however, does not go to the root of the dysfunctional institutional design.⁸⁶ The announced scope of work includes jurisdictional ping-pong between ICBF and Family Commissioners (but not the problem of *cupos*), lack of criteria to distinguish family conflicts from domestic violence including intimate partner violence and lack of monitoring.^{xxii}

The Technical Working Group also proposes to address the lack of effectiveness of measures included in protective orders.⁸⁷ This is an important issue and one not addressed in this report. Under Colombian law all the measures that a Family Commissioner can order in a protective order are to be delivered by other national level institutions. The

^{xxii} We have recommended that the responsibility for managing family conflicts be eliminated from the Family Commissioner's portfolio. We have not discussed monitoring (or certain other relevant Family Commissioner responsibilities) in this report because, while important, they pale in comparison to the structural flaws discussed. Because the Technical Working Group intends to take up monitoring, we have included our analysis and recommendations on monitoring in Appendix 5.

focus therefore must be on measures that force these other national level institutions to fulfill their legally mandated responsibilities. Any improvements the Technical Working Group can bring about are likely to be helpful, but they will not solve the fundamental flaws of overloading Family Commissioners with diverse responsibilities under laws with different public policy goals, requiring Family Commissioners to assume the subsidiary role of Family Defender or their placement under the local executive branch of government in municipalities levels 1-6.

We met many dedicated civil servants at the national and municipal level of government who are sincerely committed to addressing men's violence against women in the home, particularly within the Ministry of Justice and the *Fiscalía*. The *Procuraduría*, too, has made important contributions. These national and municipal level government officials, however, cannot address the many design flaws absent a strong and sustained commitment from the Government of Colombia to do so.

Implementation of the recommendations we have made in this report are the responsibility of the Government of Colombia under its Constitution and international treaty obligations. Political will and leadership of the Government of Colombia at the highest levels is needed to tackle them. Participation of all branches of the national executive, including those related to budgeting and fiscal management, the dedication of the necessary resources, the willingness to engage Congress and the inclusion of Family Commissioners, who have the experience and understand the practical challenges, are essential.

Finally, in all conversations regarding domestic violence, be it against women, girls, boys or men, the Colombian government and society needs to recognize the "elephant in the room"--- the brutal, extreme and terroristic violence of the armed conflict that has been brought back into all intimate family relationships as ex-combatants demobilize and its impact on future generations.



Appendix 1 Glossary and Abbreviations

Sources in this report are cited to their original language, English or Spanish, as the case may be.

Abbreviations used in this report are listed below, together with their means and terms listed below and are used in this report have the meanings ascribed to them. Abbreviations and defined terms are set forth in alphabetically order.

In the English version of this report, we use the following conventions when referring to the identified Colombian institutions.

Contaduría General de la Nación is translated as General Accountant of the Nation, and is referred to in the Spanish, “Contaduría” (<http://www.contaduria.gov.co/wps/portal/internetes/home/internet/>).

The **Consejera Presidencial para la Equidad de la Mujer** is a national executive advisor with a broad portfolio to advance public policy and programs to eliminate discrimination against women and create conditions of equality and empowerment of women. It has a specific obligation to report annual to Congress on the implementation of Law 1257. (<http://www.equidadmujer.gov.co/Paginas/equidad-mujer.aspx>).

The **Departamento Administrativo Nacional de Estadística** or DANE is translated the English National Department of Statistics but may be referred to by its Spanish initials “DANE” (<http://www.dane.gov.co/>).

The **Fiscalía General de la Nación** is the national office that employs and supervises all state prosecutors (<https://www.fiscalia.gov.co/colombia/>).

- » Housed under the *Fiscalía General de la Nación* is the **Instituto Nacional de Medicina Legal y Ciencias Forenses** or the National Institute of Legal Medicine and Forensic Sciences, which we will refer to as “*Medicina Legal*” (<http://www.medicinalegal.gov.co/>).

For the *Fiscalía General de la Nación*, the *Procuraduría General de la Nación*, *Personería*, and the *Instituto Nacional de Medicina Legal y Ciencias Forenses* we will use the Spanish names, shortened at times to, respectively, “*Fiscalía*”, “*Procuraduría*,” and “*Medicina Legal*.”

The **Instituto Colombiano de Bienestar Familiar** is translated as the “National Institute of Family Wellbeing” and the Spanish abbreviation for this institution “ICBF” is used (<https://www.icbf.gov.co/>).

The **Ministerio de Justicia y Derecho** is translated as the Ministry of Justice and Law and referred to as the Ministry of Justice in this report. The Ministry of Justice is responsible for issuing technical guidance under Laws 294 and 1257 to Family Commissioners and others in the judicial system. Family Commissioners do not report to the Ministry and it does not have firsthand experience with the daily operations and challenges faced by the Offices. The Ministry of Justice is committed to strengthening the Office of Family Commissioner. Efforts like creating a set of internet resources for Family Commissioners under its *Conexión Justicia* (<https://www.minjusticia.gov.co/Conexi%C3%B3n-Justicia/-Qu%C3%A9-es-Conexi%C3%B3n-Justicia>) and seeking to make improvements, within the limited scope of its mandate, to facilitate the effectiveness of Family Commissioners as it is trying to do with the *Mesa Técnica de los Comiarios de Familia*.

The **Ministerio de Salud y Protección Social** is the national executive ministry of the Government of Colombia responsible for coordinating and implementing the national policy and social services relating to health and social security. Law 1257 assigns it responsibility to provide shelter, support, and extended special health (both physical and psychological) benefits to at risk women who are victims of intimate partner violence. Our study showed that shelter, where available, is provided by local municipalities at their own cost. Family Commissioners in our study tell us that special health benefits are not provided. Abused women receive only the health benefits available to all Colombians under Colombia's form of universal health care. (<https://www.minsalud.gov.co/Paginas/default.aspx>).

The **Procuraduría General de la Nación** is an institution of control in the State, houses the country's public defenders and, among other things, is the voice of the citizens when government officials fail to fulfill their responsibilities. Sometimes the function is translated as Ombudsman, other times as Attorney General, but for clarity, we will refer to it as *Procuraduría* (<https://www.procuraduria.gov.co/portal/>). The *Procuraduría* conducted a landmark survey in 2010 of the country's Family Commissioners that identified

material deficiencies and recommended transfer of the Office to a national level institution. These deficiencies continue today. It also organized and lead the First Annual Audience for Family Commissioners in February, 2019.

- » Within each municipality there is an entity referred to as *Personería*. This entity falls under the *Procuraduría General de la Nación* and plays an important role as the voice of citizens before municipal officials. They will be consistently referred to as *Personería* (https://www.procuraduria.gov.co/relatoria/media/file/flas_juridico/1725_CE-Rad-2006-02724-01.pdf).

The ***Policía Nacional de Colombia*** is a national level institution reporting into Ministerio de Defensa Nacional. It has the responsibility under Law 294 of fulfilling measures of protection and certain other measures when ordered by Family Commissioners (<https://www.policia.gov.co/>).

The ***Secretaría de Integración Social, Bogotá***, is the entity within Bogotá's government charged with leading and developing public social policy fostering social integration of individuals, families and communities, with a special focus on the most vulnerable. It is to take actions to promote, protect and restore the rights of citizens, striving to eliminate barriers to the full enjoyment of their rights and access to opportunities. The Family Commissioner Offices are part of the portfolio of the Secretaría de Integración Social (<http://www.integracionsocial.gov.co/>).

The ***Secretaría de Seguridad y Convivencia***, Medellín is the entity within Medellín's municipal government charged with strengthening and improving security for Medellín's citizens while protecting the rights of its citizens. The Family Commissioner Offices are part of the portfolio of the Secretaría de Seguridad y Convivencia, (<https://www.Medellin.gov.co/irj/portal/Medellin?NavigationTarget=navurl://7d0b6040724c6a7b3d95c4cc53e13fe3>).

AUC Refers to the Autodefensas Unidas de Colombia, translated as the United Self-Defense Forces of Colombia, a paramilitary group responsible for many abuses during the armed conflict. They begin demobilization in 2003 which was completed in 2006. Many of its members reorganized into BACRIM which continued drug trafficking and other illegal activities that helped fund AUC's activities.

BACRIM, *Criminal Organizations, Mafia* was the term first used for the groups formed by AUC paramilitaries who demobilized and formed criminal groups to continue the drug trafficking and other illegal activities that had funded part of their operation. This term is still used frequently in Medellín and Antioquia. AUC demobilization officially ended in 2006, more than thirteen years ago. Since then other criminal organizations have been formed, various organizations have collapsed and others have been taken over by other groups. Sometimes the term Mafia is used to refer to these groups. More recently, with the FARC demobilization, another term ex-FARC Mafia has arisen to refer to ex-FARC

who has formed into various criminal organizations. The ELN (see below) is both an organization of combatants who continue the combat and a cross border criminal organization. The general term “criminal organizations” is used to refer to all of these different criminal actors.

CEDAW The United Nation’s Convention on the Elimination of all Forms of Discrimination Against Women to which Colombia is a party and adopted in national legislation.

Displaced Colombia has an internally displaced population due to the conflict of 7.3 million, approximately 15% of the population making Colombia second only to Syria in the number of internally displaced. The conflict has not ended internal displacement, which has continued. The crisis in Venezuela has swelled the ranks of the displaced with Venezuelan refugees.

ELN refers to Ejército de Liberación Nacional, or the National Liberation Army. It is the last combatant group in Colombia engaged in armed conflict the State. Since the Peace Agreement, it has expanded its territorial reach within Colombia and into Venezuela and its criminal activities, leveraging the crisis in Venezuela.

Ex-combatant groups Regardless of the combatant group or affiliation, being in an organized armed force, has negative effects on intimate partner violence and other violence in the family. We use the term ex-combatant as an umbrella term that also includes any former member of Colombia’s national armed forces including the police. During the years of armed conflict, there are recorded incidences of the armed forces engaging in the same brutal and terroristic practices employed by the AUC, the FARC and the ELN.

FARC refers to the Fuerzas Armadas Revolucionarias de Colombia, in Colombia, The Revolutionary Armed Forces of Colombia, which entered into a Peace Agreement with the Government of Colombia in 2016 pursuant to which they demobilized in 2017.

Peace Agreement On November 24, 2016, the Colombian government and FARC signed an agreement that brought an end to their conflict, which was ratified by Congress on November 29–30, 2016. In this report it is referred to as the Peace Agreement.

Tutela The legal action of a *tutela* allows every citizen to sue when it is believed that the citizen’s fundamental constitutional rights have been violated or threatened by an act or omission of any public official. Because it involves fundamental constitutional rights, it is fast tracked through the judicial system requiring hearings, decisions, and appeals to occur within short periods of time. It is regarded as an important innovation within Latin American jurisprudence.

Veredas For administrative purposes, municipalities are divided into *veredas*. This geo-political term is particularly important in the more rural areas of Colombia, including many of the zones most recently under FARC control. It is highly relevant for understanding

Family Commissioners in rural areas because they will describe their municipality as (1) the town center, where there is a relatively denser population concentration, and (2) the number of *veredas* that are attached to the municipality for which the Family Commissioner is responsible.

Victim's Unit refers to Colombia's Unidad para la Atención y Reparación Integral a las Víctimas, an institution created in 2012 under the Ley de Víctimas to provide support and reparations to those who have been victims of Colombia's armed conflict.

Violence

In this report we use the concepts below which are susceptible to being defined in different ways in legal, academic, and social contexts.

Domestic Violence is an umbrella concept that includes intimate partner violence, violence by a family member against a parent or a child and violence among siblings. It covers all types of physical, emotional, psychological, and economic violence as well as sexual assault, and any type of exploitation for commercial or trade purposes if perpetrated by one family member against any other family member, all as set forth under Laws 294 and 1257. While intimate partner violence is a form of domestic violence, in this report it is not synonymous with domestic violence. In this report, when we use the term "violence" we are referring to the broad definitions of types of violence set forth in Laws 294 and 1257.

Under Colombian law, the definition of "family" for the purposes of Law 294 raises many issues that have been extensively publicized over many years. The definition covers any individual living under one roof. The factor that determines "domestic" is the living arrangement not kinship. Consequently, an uncle who sexually abuses a niece in his home is not engaging in "domestic violence" according to Colombian law. Conversely, a domestic worker who lives at her place of work is considered part of the "domestic unit." While permanent companions, even without benefit of marriage are included, the scope of coverage is generally not seen to cover ex-permanent companions if there is not a child in common.⁸⁹ Colombia should address the definition of family, but the focus of this report is the institutional structure and the need to recognize the impact demobilizing combatants are having on the family and future generations.

In the case of children and adolescents, Law 1098 defines "child maltreatment" as encompassing a range of actions that includes all domestic violence under Law 294, but also includes any "lack of care, any omission or negligent treatment".⁹⁰ Child maltreatment includes acts by family members, as defined by Law 294, but also acts by legal representatives of children and adolescents, individuals responsible for their care and members of their family, school and community groups.⁹¹ One among the many debates on how to interpret the responsibilities of Family Commissioners in Article 86 of Law 1098 is whether Family Commissioners (who are not also Family Defenders) are required to handle cases of "child maltreatment" under Law 1098 that is not also "domestic violence" as

defined under Law 294. If a Family Commissioner is also a Family Defender, then of this interpretative issue is moot: they must handle all matters involving “child maltreatment”.

To avoid confusion, when we use the term “child maltreatment”, we state that it is child maltreatment as defined in Law 1098. Our recommendation to resolve the jurisdictional ping-pong between ICBF Family Defenders and Family Commissioner would require addressing the broader Law 1098 definition of child maltreatment, the narrower definition of family in Law (which in turn defines the legal scope of domestic violence under Colombian law) and modifying or clarifying, as the case may be, the Family Commissioner responsibilities as set forth in Article 86 of Law 1098 to put an end to the debate on the scope of the jurisdiction of the Family Commissioner.

USAID Refers to the United States Agency for International Development.

Appendix 2

Table of Family Commissioner Responsibilities: Nature and Description According to Accidental Congressional Commission for Family Commissioner Evaluation and Family Commissioners in our Sample

The below table lists Family Commissioner responsibilities and the nature of the governmental power that allowed for assignment of the responsibility, whether the responsibility was identified in the First Report of the Accidental Congressional Commission to Evaluate Family Commissioners, and whether our interviews of Family Commissioners in, respectively, Bogotá, Medellín, Boyacá and other smaller municipalities included in our sampling reported having the particular responsibility.

Family Commissioner (FC) Responsibilities: Nature & Description	Identified, First Report of the Accidental Commission for FC Evaluation	Bogotá FCs	Medellín FCs	FCs in Boyacá Urban and Rural Municipalities	FCs in Smaller Municipalities throughout Colombia
Administrative Judicial Powers					
Issue preliminary and permanent civil orders of protection in favor of victims of intimate partner and other domestic violence. Under Law 294 as amended by Laws 575 and 1257	Yes	Yes	Yes	Yes	Yes
Administrative Judicial Powers - Extrajudicial Mediation Matters					
Under Law 640, FCs and other entities are authorized to conduct extrajudicial mediation of family law matters such as custody, support, visitation, separation, etc.	Yes	Yes	Yes	Yes	Yes
Administrative National Executive Powers - Re-establishment of Rights of Children/Adolescents					
Under Law 1098, initiate, investigate, pursue, and issue decisions to re-establish rights of children and adolescents that may have been violated or threatened by domestic violence.	Yes	Yes	Yes	Yes	Yes

Family Commissioner (FC) Responsibilities: Nature & Description	Identified, First Report of the Accidental Commission for FC Evaluation	Bogotá FCs	Medellín FCs	FCs in Boyacá Urban and Rural Municipalities	FCs in Smaller Municipalities throughout Colombia
Administrative Judicial Police Powers (transitory)					
The National Prosecutor authorizes FCs to act as judicial police in connection with six types of matters, the most important of which is receiving "denuncias" of domestic violence. Is a transitory power, but has been reissued every 5 years for the past 15 years.	Yes	Yes, with respect to complaints	Yes, with respect to complaints	Yes, with respect to complaints	Yes, with respect to complaints
Administrative Police Powers					
Non-binding mediation of family conflicts	Yes	Yes	Yes	Yes	Yes
Impose sanctions on minors who engage in behaviors that constitute police infractions under Article 190, Law 1098	Yes	No	Yes, sometimes	Yes	Yes
Address police infraction in schools	Yes	No	No	Yes	Yes
Administrative National Executive Powers					
Exercise the role of Family Defender under the child national welfare system when that system does not have a Family Defender	Yes	No	No	Municipality dependant, but FCs act as FDs in 88% of Colombian municipalities	Municipality dependant, but FCs act as FDs in 88% of Colombian municipalities
Law 1098 imposes a duty on FCs to engage in efforts of prevention of domestic violence.	No	Yes, with mobile units	Yes, sometimes too over-burdened	Yes	Yes
Decree 294 imposes a duty on FCs to monitor orders of protections they issue	No	Yes	Only most urgent	Generally, no	Generally, no
While Law 1098, Section 190 talks about police infractions - many other laws require them: sports law, transit laws.	No	No	Yes	Yes	Yes
Law on Victims and Restitution of Land related to the Armed Conflict	No	No	Yes	Yes	Yes
Administrative Local Executive Powers					
Administrative responsibilities assigned by local mayors / municipal councils. May include mangaging municipal jails, school lunch programs, acting as transit / accident police, and committee responsibilities.	No	No	No	Yes, enormous burden	Yes, enormous burden

Source: prepared by authors based on information in the First Report of the Accidental Congressional Commission to evaluate Family Commissioners and from interview data.

Appendix 3

Summary List of ICBF "Subsidiary" Duties of Family Commissioners Who Must Act as Family Defenders

Responsibilities Related to Re-establishment of Rights of Children and Adolescents
Adelantar de oficio, las actuaciones necesarias para prevenir, proteger, garantizar y restablecer los derechos de los niños, las niñas, los adolescentes y las adolescentes cuando tenga información sobre su vulneración o amenaza.
Adoptar las medidas de restablecimiento establecidas en la ley 1098 de 2008, para detener la violación o amenaza de los derechos de los niños, las niñas o los adolescentes.
Dictar las medidas de restablecimiento de los derechos para los niños y las niñas menores de catorce (14) años que cometan delitos.
Responsibilities Related to Mediation
Promover la conciliación extrajudicial en los asuntos relacionados con derechos y obligaciones entre cónyuges, compañeros permanentes, padres e hijos, miembros de la familia o personas responsables del cuidado del niño, niña o adolescente.
Aprobar las conciliaciones en relación con la asignación de la custodia y cuidado personal del niño, el establecimiento de las relaciones materno o paterno filiales, la determinación de la cuota alimentaria, la fijación provisional de residencia separada, la suspensión de la vida en común de los cónyuges o compañeros permanentes, la separación de cuerpos y de bienes del matrimonio civil o religioso, las cauciones de comportamiento conyugal, la disolución y liquidación de sociedad conyugal por causa distinta de la muerte del cónyuge, y los demás aspectos sucesoria les, sin perjuicio de la competencia atribuida por la ley a los notarios.
Responsibilities Related to Civil State
Citar al presunto padre con miras al reconocimiento voluntario del hijo, extramatrimonial nacido o que está por nacer y, en caso de producirse, extender el acta respectiva y ordenar la inscripción o corrección del nombre en el registro del estado civil.
Solicitar la inscripción del nacimiento de un niño, la corrección, modificación o cancelación de su registro civil ante la Dirección Nacional de Registro Civil de las personas, siempre y cuando dentro del proceso administrativo de restablecimiento de sus derechos se pruebe que el nombre y sus apellidos no corresponden a la realidad de su estado civil y a su origen biológico, sin necesidad de acudir a la jurisdicción de familia.
Responsibilities Related to the Family
Promover los procesos o trámites judiciales a que haya lugar en defensa de los derechos de los niños, las niñas o los adolescentes, e intervenir en los procesos en que se discutan derechos de estos, sin perjuicio de la actuación del Ministerio Público y de la representación judicial a que haya lugar.

Responsibilities Related to the Family
Representar a los niños, las niñas o los adolescentes en la actuaciones judiciales o administrativas, cuando carezcan de representante, o este se halle ausente o incapacitado o sea el agente de la amenaza o vulneración de los derechos.
Fijar cuota provisional de alimentos, siempre que no se logre conciliación.
Responsibilities Related to Criminal Matters
Formular denuncia penal cuando advierta que el niño, niña o adolescente ha sido víctima de un delito
Asumir la asistencia y protección del adolescente responsable de haber infringido la ley penal ante el juez penal para adolescentes, para lo cual deberá: <ul style="list-style-type: none"> i. Participar en los procesos judiciales en defensa de los derechos. ii. Impugnar las decisiones que se adopten de ser procedente. iii. Acompañar al adolescente en todas las actuaciones del proceso. iv. Verificar la garantía de los derechos del adolescente. v. Tomar las declaraciones y entrevistas rendidas por los adolescentes del cuestionario enviado por Juez o Fiscal. vi. Realizar seguimiento al adolescente durante la ejecución de la sanción, para ello, recibirá mensualmente el reporte del Plan de Intervención Individual por parte del operador. vii. Rendir informe inicial de la situación familiar económica, social, psicológica, cultural y del nivel educativo del adolescente con el apoyo de equipo sicosocial, ante el Juez de garantías. viii. Presentar en audiencia de imposición de sanción un estudio actualizado, basado en el informe inicial, sobre los resultados de la intervención realizada al adolescente. ix. Recibir notificación de la acusación del adolescente. x. Controlar el cumplimiento de la obligación del Operador vincular al adolescente al sistema educativo.
Ejercer las funciones atribuidas por el artículo 71 de la Ley 906 de 2004. Interviniendo como querellante legítimo en los casos previstos en los incisos 2 y 3, formulando la querrela cuando el sujeto pasivo estuviere imposibilitado para formular la querrela o sea incapaz y carezca de representante legal o cuando el representante legal sea autor o participe del delito, y cuando se trate del delito de inasistencia alimentaria.
Responsibilities for Other Matters
Conceder permiso para salir del país a los niños, las niñas y los adolescentes, cuando no sea necesaria la intervención del juez.
Ejercer las funciones de policía señaladas en el Código de Infancia y Adolescencia.
Emitir los conceptos ordenados por la ley, en las actuaciones administrativas.
Asesorar y orientar al público en materia de derechos de la infancia, la adolescencia y la familia.

Source: prepared by authors base don ICBF Lineamientos Técnicos para las Comisarías de Familia.

Appendix 4

Tables Reflecting Bogota's *Ruta Interna* and Service Model Innovations

Bogotá Family Commissioner Personnel Requirements For each Stage (Nivel) of Bogotá *Ruta Interna* Procedures

Nivel y/o área de atención	Perfil
Nivel Directivo (Transversal)	Comisario/a de Familia
Primer Nivel: Recepción inicial del/a Usuario/a	Asistente administrativo preferiblemente con formación legal o con experiencia específica mínima de 3 años en Comisarías de Familia
Segundo Nivel: Evaluación inicial del caso	Funcionario con formación legal; psicólogo/a y trabajador/a social con experiencia relacionada.
Tercer Nivel: Intervención. Está subdividido en cuatro áreas, así:	Área de verificación de garantía de derechos: Psicólogo/a preferiblemente especializado/a en temas jurídicos y forenses, y trabajador/a social preferiblemente especializado/a en temas jurídicos.
	Área de orientación y atención en conflictos familiares: psicólogo/a y trabajador/a social preferiblemente con formación en resolución de conflictos.
	Área de Conciliación: Abogado/a preferiblemente con formación en derecho de familia y/o infancia y/o métodos alternativos en resolución de conflictos.*
	Área de Protección: Comisario/a: Abogado/a preferiblemente con formación en derecho de familia, administrativo, infancia, métodos alternativos en resolución de conflictos y abogado/a de apoyo con las mismas condiciones de formación.
Cuarto Nivel: Seguimiento.	Psicóloga/o y trabajador/a social preferiblemente con experiencia y formación en trabajo de redes sociales y/o abordaje terapéutico. Trabajador/a social en formación por convenio realizado con universidades.
Nivel Administrativo (Transversal, apoyo general a la oficina)	Secretario/a de Despacho. Preferiblemente Técnico con formación legal o con experiencia específica mínima de 3 años en Comisarías de Familia.
	Técnico/a en sistemas. Técnico en sistemas.
	Técnico/a administrativo. Técnico en administración.
	Notificador/a. Bachiller.

* Support lawyers may perform Law 640 mediations; however, as a general matter various Bogotá Family Commissioners told us that is their psychologists and social workers who perform 640 mediations.

Source: materials from Bogotá's Secretaría de Integración Social office.

Bogotá Family Commissioner **Daily Office Staffing by Function and Ruta Interna Stage**

Profesion	Cargo	Ruta interna
Comisario/a de familia	Comisario/a de familia	
Abogado/a de apoyo	Apoyo jurídico	Nivel 3
Secretario/a	Secretario/a	Transversal
Psicologo/a	Equipo	Nivel 3
T. Social	Equipo	Nivel 3
Psicologo/a	Recepción	Nivel 2
Psicologo/a	Recepción	Nivel 2
T. Social	Seguimiento	Nivel 4
T. Social	Seguimiento	Nivel 4
Aux. Activo/a	Aux. Activo/a	Nivel 1
Aux. Activo/a	Aux. Activo/a	Nivel 1
Digitador/a	Digitador/a	Transversal
Notificador/a	Notificador	Transversal
Aux. Activo/a - archivo	Archivo	Transversal
Total personnel: 13. 1 Family commissioner and 12 interdisciplinary team members		

Bogotá Family Commissioner **Semi-Permanent Office (7 AM - 11 PM) Staffing by Function and Ruta Interna Stage**

Profesion	Cargo	Ruta interna
Comisario/a de familia	Comisario/a de familia	
Abogado/a de apoyo	Apoyo juridico	Nivel 3
Secretario/a	Secretario/a	Transversal
Psicologo/a	Equipo	Nivel 3
T. Social	Seguimiento	Nivel 4
T. Social	Equipo	Nivel 3
T. Social	Seguimiento	Nivel 4
Psicologo/a	Recepcion	Nivel 2
Aux. Activo/a	Aux. Activo/a	Nivel 1

Profesion	Cargo	Ruta interna
Comisario/a de familia	Comisario/a de familia	
Aux. Activo/a	Aux. Activo/a	Nivel 1
Aux. Activo/a	Aux. Activo/a	Nivel 1
Digitador/a	Digitador/a	Transversal
Aux. Activo/a - archivo	Archivo	Transversal
Abogado/a de apoyo	Apoyo jurídico	Nivel 3
Secretario/a	Secretario/a	Transversal
Psicologo/a	Equipo	Nivel 3
T. Social	Equipo	Nivel 3
T. Social	Seguimiento	Nivel 4
Psicologo/a	Recepción	Nivel 2
Aux. Activo/a	Aux. Activo/a	Nivel 1
Digitador/a	Digitador/a	Transversal
Notificador/a	Notificador	Transversal
Aux. Activo/a - archivo	Archivo	Transversal
Total personnel: 24. First shift: 1 family commissioner and 12 interdisciplinary team members. Second shift: 1 family commissioner and 10 interdisciplinary team members.		

Bogotá Family Commissioner 24 hour/7 day Permanent Office Staffing by Function and Ruta Interna Stage

Profesion	Cargo	Ruta interna
Comisario/a de familia	Comisario/a de familia	
Secretario/a	Secretario/a	Transversal
Aux. Activo/a	Aux. Activo/a	Nivel 1
Secretario/a	Secretario/a	Transversal
Aux. Activo/a	Aux. Activo/a	Nivel 1
Digitador/a	Digitador/a	Transversal
Abogado/a de apoyo	Apoyo jurídico	Nivel 3
Abogado/a de apoyo	Apoyo jurídico	Nivel 3
Psicologo/a	Equipo	Nivel 3
Psicologo/a	Equipo	Nivel 3

Profesion	Cargo	Ruta interna
Comisario/a de familia	Comisario/a de familia	
T. Social	Equipo	Nivel 3
T. Social	Equipo	Nivel 3
T. Social	Seguimiento	Nivel 4
T. Social	Seguimiento	Nivel 4
Psicologo/a	Recepción	Nivel 2
Psicologo/a	Recepción	Nivel 2
Aux. Adtivo/a	Aux. Adtivo/a	Nivel 1
Aux. Adtivo/a	Aux. Adtivo/a	Nivel 1
Aux. Adtivo/a	Aux. Adtivo/a	Nivel 1
Notificador/a	Notificador	Transversal
Aux. Adtivo/a - archivo	Archivo	Transversal

Total personnel :28. There are 4 family commissioners and 24 team members every night from 11 pm to 7 am and on weekends team of 3, one family commissioner, a secretary and an administrative assistant address emergencies. In addition, there are two shifts monday through friday, each staffed by a family commissioner and an extensive team.

Source: materials from Bogotá's Secretaría de Integración Social office.

Appendix 5

Monitoring Domestic Violence Protective Orders Considerations and Recommendations

Monitoring of Domestic Violence Protective Orders

The Ministry of Justice established the requirement to monitor domestic violence protective orders in 2011 through Decree 4799.⁹² Its stated goal is “to verify the fulfillment and effectiveness (of the measures in a protective order). ...If the ordered measures have not been fulfilled, the Family Commissioner Office will explain to the victim the rights (the victim) has in this situation”.

In practice, monitoring may be impossible in more rural areas unless the victim is willing to return to the Family Commissioner Office. Distances can be far, travel outside the town center may be impossible except by foot or horseback or require a car (which the Family Commissioner does not have) and travel may still be too dangerous. Family Commissioner Offices in our sample, outside of Bogotá and Medellín, frequently have no social worker and might not have other staff. The volume of work and/or the local mayor may not permit the Family Commissioner to be absent from the Office even if it is to perform monitoring. Monitoring via other communication methods may not work. There may be no internet. Victims might not have a telephone of their own or phone service may be spotty.

In larger cities, including special cities and levels 1, 2 and 3, the Family Commissioner Office may be understaffed, as well as having a crushing workload, making monitoring, except in the cases deemed to be of highest risk. Bogotá stood out as consistently trying to monitor orders. One of the two social workers under each Bogotá Family Commissioner is assigned to monitoring. But, even in Bogotá, social workers reported logistical difficulties due to volume and refusal of parties to participate in monitoring.

Greater guidance and clarity are needed on the goals monitoring is to fulfill and the circumstances in which it is to take place. A clear statement that identifies when it may be impossible for a Family Commissioner Office to conduct monitoring and excusing the Family Commissioner in this case is needed.

The actual wording of Decree 4799, with its reference to advising women of their rights if there is a violation, would suggest that a goal is to monitor whether the aggressor is fulfilling the terms of an order and sanction him if he is not, but this is not expressly stated. When a woman learns that the sanctions for an aggressor who violates a protective order are a fine followed by a jail sentence for repeat offenders, she will not want her aggressor punished if she is entirely economically dependent on her aggressor for her survival and that of her children. Using Bogotá as an example, most cases fall in strata 2, which means

that the families lack financial resources. Because protective orders are civil in nature, a victim must commence a new proceeding before the Family Commissioner seeking sanctions against an aggressor for his failure to comply with an order.^{xxiii} When women realize that sanctions could inflict real economic harm on her and her children, leaving them completely destitute, many will not commence a sanction proceeding.

A subsequent monitoring tool developed by the Ministry, however, seems to suggest that goal of monitoring is to determine if the other national institutions charged with fulfilling various measures that can be included in a Family Commissioner protective order are fulfilling their responsibilities. The value of this information is unclear. It has been well documented by others that many of these services are not being provided.⁹³ The lone Family Commissioner, as we have shown, is in the “basement” of the administration and cannot force these large institutions to fulfill their duties. This fact, coupled with understaffing and overwork, likely accounts for the lack of use of this monitoring tool by Family Commissioners.

If the purpose of monitoring is to assist the woman navigate the difficult process of change involved in confronting domestic violence, this involves providing psycho-social treatment and other services. Those services must exist for this monitoring goal to be meaningful. Often they do not.

If a goal of monitoring is to evaluate effectiveness of protective orders, standard criteria for effectiveness would need to be set and a process developed to collect it. Further, unless and until the recommendation to set up a national data collection under a system headed by DANE is implemented, any data collected on effectiveness would be fragmented and could not be aggregated, undermining usefulness.

Regardless of the purpose(s) of monitoring, the Family Commissioners must be given the resources to conduct the necessary monitoring. If the State does not provide Family Commissioners with the necessary resources to conduct monitoring, Family Commissioners should not be held accountable for failure to monitor protective orders or worry that a mayor who wants to appoint his own person as the Family Commissioner will use lack of monitoring as an excuse for termination.

^{xxiii} Technically, the Family Commissioner or a third party could commence a sanctions proceeding but only if they have first hand knowledge of the violation and offer proof to substantiate it.

Harmonization and Clarification of Monitoring Required for Re-Establishment of Rights Where There Has Been Domestic Violence

To the extent that a Law 1098 re-establishment of rights proceeding requires Family Commissioner personnel to assure that measures ordered to restore the rights of a child or adolescent are implemented, there should be a clear statement regarding the type of monitoring required and how it is the same or different from that required for protective orders under Law 294. There are public policy reasons that might dictate more robust monitoring in the cases of children and adolescents. Moreover, in these cases the Family Commissioner has the legal power to remove the child or adolescent from the home in order to protect and restore their rights. From the perspective of the personnel in a Family Commissioner trying to implement the law, a clear statement regarding the monitoring required under these two types of proceedings and the differences, if any, will help to assure that there is a standardized approach throughout the many Colombias.

As we noted earlier, Family Commissioner requirements under Laws 294 and 1257 are not harmonized with those in Law 1098. This creates ambiguity and confusion. It requires that the individual Family Commissioner interpret and determine how to navigate these laws. The result is many different interpretations of the same provisions of law, contributing to the phenomena that a woman's access to justice depends, in part, on the Family Commissioner who has jurisdiction to hear her claims.

First, a clear statement is needed where there is domestic violence against a child or adolescent whether the Family Commissioner should proceed under a Law 294 protective order proceeding or under Law 1098 re-establishment of rights proceeding. When a Family Commissioner is using a Law 1098 re-establishment of rights proceeding in connection with domestic violence against a child or adolescent, there needs to be a clear description of how the differential treatment to be afforded girls required under Law 1257 is to be applied. Finally, as part of the process of resolving the jurisdictional ping-pong between ICBF Family Defenders and Family Commissioners, the provisions of Article 86, Law 1098 need to be clarified through revision so Family Commissioners and Family Defenders know which sorts of cases falling within the Law 1098 term "maltreatment" fall within the Family Commissioner's jurisdiction. "Maltreatment" is the very broad term used in Law 1098 that includes not only Law 294 domestic violence but also all forms of negligence through action or omission by not only "family" members, but all other third parties in the community.

Recommendations

1. The Ministry of Justice should (1) clearly identify the public policy goal(s) it seeks to achieve through monitoring of Law 294 protective orders, the feasibility of monitoring, the resources required and the costs and benefits of requiring the Family Commissioner

Office to perform this monitoring role and (2) amend the regulations and related guidance accordingly. In doing so, the Ministry of Justice should clarify that Family Commissioners cannot be held accountable for failure to monitor if the Family Commissioner is not permitted to do so by the local executive branch of government or is not provided with the necessary staff and other resources needed to conduct the monitoring.

- 2.** The Ministry of Justice and ICBF should harmonize the scope of their monitoring requirements, clarifying how monitoring requirements under Law 294 and Law 1098 are the same or different.
- 3.** The Ministry of Justice and ICBF should clarify:
 - a)** When there is domestic violence against a child or adolescent whether the Family Commissioner should proceed under a Law 294 protective order or a Law 1098 re-establishment of rights.
 - b)** If the Family Commissioner must proceed under a Law 1098 re-establishment of rights how the Family Commissioner is to apply the Law 1257 differential treatment to be afforded to girls in the context of the Law 1098 re-establishment of rights.
 - c)** The extent of the Family Commissioner's jurisdiction by clarifying which types of cases that fall within Law 1098's broad definition of "maltreatment" are not the Family Commissioner's responsibility and are the sole responsibility of Family Defenders.
- 4.** The Government of Colombia and Congress should implement, as necessary, any changes in law to implement the clarifications agreed by the Ministry of Justice and ICBF.



Endnotes

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- 7 According to an Accidental Commission formed by Congress, Family Commissioners and Judges of Garantías are the governmental institutions with the greatest presence in the country. Accidental Congressional Commission formed to Review Family Commissioner Responsibilities. "First (and only) Informe de la Comisión Accidental para la Evaluación de Comisarías de Familia de 22 de diciembre de 2015 dirigido al Señor Presidente de la Comisión Primera de la Cámara, Sr. Miguel Angel Pinto" http://www.imprenta.gov.co/gacetap/gaceta.mostrar_documento?p_tipo=2872&p_numero=%20&p_consec=43905
- 8 The position of Family Commissioner has been a civil service position since 1997. Corte Constitucional de Colombia. "Sentencia C-406/97." (1997); Ley 575 de 2000. "Diario Oficial No. 43.889 de 11 de febrero de 2000." <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=5372>
- 9 Re-establish the rights of children, Ley 1098 del 2006. "Diario Oficial No. 46.446 de 8 de noviembre de 2006." <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=22106> (2006) Mediate matters related to support, custody and visitation, Ley 640 de 2001. "Diario Oficial No. 44.303 de 24 de enero de 2001." <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6059> Manage family conflicts, Ley 1098 del 2006, "Diario Oficial No. 46.446 de 8 de noviembre de 2006." Issue civil protective orders in cases of domestic violence, Ley 294 de 1996. "Diario Oficial No. 42.836 de 22 de julio de 1996." <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=5387>
- 10 Ley 1098 del 2006, "Diario Oficial No. 46.446 de 8 de noviembre de 2006."
- 11 Ibid.
- 12 See E.g., Ley 1257 de 2008. "Diario Oficial No. 47.193 de 4 de diciembre de 2008." <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=34054> (2008)
- 13 Jurisdictional issues between Family Commissioners and ICBF Family Defenders is a long-standing unresolved issue. It was first addressed in the 2007 Decree 4840, then by ICBF's technical guidance to Family Commissioners, in numerous *conceptos* or interpretations by ICBF. The recently formed 2019 Technical Working Group led by the Ministry of Justice has identified addressing this issue as one of its goals. Decreto 4840 de 2007. "Diario Oficial No. 46.846 de 18 de diciembre de 2007." <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=28019> ; Instituto Colombiano de Bienestar Familiar. "Lineamiento Técnico para las Comisarías de Familia." <http://www.icbf.gov.co/portal/page/portal/Descargas1/LINEAMIENTO%20TECNICO%20PARA%20LAS%20COMISARIAS%20DEFAMILIA%20Febrero%20de%202011.pdf> (2010); Ministerio de Justicia y del Derecho, "Las Comisarías de Familia son la Puerta de Entrada a la Justicia." When the law governing the unitary regulation of the Justice and Law Sector was adopted in 2015, portions of Decree 4840 were compiled into it. For this report we cite to Decree

- 4840, but the identical provisions are found in 2015, Decreto Único Reglamentario 1069 de. "Diario Oficial No. 49.523 de 26 de mayo de 2015." https://www.minjusticia.gov.co/Portals/0/DUR/Decreto_%C3%9Anico_MJD_Integrado_05-12-2017.pdf
- 14** For example, the Ministry of Justice, in a sincere effort to strengthen Family Commissioner Offices, created a model procedure for handling domestic violence protective orders that sought to operationalize and include all due process requirements. Family Commissioners tell us that they cannot use it. It is written as if the only task of the Family Commissioner were issuing domestic violence protective orders. It also assumes Family Commissioners have a staff of two social workers, a secretary, and other administrative personnel when approximately 97% of Colombian municipalities do not have to provide their Family Commissioners with a staff consisting of a secretary, one psychologist and one social worker. Most Family Commissioners outside of Bogotá and Medellín lack the legally required minimum staff. The *Consejería Presidencial para la Equidad de la Mujer* created a risk assessment tool that misses the mark and is not used.
 - 15** When the Ministry of Justice, for example, asks Family Commissioners to comment on a proposed guide, it is unclear whether the Family Commissioners can do so due to restraints imposed by their workload or limitations imposed on them by their local mayors. Family Commissioners also believe (rightly or wrongly) that their input will not be considered, further discouraging their participation. While there is an Association of Family Commissioners, it is unclear how representative it is. None of the Family Commissioners we interviewed in Bogotá or Medellín indicated that they were members. To gain access to it, one must pay to become a member and its governance is not clear. Some of the Family Commissioners in our sample from rural areas were members, but many were not.
 - 16** Ley 1098 del 2006, "Diario Oficial No. 46.446 de 8 de noviembre de 2006." Decreto 4840 de 2007, "Diario Oficial No. 46.846 de 18 de diciembre de 2007."
 - 17** Ley 1098 del 2006, "Diario Oficial No. 46.446 de 8 de noviembre de 2006." The Ministry of Justice is charged with issuing technical guidance to Family Commissioners under Law 294 as amended by Law 1257.
 - 18** Decreto 4840 de 2007, "Diario Oficial No. 46.846 de 18 de diciembre de 2007."
 - 19** Ley 1098 del 2006, "Diario Oficial No. 46.446 de 8 de noviembre de 2006."
 - 20** Decreto 4840 de 2007, "Diario Oficial No. 46.846 de 18 de diciembre de 2007."; Bird, Richard M. "Fiscal decentralization in Colombia: A work (still) in progress." *International Center for Public Policy Working Paper Series Working Paper 12-23* (2012); Bonet, Jaime, Gerson Javier Pérez, and Jhorland; Ayala. "Contexto histórico y evolución del SGP en Colombia " [In Spanish]. *Documentos de Trabajo Sobre Economía Regional, Banco de la República* 205 (2014); ESAP-Escuela Superior de Administración Pública. "Estudio Técnico de Análisis Normativo e Institucional de las Comisarías de Familia. Producto 2. Análisis del Marco Normativo e Institucional y Propuestas Alternativas de Ajustes." *Contrato Administrativo DNP-ESAP 474 de 2013* (2013) In 2017, the Procurador General de la Nación issued a circular to mayors, municipal council members and other governing entities of Family Commissioners of their obligations under

- law to adequately fund their Family Commissioner Offices in their budgets. Nación, Procuraduría General de la. "Cumplimiento de las Obligaciones Previstas en la Ley 1098 de 2006 y Decreto 4840 de 2007, sobre el presupuesto para las Comisarías de Familia." *Circular No. 020* (Diciembre 14, 2017 2017)
- 21 ESAP-Escuela Superior de Administración Pública, "Estudio Técnico de Análisis Normativo e Institucional de las Comisarías de Familia. Producto 2. Análisis del Marco Normativo e Institucional y Propuestas Alternativas de Ajustes."
 - 22 Accidental Congressional Commission formed to Review Family Commissioner Responsibilities, "First (and only) Informe de la Comisión Accidental para la Evaluación de Comisarías de Familia de 22 de diciembre de 2015 dirigido al Señor Presidente de la Comisión Primera de la Cámara, Sr. Miguel Angel Pinto."; ESAP-Escuela Superior de Administración Pública, "Estudio Técnico de Análisis Normativo e Institucional de las Comisarías de Familia. Producto 2. Análisis del Marco Normativo e Institucional y Propuestas Alternativas de Ajustes."
 - 23 "Estudio Técnico de Análisis Normativo e Institucional de las Comisarías de Familia. Producto 2. Análisis del Marco Normativo e Institucional y Propuestas Alternativas de Ajustes."
 - 24 Ministerio de Justicia y del Derecho. "Las Comisarías de Familia están asumiendo competencias que no deberían tener," <http://www.minjusticia.gov.co/Noticias/Tab-Id/157/ArtMID/1271/ArticleID/2204/Las-Comisar237as-de-Familia-est225n-asumiendo-competencias-que-no-deber237an-tener-Minjusticia.aspx>
 - 25 Accidental Congressional Commission formed to Review Family Commissioner Responsibilities, "First (and only) Informe de la Comisión Accidental para la Evaluación de Comisarías de Familia de 22 de diciembre de 2015 dirigido al Señor Presidente de la Comisión Primera de la Cámara, Sr. Miguel Angel Pinto."
 - 26 Nación, Procuraduría General de la. "Agenda Primera Audiencia Nacional por las Comisarías de Familia." edited by *Procuraduría General de la Nación*, 2019. Retrieved from https://www.procuraduria.gov.co/portal/media/file/foro/81_190228_AGEN-DA-audiencia-comisarias.pdf Maritiano, Ana Paula. "Acuerdo para la Reforma de las Comisarías de Familia." *Diario Jurídico*, (2019) <https://www.diariojuridico.com/acuerdo-para-la-reforma-de-las-comisarias-de-familia/>; Ministerio de Justicia y del Derecho, "Las Comisarías de Familia son la Puerta de Entrada a la Justicia."; *ibid.*; Correa, Sergio Andres. "Comisarías, a Medias para Cumplir su Rol." *El Colombiano*, (2019) <https://www.elcolombiano.com/colombia/comisarias-a-medias-para-cumplir-su-rol-MB10331836>
 - 27 *Proyecto de Ley No. 033 de 2018*. <http://www.camara.gov.co/sites/default/files/2018-07/P.L.033-2018C%20%28MINISTERIO%20DE%20LA%20FAMILIA%29.pdf>
 - 28 Committee on the Elimination of Discrimination Against Women, Concluding Observations on the ninth periodic report of Colombia, adopted by the Committee at its seventy-second session (18 February – 8 March, 2019) CEDAW/COL/CO/9, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCOL%2fCO%2f9&Lang=en, accessed on May 5, 2019
 - 29 Although only Family Commissioners and Family Defenders have the ability to impose decisions on family law matters for a period of a 30 days in the absence of an

- agreement of the parties and if deemed necessary to protect the rights of children, Colombia could consider extending this ability to other institutions if deemed necessary or appropriate.
- 30** Twenty two percent of Colombia's population lived in Bogotá and Medellín in 2018. The remaining special cities not included in our sample comprise 11% of Colombia's current population. Numbers are calculated using DANE's 2018 census figures and the *Contaduría General de la Nación's* figures for the 2019 municipal classification. DANE data retrieved from <https://www.dane.gov.co/index.php/estadisticas-por-tema/demografia-y-poblacion/censo-nacional-de-poblacion-y-vivenda-2018/cuantos-somos> Contaduría's data was downloaded from http://www.contaduria.gov.co/wps/wcm/connect/759e1fc3-bd8b-4d63-a95b-f7c37d509140/CT01+-+Categorizacion+2019+-DNP.xlsx?MOD=AJPERES&CONVERT_TO=url&CACHEID=759e1fc3-bd8b-4d63-a95b-f7c37d509140
 - 31** *Proyecto de Ley No. 033 de 2018*; *ibid*.
 - 32** *Procuraduría General de la Nación*. "Vigilancia Superior a la Garantía de los Derechos desde la Perspectiva de Género Comisarías de Familia Línea de Base Nacional Primera Parte" <http://www.procuraduria.gov.co/portal/media/file/Procurando%206%20ene%2012-12.pdf>; ———. "Vigilancia Superior a la Garantía de los Derechos desde la Perspectiva de Género Comisarías de Familia Línea de Base Nacional Segunda Parte" http://www.procuraduria.gov.co/portal/media/file/PROCURANDO7_WEB%20final%20nov%2023.pdf
 - 33** Beebe, James. *Rapid assessment process. An introduction*. Walnut Creek: Altamira Press, 2001.
 - 34** The number of municipalities in the sample and interviews are not equal as some interviews were group interviews.
 - 35** United Nations, Division for the Advancement of Women, "Handbook for Legislation on Violence Against Women."
 - 36** Constitución Política de Colombia. [In Spanish]. <http://www.secretariasenado.gov.co/index.php/constitucion-politica> (1991).
 - 37** Convention Belem do Para. "Inter-American Organization of States' Convention on the Prevention, Punishment and Eradication of Violence against Woman." <http://www.oas.org/juridico/spanish/firmas/a-61.html> (1994); CEDAW, Convention on the Elimination of All Forms of Discrimination against Women. "Convention on the Elimination of All Forms of Discrimination against Women." https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (1979).
 - 38** Ley 1257 de 2008, "Diario Oficial No. 47.193 de 4 de diciembre de 2008."
 - 39** *Ibid*. Ley 294 de 1996, "Diario Oficial No. 42.836 de 22 de julio de 1996."
 - 40** For discussion of Ministerio de Salud's responsibilities (and failure to fulfill them) see, e.g., Friedemann-Sánchez, Greta, and Margaret Grieve. "General Background on Colombian Laws on Violence against Women, Orders of Protection, and Shelters." <https://www.ohchr.org/Documents/Issues/Women/SR/Shelters/FriedemannSanchezGrieve.pdf> (January 27, 2017); Special Rapporteur for Violence Against Women. "Report of the Special Rapporteur on violence against women, its causes and consequences"

https://www.google.com/search?q=report+of+the+special+rappporteur+on+violence+against&rlz=1C1GGRV_enUS787US793&oq=Resport+of+the+special+rappporteur+for+violenc&aqs=chrome.1.69i57j0.12264j1j8&sourceid=chrome&ie=UTF-8

- 41 Law 294 provides that Judges de *Control de Garantías* can issue a provisional protective order in connection with criminal proceeding for domestic violence, but then must refer the matter to the Family Commissioner for further review, collection of evidence, and the required hearing before a permanent protective order can be issued. Ministerio de Justicia y del Derecho, "Justicia y Género. II Lineamientos Técnicos en las Violencias Basadas en Género Para las Comisarías de Familia."; Ley 1257 de 2008, "Diario Oficial No. 47.193 de 4 de diciembre de 2008."
- 42 Ley 1098 del 2006, "Diario Oficial No. 46.446 de 8 de noviembre de 2006."
- 43 Ley 294 de 1996, "Diario Oficial No. 42.836 de 22 de julio de 1996."
- 44 Article 11, *ibid.*
- 45 Article 12, *ibid.*
- 46 Article 18, *ibid.*
- 47 *Ibid.*
- 48 United Nations, Division for the Advancement of Women, "Handbook for Legislation on Violence Against Women."; Conner, Dana Harrington, "Civil Protection Order Duration: Proof, Procedural Issues, and Policy Considerations." *Temple, Political & Civil Law Review*, (2014) 24: 343.
- 49 Kelly, Joan, and Michael Johnson. "Differentiation Among Types of Intimate Partner Violence: Research Update And Implications for Interventions." *Family Court Review* 46, no. 3 (2008): 479-99.
- 50 Ayala Silvia, Zárate Lozano, Francy. "Análisis de la Violencia de Pareja 2017 Casos: Bogotá, Cali, Medellín." In *2017 Forensis Datos para la Vida*, edited by *Instituto Nacional de Medicina Legal y Ciencias Forenses*, 545-57. Bogotá: *Instituto Nacional de Medicina Legal y Ciencias Forenses* 2018.
- 51 Insight Crime and Universidad del Rosario. "Colombian Organized Crime Observatory, Presence of Criminal Actors, 2017." Insight Crime, <https://insightcrime.org/indepth/observatory-rosario/>
- 52 Friedemann-Sánchez, Greta and Margaret Grieve, "General Background on Colombian Laws on Violence against Women, Orders of Protection, and Shelters."
- 53 Protective orders for domestic violence are issued under the civil law. As a consequence, an individual must request the protective order measure before a Family Commissioner can issue such an order.
- 54 The Family Commissioner would still have an independent obligation to report sexual abuse of a child to the prosecutor, but it is preferable for the family to make the report and support the prosecution.
- 55 We verified this account and found the newspaper and television reporting. We do not provide the citation to keep the interviewee anonymous by not identifying the municipality.

- 56** We heard again and again in Bogotá that Family Commissioners and their teams will do everything in their power to convince a woman to go to the shelter, but the decision ultimately rests with the woman, not Family Commissioner personnel.
- 57** *Medicina Legal* classifies injuries by the number of days of disability, i.e. the number of days that the person is medically unable to work.
- 58** Secretaría de Integración Social. "Las Comisarías de Familia de Bogotá y la Atención de la Violencia Intrafamiliar".
- 59** Ley 2737 de 1989. "Código del Menor." <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=4829>
- 60** Ley 575 de 2000, "Diario Oficial No. 43.889 de 11 de febrero de 2000."
- 61** Per the Contaduría's 2016 classification of municipalities, there are 1,071 municipalities in levels 6-2, which equates to approximately 97% of Colombia's municipalities.
- 62** *Contaduría General de la Nación*, "Categorización de Departamentos, Distritos y Municipios." We created the chart based on the Contaduría's 2016 numbers and calculated the percentages.
- 63** The Alcaldía de Guateque, Boyacá, not in our sample, where the Family Commissioner also must discharge the role of Family Defender, describes the Family Commissioner office's mission on its website: "*prevenir, garantizar, restablecer y reparar los derechos de los niños, niñas, adolescentes y de cualquier miembro de la familia que se encuentre en situaciones de inobservancia, vulneración y amenaza,*" and lists eight goals, none of which mention IPV. Alcaldía de Guateque. "Comisaría de Familia ". (2018) The municipality of San Pedro de los Milagros, Antioquia, also not in our sample, where the Family Commissioner is a Family Defender, describes the mission of the Family Commissioner as achieving peaceful co-existence within the family and in connection with children and adolescents (but not women):
- La Comisaría del Municipio de San Pedro de los Milagros es una dependencia adscrita a la Secretaría de Gobierno de la Administración Municipal, la cual se constituye en un espacio para prevenir, garantizar, restablecer y reparar los derechos de los niños, niñas y adolescentes, además asegurar a las familias las condiciones necesarias para el sostenimiento de la convivencia pacífica y el respeto de los derechos fundamentales consagrados en la Constitución y en los tratados internacionales. Milagros, Alcaldía de San Pedro de los. " Comisarías de Familia de San Pedro de los Milagros."*
- 64** Corte Constitucional de Colombia, "Sentencia C-406/97." See also Law 575 of 2000 which added a provision of law that states that the Family Commissioner position is a civil service position. Ley 575 de 2000, "Diario Oficial No. 43.889 de 11 de febrero de 2000."
- 65** Article 87, Article 1098. Ley 1098 del 2006, "Diario Oficial No. 46.446 de 8 de noviembre de 2006."
- 66** *Ibid.*; Familiar, Instituto Colombiano de Bienestar. "Concepto 131 de 2014." (2014)
- 67** A Family Commissioner domestic violence decision and protective order can be appealed, as is the case with any judicial decision, to a higher judicial authority, in this case, to a Family Court Judge. We are told this rarely happens. The right to appeal,

while essential, is not a substitute for providing judicial branch review of a judicial function.

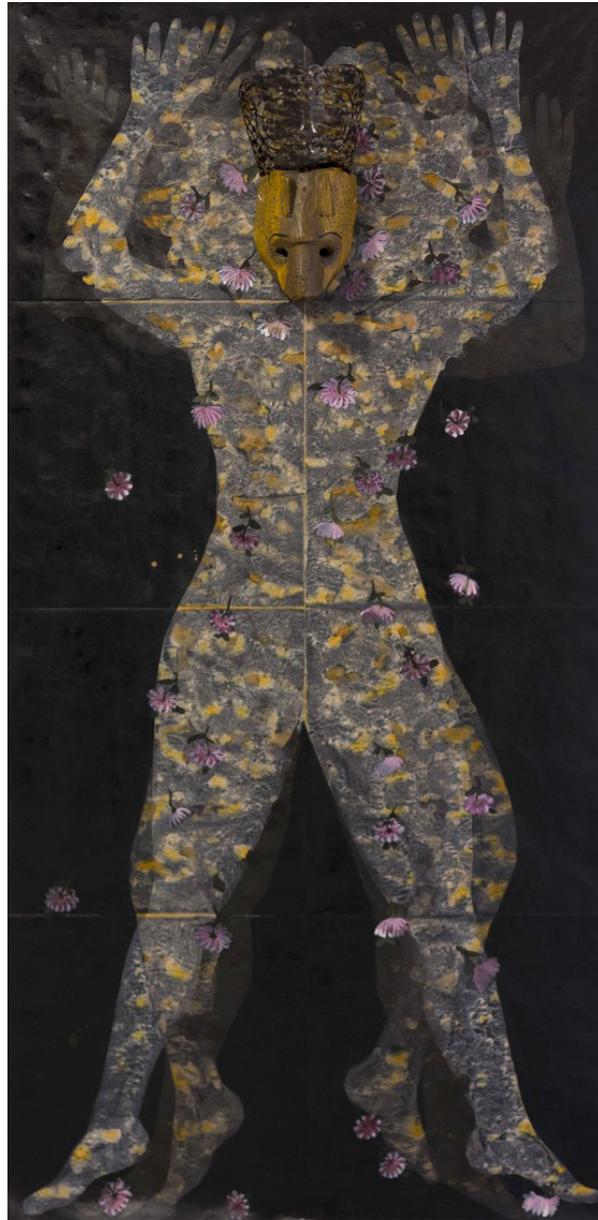
- 68** In our interviews, we learned of two cases where local mayors or city council members tried, unsuccessfully due to the resistance of Family Commissioners, to interfere in outcomes of individual cases.
- 69** ESAP-Escuela Superior de Administración Pública, "Estudio Técnico de Análisis Normativo e Institucional de las Comisarías de Familia. Producto 2. Análisis del Marco Normativo e Institucional y Propuestas Alternativas de Ajustes."
- 70** Interestingly, since the initiation of our study, the preliminary report no longer appears to be available on the internet.
- 71** Our analysis based on data provided in 2016 by Bogotá's Secretaría de Integración Social and Medellín's Secretaría de Seguridad y Convivencia.
- 72** United Nations, Division for the Advancement of Women, "Handbook for Legislation on Violence Against Women."
- 73** The absence of a national information system makes it impossible to calculate the caseload of Family Commissioners in this dual role, guaranteeing its invisibility.
- 74** *Instituto Nacional de Medicina Legal y Ciencias Forenses*. (2018). *Forensis 2017: Datos Para la Vida*. Retrieved from <http://www.medicinalegal.gov.co/documents/20143/262076/Forensis+2017+Interactivo.pdf/0a09fedb-f5e8-11f8-71ed-2d3b475e9b82>
- 75** Ley 1098 del 2006, "Diario Oficial No. 46.446 de 8 de noviembre de 2006."; Decreto 4840 de 2007, "Diario Oficial No. 46.846 de 18 de diciembre de 2007."
- 76** Article 84, Law 1098 effectively excuses municipalities in levels 6-2 from having a full interdisciplinary team, but both Decree 4840 and the Technical Guidance issues by ICBF to Family Commissioners assigns responsibilities as if all Family Commissioner Offices had full teams. "Diario Oficial No. 46.846 de 18 de diciembre de 2007."; *Instituto Colombiano de Bienestar Familiar*, "Lineamiento Técnico para las Comisarías de Familia."
- 77** Instituto Nacional de Medicina Legal y Ciencias Forenses. "Forensis 2016: Datos Para la Vida" <http://www.medicinalegal.gov.co/documents/20143/49526/Forensis+2016.+Datos+para+la+vida.pdf>
- 78** Decreto 4840 de 2007, "Diario Oficial No. 46.846 de 18 de diciembre de 2007."; *Instituto Colombiano de Bienestar Familiar*, "Lineamiento Técnico para las Comisarías de Familia."
- 79** Article 79, Ley 1098 del 2006, "Diario Oficial No. 46.446 de 8 de noviembre de 2006."
- 80** Ibid.
- 81** The 2013 main "policy/procedure" document (Ruta Interna de Atención Integral en Comisarías de Familia en Bogotá, D.C.) explains relevant legal background, lists Family Commissioner responsibilities, identifies the principles that govern Family Commissioner actions, the strategic criteria employed to assess demand for Family Commissioner services, and creates a 4-stage structure, specifies what is to happen at each stage (including documentation within the system) and the "human resources" (i.e., who among the Family Commissioner staff is to perform each task and identifying certain personnel who have administrative support roles (transversal) that are

- necessary for the general functioning of the office. This is “Bogotá’s Ruta Interna”; see Appendix 4. Three documents support the Bogotá Ruta Interna: a subsequent procedure document Instructivo: Implementación Ruta Interna de Atención en Comisarías de Familia) (Bogotá Instructivo), a risk assessment tool (Formato Instrumento de Identificación Preliminar de Riesgo para a Vida y la Integridad Personal por Violencias al Interior de la Familia (Risk Assessment Tool)), and a policy/procedure regarding monitoring of IPV protective orders (Modelo de Seguimiento y Acompañamiento a Familias Afectadas por Violencia Intrafamiliar en las Comisarías de Familia de Bogotá (Monitoring Procedure).
- 82** This tie between the civil and criminal justice system is contrary to best practices because when women learn that the information they provide for a protective order will be provided to prosecutors and could lead to prosecution and incarceration of their partner for up to 8 years, they withdraw their request for a protective order. We recommend severing this tie. See United Nations, Division for the Advancement of Women, "Handbook for Legislation on Violence Against Women." Conner, Dana Harrington, "Civil Protection Order Duration: Proof, Procedural Issues, and Policy Considerations."
- 83** Comisarías de Familia de Medellín, en paro por falta de personal. "Noticias Caracol." <https://noticias.caracoltv.com/medellin/comisarias-de-familia-de-medellin-en-paro-por-falta-de-personal>, (2015)
- 84** Procuraduría General de la Nación, "Vigilancia Superior a la Garantía de los Derechos desde la Perspectiva de Género Comisarías de Familia Linea de Base Nacional Segunda Parte."
- 85** *Proyecto de Ley No. 033 de 2018.*
- 86** Ministerio de Justicia y del Derecho, "Las Comisarías de Familia son la Puerta de Entrada a la Justicia."; Maritiano, Ana Paula, "Acuerdo para la Reforma de las Comisarías de Familia."; Correa, Sergio Andres, "Comisarías, a Medias para Cumplir su Rol."
- 87** Maritiano, Ana Paula, "Acuerdo para la Reforma de las Comisarías de Familia."; Correa, Sergio Andres, "Comisarías, a Medias para Cumplir su Rol."
- 88** ACNUR/UNHCR. "Situación Colombia. Colombia, Ecuador y Venezuela" <http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/BDL/2017/10938>
- 89** Article 2, Law 294 defines family as follows: *La familia se constituye por vínculos naturales o jurídicos, por la decisión libre de un hombre y una mujer de contraer matrimonio o por la voluntad responsable de conformarla.*
Para los efectos de la presente Ley, integran la familia:
- a) *Los cónyuges o compañeros permanentes;*
 - b) *El padre y la madre de familia, aunque no convivan en un mismo hogar;*
 - c) *Los ascendientes o descendientes de los anteriores y los hijos adoptivos;*
 - d) *Todas las demás personas que de manera permanente se hallaren integrados a la unidad doméstica.*
- 90** Article 18, Ley 1098 del 2006, "Diario Oficial No. 46.446 de 8 de noviembre de 2006."
- 91** Ibid.

- 92** Decreto 4799 del 2011. "Diario Oficial No. 48.289 de 20 de diciembre de 2011." <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Diciembre/20/dec479920122011.pdf>
- 93** Mesa por el Derecho de las Mujeres a una Vida Libre de Violencias. "La Misma Historia Otra Vez Vivencias de Mujeres y Barreras de Acceso a la Justicia Tercer Informe de Seguimiento a la Ley 1257 de 2008" <http://www.convergenciagnoa.org/images/Documentospdf/informesddhh/IIILey1257.pdf>; Mesa por los Derechos de las Mujeres a una Vida Libre de Violencias, Ley 1257 de 2008. "Ley 1257 Cinco Años Después. II Informe de Seguimiento a la Implementación a la Ley 1257 de 2008" Ediciones Antropos. <http://www.convergenciagnoa.org/images/Documentospdf/informesddhh/Informe%20Ley%201257.pdf>; León Amaya, Andrea Catalina, and Linda María Cabrera Cifuentes. "Ley 1257 Ocho Años de Obstáculos en la Protección Integral para las Mujeres Víctimas de Violencias. Informe de Seguimiento a la Ley 1257 de 2008." Ediciones Antropos, <http://www.sismamujer.org/wp-content/uploads/2016/11/Ley-1257-ocho-a%C3%B1os-de-obstaculos-en-la-protecci%C3%B3n-integral-de-las-mujeres-v%C3%ADctimas-de-violencias.pdf>



NANCY FRIEDEMANN-SÁNCHEZ, Colombian artist, develops visual discourses about the hybridity of dominant and subordinate art forms that have existed since the Conquest of the Americas and that are replicated in migration processes. The works in this book are inspired by 18th century caste paintings. The artist invited 16 women of Latin origin, depicting them with their arms raised, the obligatory pose when passing through security machines at airports. The figures, suspended on black backgrounds, are painted with flora and fauna based on colonial iconography; each painting is adorned with masks of indigenous or African origin, and a Spanish comb associated with the respective caste. During the colonial era, this visual genre of *mestizaje* and lines of race, gender, and class, represented the same parameters that still define the xenophobia, marginalization, and economic and racial differences throughout America. For more information see <https://www.nancyfriedemann.com/>



Loba

Colombia's institutional design addressing violence against women defies principles of logical government organization and separation of powers.

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The focus of this report is the Office of the Family Commissioner, the public entities responsible for issuing judicial administrative measures for the protection of victims of violence since 2000. Family Commissioners are the portal to justice for victims of domestic violence, the majority who are women. But Colombia's institutional design of the Office of the Family Commissioner defies principles of logical government organization and separation of powers. The Office is currently located under the local executive branch of government, an illogical location for an office imparting justice. In addition to their judicial responsibilities, the range and number of duties prevent them from effectively addressing domestic violence, their primary responsibility. Contrary to logic, and based on an inverse formula, the number of legally mandated Offices decreases as population, incidence, and prevalence of domestic violence, and service needs increase. The report offers an in-depth analysis of the institutional structure and policy recommendations to improve its design and a stronger institutional response to victims of violence.

