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**INTERNATIONAL
HUMAN RIGHTS
CLINIC**

THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND VIOLENCE AGAINST WOMEN

**Norms, Compliance Mechanisms, Jurisprudence,
Implementation, Lessons Learned, and Recommendations**

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Report prepared by the

**International Human Rights Clinic
at Santa Clara University School of Law**

in partnership with the Initiative on Violence Against Women (VAW) at the Carr Center for
Human Rights Policy of Harvard's Kennedy School of Government

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I. Introduction, Purpose, and Scope of Research

The International Human Rights Clinic (Clinic) is currently collaborating with the Initiative on Violence Against Women (VAW) at the Carr Center for Human Rights Policy of Harvard's Kennedy School of Government (the Carr Center's Initiative) to research, describe, and analyze how VAW is addressed in the Americas within the Organization of American States (OAS) generally, and in the Inter-American Human Rights System (IAHRS) specifically. The Carr Center's Initiative is in its exploratory phase, compiling research on the effectiveness of the international framework on VAW. In this regard, the Clinic's research findings on the Americas will complement the research carried out in other regions of the world by several other collaborators of the Carr Center's Initiative.

The Clinic has divided the research into two components. The first part, seeks to identify the following:

- relevant norms that address, either directly or indirectly, the issue of VAW in the region;
- relevant compliance mechanisms to enforce these norms;
- landmark decisions on VAW issued by the Inter-American Commission on Human Rights (IACHR) and by the Inter-American Court of Human Rights (IACtHR);
- the most important and relevant facts, holdings, and reparations ordered;
- the level of state compliance with the reparations ordered by the IACHR and the IACtHR; and
- concerns and success stories in the implementation of Inter-American norms and decisions on VAW, specifically as they relate to the Inter-American Convention on the Prevention, Punishment, and Eradication of VAW (Convention of Belém do Pará, or CBP).

The second part of the Clinic's research focuses on the following:

- summarizing lessons learned from the Inter-American System's experience with VAW, and
- providing recommendations for a specialized international VAW treaty based on the experience of the Americas.

More generally, the Clinic's research aims to provide the Carr Center's Initiative with an analysis of the extent to which a specialized binding regional treaty like the Convention of Belém do Pará has aided in the promotion of domestic norms and practices aimed at preventing, punishing, and eradicating VAW in the region, and the limitations and barriers that still exist in translating the treaty's legal standards into effective VAW policies and practices on the ground. The insights gained from the Clinic's research will help the Carr Center evaluate whether a similar specialized international legal framework on VAW should be pursued in the United Nations' human rights system.

II. Description of VAW Normative Framework within the OAS

The Organization of American States (OAS) is a regional organization founded in 1948 that is composed of 35 independent states¹. The OAS has developed a regional human rights legal framework comprised of general and specialized international norms, as well compliance mechanisms. This section will briefly describe the norms, while the next section will describe the compliance mechanisms.

All of the following eight regional human rights instruments adopted² by the OAS recognize rights and obligations relevant to address the issue of VAW:

- American Declaration on the Rights and Duties of Man (ADRDM or American Declaration) (1948);³
- American Convention on Human Rights (ACHR or American Convention) (1978);
- Inter-American Convention to Prevent and Punish Torture (CPPT) (1987);
- Protocol to the American Convention on Human Rights to Abolish the Death Penalty (PDP) (1991);
- Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women “Convention of Belém do Pará” (CBP) (1995);
- Inter-American Convention on Forced Disappearance of Persons (CFDP) (1996);
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights “Protocol of San Salvador” (PSS) (1999), and
- Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (CEDPD) (2001).

All of these instruments are relevant in addressing the issue of VAW to the extent they recognize the following rights, among others:

- right to life;
- right of non-discrimination;
- right to equal treatment under the law;
- right to physical and mental integrity;
- right to personal liberty;
- right to personal dignity;

¹ For more information on the OAS, see www.oas.org.

² This list excludes the two most recent treaties adopted by the OAS in 2013 on discrimination and intolerance, because these treaties are not yet in effect.

³ The numbers in parenthesis refer to the dates when these international instruments came into effect.

- right to privacy;
- right to family, and
- right to access to justice.

Of these eight instruments, the following four are the most relevant in addressing the issue of VAW, insofar as the IAHRs compliance mechanisms have cited to these instruments in deciding cases involving VAW: ADRDM, ACHR, CPPT, and CBP. The following subsections provide more detail about how these instruments have been used in the context of VAW cases.

A. American Declaration on the Rights and Duties of Man (ADRDM or American Declaration)

Despite its unfortunate name, the ADRDM is an important normative tool for the prevention and eradication of VAW in the region. According to the Inter-American Commission on Human Rights (IACHR), the “American Declaration is part of the human rights framework established by the OAS Member States, one that refers to the obligations and responsibilities of States and mandates them to refrain from supporting, tolerating or acquiescing in acts or omissions that contravene their human rights commitments.”⁴ In this sense, OAS Member States must not only respect the rights enumerated therein, but also “ensure that individuals within their jurisdictions also exercise those rights.”⁵

Although the American Declaration is not a treaty in the strict sense of the word, it has long been recognized “as constituting a source of legal obligation for [all] OAS Member States”⁶ that flows from the principles and human rights obligations under the OAS Charter.⁷ Additionally, some of

⁴ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 116 (2011).

⁵ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 117 (2011).

⁶ See Inter-American Court of Human Rights, *Advisory Opinion OC-10/89 "Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights"*, July 14, 1989, Ser. A N° 10 (1989), paras. 35-45 (The Court held that “for the member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter”); *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Res. 3/87, 22 September 1987; Annual Report of the IACHR 1986-87, paras. 46-49; and IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 115 (2011). See, as reference, Statute of the Inter-American Commission on Human Rights (1979), article 1, providing that the Commission was created “to promote the observance and defense of human rights” and defining human rights as those rights set forth both in the American Declaration and the American Convention. See also, Rules of Procedure of the Inter-American Commission of Human Rights (2009), articles 51 and 52, empowering the Commission to receive and examine petitions that allege violations of the rights contained in the American Declaration in relation to OAS Member States that are not parties to the American Convention.

⁷ Charter of the Organization of American States, Preamble and Art. 3(1). See e.g. OAS General Assembly Resolution 314, AG/RES. 314 (VII-O/77), June 22, 1977 (entrusting the Inter-American Commission with the preparation of a study to “set forth their obligations to carry out the commitments assumed in the American Declaration of the Rights and Duties of Man”); OAS General Assembly Resolution 371, AG/RES (VIII-O/78), July 1, 1978 (reaffirming its commitment to “promote the observance of the American Declaration of the Rights and Duties of Man”); OAS General Assembly Resolution 370, AG/RES. 370 (VIII-O/78), July 1, 1978 (referring to the

the Declaration's core provisions are considered binding insofar as they reflect norms of customary international law.⁸

Specifically, under Article II of the American Declaration, OAS Member States have an obligation not to discriminate and to provide for equal protection before the law. According to the Inter-American Commission on Human Rights, "[t]he obligations established in Article II extend to the prevention and eradication of violence against women, as a crucial component of the State's duty to eliminate both direct and indirect forms of discrimination. In accordance with this duty, State responsibility may be incurred for failures to protect women from domestic violence perpetrated by private actors in certain circumstances."⁹ The Inter-American Commission has also stated that "a State's breach of its obligation to protect women from domestic violence under Article II may also give rise to violations of the right to life established in Article I of the American Declaration, and the duty to provide special protection under Article VII of the American Declaration in given cases."¹⁰

Therefore, the American Declaration is an essential instrument in the IAHRs that has been interpreted to provide norms for the prevention and eradication of VAW applicable in all OAS Member States, regardless of whether these States have ratified any of the other regional human rights treaties. The interpretation of the American Declaration in this manner thus provides some measure of normative protection regarding VAW to women all across the region.

B. American Convention on Human Rights (ACHR or American Convention)

Similar to the American Declaration, the American Convention is a human rights instrument of a general nature that describes broad rights and obligations. Unlike the American Declaration, the American Convention is a binding treaty that is subject to ratification by OAS Member States. The ACHR is arguably the most important human rights treaty in the region, as it not only recognizes binding norms for those States that ratify the treaty, it also creates the Inter-American Court of Human Rights as an enforcement mechanism to supervise compliance with the ACHR¹¹ (see Chapter III, Section D below).

In the absence of a more specialized treaty on VAW, the American Convention had been the primary international instrument within the IAHRs that recognized rights relevant to situations

"international commitments" of OAS Member States to respect the rights recognized in the American Declaration of the Rights and Duties of Man).

⁸ IACHR, Report N° 19/02, Case 12.379, *Lare-Reyes et al.* (United States), February 27, 2002, para. 46.

⁹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 120 (2011).

¹⁰ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 121 (2011).

¹¹ OAS, *American Convention on Human Rights*, Chapter VIII, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

of VAW, as well as the States' duties to respect, protect, and ensure those rights.¹² Although the American Convention does not explicitly address the issue of VAW (with the exception of a prohibition on trafficking in women),¹³ the rights recognized therein have been interpreted to apply to situations of VAW. As will be discussed below (see Chapter IV below), cases involving rape, sexual violence, domestic violence, discrimination, equal protection under the law, and lack of judicial protection, for example, have all been addressed under the broad spectrum of rights recognized in the American Convention. That is, insofar as situations of VAW affect rights recognized under the American Convention, this treaty is a powerful source of legal obligations for States Parties to respect, protect, and ensure those rights.

C. Inter-American Convention to Prevent and Punish Torture (CPPT)

The CPPT is a specialized human rights treaty that focuses on the prohibition, prevention, and punishment of torture. In this sense, this treaty provides specific content to the general right to physical, mental, and moral integrity and security recognized in Article 5 of the American Convention and in Article I of the American Declaration.

This treaty is also an essential normative tool for the prevention, punishment, and eradication of VAW insofar as it recognizes the right of all people to be free from torture and other cruel, inhuman, or degrading treatment or punishment (CIDT),¹⁴ and it identifies the States Parties' obligation to investigate alleged acts of torture or CIDT¹⁵ to prevent their impunity. In this sense, the CPPT not only contains important specific norms that apply in States Parties, but it also complements and reinforces the rights and obligations found in other, more general, human rights instruments.

Nonetheless, the lack of specificity of norms aimed at addressing the particular concerns involved in cases of VAW reflects a gap in the protection of women in such contexts. For example, under Article 7 of CPPT, States Parties have the obligation to provide training to public officials on the prohibition of the use of torture in interrogation, detention or arrest of individuals. Said Article makes no mention of whether such training should include education on how to address the specific concerns of interrogation, detention or arrests of women, particularly those belonging to especially vulnerable populations like afro-descendants or indigenous groups.

¹² The American Convention is still the main source of VAW obligations in the region for States Parties that have not yet ratified the Belém do Pará Convention.

¹³ Article 6.1 ACHR explicitly prohibits trafficking in women. ("No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women"). OAS, *American Convention on Human Rights*, Article 6.1, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

¹⁴ OAS, *Inter-American Convention to Prevent and Punish Torture*, Articles 6-7, available at <http://www.oas.org/juridico/english/treaties/a-51.html>.

¹⁵ OAS, *Inter-American Convention to Prevent and Punish Torture*, Article 8.

A similar situation arises in the context of Article 8 of CPPT, which requires States Parties to carry out investigations of alleged acts of torture or CIDT, but does not address the special procedures that must be carried out in some contexts of victims of VAW.

As will be discussed below (see Chapter IV below), the organs in charge of overseeing compliance and enforcement of these norms have gone to great lengths to interpret these treaties creatively to construct jurisprudence that establishes a more specialized legal framework to address VAW in the region. In the absence of such progressive jurisprudence, the effectiveness of these international instruments in addressing VAW is limited by the narrow scope and language of each instrument.

D. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women “Convention of Belém do Pará” (CBP)

Twenty years ago in 1994, in light of the limitations of the legal framework described above, OAS Member States decided to adopt a specialized treaty focused exclusively on VAW. This treaty, the Convention of Belém do Pará, entered into force in 1995 and became the first international treaty of its kind. Of the 34 current OAS Member States, all but two states have ratified it.¹⁶ The almost universal ratification of this treaty within the OAS showcases its importance.

The Convention of Belém do Pará defines VAW as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”¹⁷ This definition of VAW is “understood to include physical, sexual and psychological violence:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.”¹⁸

¹⁶ Only Canada and the United States have not ratified this treaty.

¹⁷ OAS, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* “Convention of Belém do Pará,” Article 1, available at <http://www.oas.org/juridico/english/treaties/a-61.html>.

¹⁸ OAS, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* “Convention of Belém do Pará,” Article 2.

In addition to providing a uniform definition of VAW and defining its scope of application (to include both the private and public spheres), the CBP describes a set of specific rights and duties related to the context of VAW. The treaty specifically recognizes a woman’s “right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments”, which include the rights mentioned above, such as the rights to life; to have her physical, mental and moral integrity respected; to personal liberty and security; not to be subjected to torture; to have the inherent dignity of her person respected and her family protected; to equal protection before the law and of the law, and judicial protection against acts that violate her rights.¹⁹ The treaty also specifies the duties of States Parties to respect, protect, and take measures to ensure the enjoyment of these rights.²⁰ In this sense, the CBP complements and provides specific content to the other regional human rights instruments discussed above, and adds specific language applicable to the context of VAW.

Finally, the CBP specifically defines the compliance mechanisms designed to supervise enforcement of this treaty by States Parties. The next section will describe in more detail these and other VAW compliance mechanisms in the OAS.

III. VAW Compliance Mechanisms in the OAS

In addition to the international norms described above, the legal framework on VAW in the OAS includes several compliance mechanisms. The most relevant²¹ of these mechanisms include the following:

- Inter-American Commission of Women (ICW);
- Mechanism to Follow-Up on Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (MESECVI);
- Inter-American Commission on Human Rights (IACHR or Commission), and
- Inter-American Court of Human Rights (IACtHR or Court)

The next subsections will provide a brief overview of the role of each of these VAW compliance mechanisms in the OAS.

¹⁹ OAS, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* “*Convention of Belém do Pará*,” Articles 4(a)-4(g).

²⁰ OAS, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* “*Convention of Belém do Pará*,” Articles 7-9.

²¹ This report will not discuss the role of the OAS General Assembly or of the Permanent Council in enforcing Inter-American norms on VAW.

A. The Inter-American Commission of Women (ICW)

The ICW is an OAS permanent organ established in 1928 to ensure the recognition of women's rights in the Americas.²² Its mandate includes the development of policy in the area of women's rights and gender equality.²³ It is composed of delegates from the 34 OAS Member States, which are designated by each State.²⁴

The ICW played an important role in the development and adoption of the Convention of Belém do Pará, and it continues to play a significant role in the supervision of compliance of the convention's provisions. Pursuant to Article 10 of CBP, States Parties must submit periodic reports to the ICW with "information on measures adopted to prevent and prohibit violence against women and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women". In this sense, this compliance mechanism resembles the reporting procedure of the U.N. treaty body monitoring system.²⁵

B. Mechanism to Follow-Up on Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (MESECVI)

In 2004, States Parties to the Convention of Belém do Pará gathered in Washington, D.C. to develop "a mechanism to permit follow-up and analysis of the ways in which the Convention is being applied, and to facilitate cooperation among the states parties and among all OAS member states."²⁶ This follow-up mechanism came to be known as MESECVI, and its purpose is to analyze the progress in the implementation of the Convention by States Parties.²⁷

²² OAS, *Inter-American Commission of Women Mission and Mandate*, available at <http://www.oas.org/en/CIM/about.asp>.

²³ OAS, *Inter-American Commission of Women Mission and Mandate*.

²⁴ OAS, *Inter-American Commission of Women Mission and Mandate*.

²⁵ See U.N. Office of the High Commissioner for Human Rights, *Human Rights Treaty Bodies: Monitoring the core international human rights treaties*, available at <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

²⁶ OAS, MESECVI, "Statute of the mechanism to follow up on the implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, "Convention of Belém do Pará", approved at the First Conference of States Parties held in Washington D.C. on October 26, 2004, available at <http://www.oas.org/en/mesecvi/docs/MESECVI-BasicDocuments-EN.doc>.

²⁷ OAS, "About MESECVI," available at <http://www.oas.org/en/mesecvi/about.asp>. In May 2014, MESECVI hosted a conference to reflect on 20 years of the Belém do Para Convention, which resulted a collective statement on the steps remaining to fully implement the treaty, the Declaration of Pachuca. Inter-American Commission of Women, *Declaration of Pachuca*, "Strengthening efforts to prevent violence against women," May 27, 2014, available at <http://www.oas.org/en/mesecvi/docs/DeclaracionPachuca-EN.pdf>.

The work of MESECVI consists of the following two related organs: a Conference of Member States, and a Committee of Experts.²⁸ The Conference of Member States is the political organ of MESECVI and is composed of representatives of States Parties²⁹. The Committee of Experts is the technical organ of MESECVI that receives and evaluates state reports and issues recommendations.³⁰

C. Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights is an autonomous, quasi-judicial institution within the OAS in charge of promoting and protecting human rights in the region.³¹ It is composed of seven independent experts who serve in their individual capacity.³² In carrying out its mandate, the Commission may refer to all of the regional human rights instruments within the OAS discussed above³³.

The Commission's role in addressing VAW in the region can be divided into the following main compliance mechanisms:

1. Rapporteurship on the Rights of Women

Created in 1994, the Commission's Rapporteurship on the Rights of Women has contributed to the development of norms and jurisprudence on the rights of women in general, and specifically on the issue of VAW.³⁴ The Rapporteurship monitors and receives information about VAW across the region, publishes press releases to call attention to matters of concern, and publishes reports on women's rights that include the issue of VAW.

²⁸ OAS, MESECVI, "Statute of the mechanism to follow up on the implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, "Convention of Belém do Pará", approved at the First Conference of States Parties held in Washington D.C. on October 26, 2004, Article 5.1, available at <http://www.oas.org/en/mesecvi/docs/MESECVI-BasicDocuments-EN.doc>.

²⁹ OAS, MESECVI, "Statute of the mechanism to follow up on the implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, "Convention of Belém do Pará", approved at the First Conference of States Parties held in Washington D.C. on October 26, 2004, Article 5.2.

³⁰ OAS, MESECVI, "Statute of the mechanism to follow up on the implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, "Convention of Belém do Pará", approved at the First Conference of States Parties held in Washington D.C. on October 26, 2004, Article 5.3.

³¹ IACHR, *What is the IACHR?*, available at <http://www.oas.org/en/iachr/mandate/what.asp>.

³² IACHR, *What is the IACHR?*.

³³ Nevertheless, in its system of individual complaints, the Commission may only declare violations of those OAS treaties the respondent State has ratified.

³⁴ IACHR, *Rapporteurship on the Rights of Women*, available at <http://www.oas.org/en/iachr/women/default.asp>.

2. Thematic Reports and Hearings

The Commission also contributes to the promotion of women's rights and to the prevention and eradication of VAW by holding thematic public hearings³⁵ and publishing thematic reports³⁶ on VAW in a region or in a specific OAS Member State. For example, the Commission has published the following six thematic reports that address VAW:

- Access to Justice for Women Victims of Sexual Violence: Education and Health (2011);³⁷
- Access to Justice for Women Victims of Sexual Violence in Mesoamerica (2011);³⁸
- The Right of Women in Haiti to be Free from Violence and Discrimination (2009);³⁹
- Access to Justice for Women Victims of Violence in the Americas (2007);⁴⁰
- Violence and Discrimination Against Women in the Armed Conflict in Colombia (2006),⁴¹ and
- The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination (2003).⁴²

3. Country Visits, Reports, and Hearings

In addition to thematic reports and hearings, the Commission also analyzes VAW as part of its general mandate to analyze human rights violations in all individual OAS Member States. It can do so by visiting⁴³ a particular State to investigate the general situation of human rights, including the issue of VAW, or it can hold hearings⁴⁴ at its seat in Washington, D.C. to gather

³⁵ IACHR, *Sessions by Topic: Rights of Women*, available at <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=15>.

³⁶ IACHR, *Thematic Reports*, available at <http://www.oas.org/en/iachr/reports/thematic.asp>.

³⁷ IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, (December 28, 2011), available at <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>.

³⁸ IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, (December 9, 2011), available at <http://www.oas.org/en/iachr/women/docs/pdf/WOMEN%20MESOAMERICA%20ENG.pdf>.

³⁹ IACHR, *The Right of Women in Haiti to Be Free from Violence and Discrimination*, (March 10, 2009), available at <http://cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.toc.htm>.

⁴⁰ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, (January 20, 2007), available at <http://www.cidh.org/women/Access07/tocaccess.htm>.

⁴¹ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, (October 18, 2006), available at <http://www.cidh.org/countryrep/ColombiaMujeres06eng/TOC.htm>.

⁴² IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, (March 7, 2003), available at <http://www.cidh.org/annualrep/2002eng/chap.vi.juarez.htm>.

⁴³ IACHR, *Country Visits*, available at <http://www.oas.org/en/iachr/activities/countries.asp>.

⁴⁴ IACHR, *Advanced Search of Hearings*, available at <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=en>.

this information. The Commission may also publish reports that focus on a single State,⁴⁵ where the issue of VAW may be addressed within a larger context of other human rights violations.

4. Individual Complaint Mechanism

The Commission also plays an essential role in ensuring that acts of VAW do not go unpunished. Through its system of individual complaints, victims of VAW may bring their individual cases against OAS Member States to the attention of the Commission, which will investigate the matter and determine whether the State violated one or more of the applicable regional human rights norms within the OAS.⁴⁶ For example, pursuant to Article 12 of the Convention of Belém do Pará, the Commission has the authority to find violations of that treaty,⁴⁷ but it may do so only with regards to the immediate obligations under Article 7 and not, for example, the progressive obligations under Article 8 or the State duties under Article 9 thereof.⁴⁸

If the Commission finds a violation of one or more of the applicable regional human rights norms, it may then recommend the State to take certain measures to remedy the violation and to prevent the recurrence of similar situations.⁴⁹ If the State fails to comply with the Commission's recommendations, the Commission may also submit the case to the jurisdiction of the Inter-American Court of Human Rights (see Section D below), but only if the State in question has also ratified the American Convention and recognized the Inter-American Court's jurisdiction.

Chapter IV below provides a detailed overview and analysis of the leading VAW cases decided by the Commission.

⁴⁵ IACHR, *Country Reports*, available at <http://www.oas.org/en/iachr/reports/country.asp>.

⁴⁶ IACHR, *Petition and Case System*, available at <http://www.oas.org/en/iachr/mandate/petitions.asp>.

⁴⁷ Article 12 of the Convention of Belém do Pará states the following: "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions." OAS, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará"*, Article 12, available at <http://www.oas.org/juridico/english/treaties/a-61.html>.

⁴⁸ See IACtHR, *Case of González, et al. ("Cotton Field")*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 78-80, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf (in which the Court states that it – and presumably the Commission as well – does not have jurisdiction to examine alleged violations of Articles 8 and 9 of the Convention of Belém do Pará).

⁴⁹ IACHR, *Petition and Case System Informational Brochure*, 2010, available at http://www.oas.org/es/cidh/docs/folleto/CIDHFolleto_eng.pdf.

5. Precautionary Measures

The Commission may also request a State to adopt measures for protection in serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition.⁵⁰ The mechanism for these “precautionary measures” is established in Article 25 of the Rules of Procedure of the Commission.⁵¹ The Commission may request such measures on its own initiative or at the request of a party, either in connection with or independently of a pending petition or case. This form of international protection can be used to protect women from acts of violence in situations that meet the criteria established in Article 24 of the Commission’s Rules of Procedure.⁵² Furthermore, in addition to precautionary measures, Article XIV of the Inter-American Convention on Forced Disappearance of Persons established a mechanism that the Commission can use in cases of alleged forced disappearances with respect to the States that have ratified this treaty.⁵³

D. Inter-American Court of Human Rights

The Inter-American Court of Human Rights is an autonomous judicial institution within the OAS in charge of interpreting and applying regional human rights norms, such as the Belém do Pará Convention.⁵⁴

1. Advisory Opinions

Pursuant to Article 64 of the American Convention on Human Rights, OAS Member States and the organs listed in Chapter X of the Charter of the OAS may consult the Court regarding the interpretation of the Convention or of other treaties concerning the protection of human rights in the Americas. Additionally, Article 11 of the Belém do Pará Convention also allows States Parties and the ICW to request the Court advisory opinions on the interpretation of that treaty. These are important tools in the development of norms on VAW in the Americas, as the Court has the authority to provide OAS Member States with guidance on how Inter-American treaties protect women from violence and whether domestic legislation meets these obligations.

⁵⁰ IACHR, *Precautionary Measures*, available at <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

⁵¹ IACHR, *Rules of Procedure*, Article 25, available at <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

⁵² IACHR, *Rules of Procedure*, Article 24, available at <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

⁵³ OAS, *Inter-American Convention on Forced Disappearance of Persons*, Article XIV, available at <http://www.oas.org/juridico/english/treaties/a-60.html>.

⁵⁴ IACtHR, *Statute*, Article 1, available at http://www.oas.org/xxxiiiga/english/docs_en/cortedh_statute_files/basic17.htm.

2. Contentious Cases

Unlike the Commission, which has jurisdiction over all OAS Member States, the Court has contentious jurisdiction only over those OAS Member States that are also States Parties to the American Convention on Human Rights and that additionally recognize the Court's jurisdiction.⁵⁵ In its contentious jurisdiction, the Court has addressed several cases of VAW, some of which will be discussed below. In deciding these cases, the Court has relied mostly on the American Convention on Human Rights, the Inter-American Convention on Torture, and the Belém do Pará Convention.

Once the Court issues a judgment in a contentious case involving VAW, it retains jurisdiction to oversee compliance with that judgment. The Court evaluates a State's compliance with a judgment by requiring parties to submit periodic reports on compliance, by holding public and private hearings on compliance, and by issuing Court orders on compliance. In these orders, the Court may declare full or partial compliance with the judgment, and require more information from the parties. Unlike the periodic reports submitted before the ICW under the Belém do Pará Convention, the periodic reports on compliance with the Court's judgments are ordered and supervised by a binding judicial body.

3. Provisional Measures

Pursuant to Article 63 of the American Convention on Human Rights, the Court may adopt "provisional measures" in "cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons."⁵⁶ These provisional measures have the same goal as the precautionary measures the Commission may request, but the procedural requirements for each type of protective measures is different.

IV. Landmark Decisions on VAW and Level of State Compliance

The Inter-American Commission and the Court have issued several landmark decisions⁵⁷ on VAW. The following subsections will provide a brief overview of (1) the facts and procedural history; (2) holdings or findings; (3) reparations ordered or recommended, and (4) the level of State compliance with regards to the following seven key VAW decisions in the Inter-American

⁵⁵ OAS, *American Convention on Human Rights*, Article 62, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

⁵⁶ OAS, *American Convention on Human Rights*, Article 63.

⁵⁷ This report does not include more recent cases before the IACHR involving VAW that were pending before the IACtHR when the Clinic finished its research, such as Case No. 12.777, *Claudina Isabel Velásquez Paiz v. Guatemala*. See IACHR press release at http://www.oas.org/en/iachr/media_center/PReleases/2014/029.asp.

System (the first two were decisions on the merits issued by the Commission and the rest were judgments issued by the Court):

- *María da Penha v. Brazil* (2001)
- *Jessica Lenahan (González) v. United States of America* (2011)
- *Castro-Castro Prison v. Peru* (2006)
- *González et al. “Cotton Field” v. Mexico* (2009)
- *Las Dos Erres Massacre v. Guatemala* (2009)
- *Rosendo Cantú et al. v. Mexico* (2010)
- *Fernández Ortega et al. v. Mexico* (2010)

A. Inter-American Commission on Human Rights

1. *María da Penha v. Brazil* (2006)

a) Introduction and importance of case

In 2001, the Inter-American Commission on Human Rights decided *María da Penha v. Brazil* - the first decision where the Inter-American Human Rights System applied the Convention of Belém do Pará, as well as the first case where the Commission analyzed domestic violence against women as a human rights violation.⁵⁸ This case is also significant because it demonstrates the effectiveness of the Commission’s individual complaint mechanism in pushing Brazil to make significant changes in its legal framework on domestic violence as a direct response to the Commission’s recommendations in this decision. Both the case and the reforms adopted by Brazil highlight the need for an integrated approach towards addressing the systemic problems – such as ineffective prosecutions of abusers – that contribute to individual acts of violence against women.⁵⁹

b) Facts

María da Penha is a domestic violence survivor from Fortaleza, Ceará State, Brazil.⁶⁰ On May 29, 1983, Ms. da Penha’s then-husband, Marco Antonio Heredia Viveiros, shot her while she slept.⁶¹ This attempted murder left her with irreversible paraplegia and was the culmination of “a series of acts of aggression [against her and her children] carried out over the course of their

⁵⁸ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001).

⁵⁹ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 20.

⁶⁰ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 8.

⁶¹ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 8.

married life.”⁶² Two weeks after the attempted murder, on June 6, 1983, Mr. Viveiros attempted to electrocute Mrs. da Penha while bathing, and she decided to seek legal separation.⁶³

The police conducted an investigation into these incidents and on September 28, 1984, the Office of the Public Prosecutor filed criminal charges against Mr. Viveiros in the First District Court of Fortaleza, in Ceará State.⁶⁴ However, these proceedings stalled for eight years before Mr. Viveiros was found guilty and sentenced to ten years in prison in 1991.⁶⁵ Defense counsel filed a time-barred appeal, which was nevertheless granted in 1994 and resulted in a reversal of the original conviction.⁶⁶ A second trial took place on March 15, 1996, in which Mr. Viveiros was again convicted, and sentenced to ten years and six months in prison.⁶⁷ The defense again appealed, and in 2001 Mr. Viveiros was sentenced to eight years in prison, but was released in 2002.⁶⁸ Mr. Viveiros remained free for more than seventeen years after charges were initially brought against him in 1984.⁶⁹

c) Procedural History before the Inter-American Commission

Ms. da Penha filed a petition before the Commission on August 20, 1998, with the legal representation and support of the Center for Justice and International Law (CEJIL) and the Latin American and Caribbean Committee for the Defense of Women’s Rights (CLADEM).⁷⁰ The petition alleged violations of Article 1(1) (the obligation to respect rights), 8 (the right to a fair trial), 24 (the right to equal protection), and 25 (the right to judicial protection) of the American Convention, in relation to Articles II and XVIII of the American Declaration, as well as Articles 3, 4(a), (b), (c), (d), (e), (f), and (g), and 5 and 7 of the Convention of Belém do Pará.⁷¹ In 2001, the Commission decided admissibility and the merits together in a single report.⁷²

d) Decision on the Merits

The Commission declared the petition admissible pursuant to both the American Convention and the Convention of Belém do Pará.⁷³ On the merits of the case, the Commission found that Brazil

⁶² IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 8.

⁶³ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), paras. 9, 12.

⁶⁴ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 12.

⁶⁵ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 13.

⁶⁶ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), paras. 14-15.

⁶⁷ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 17.

⁶⁸ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001). 18.

⁶⁹ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 19.

⁷⁰ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 1.

⁷¹ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 2.

⁷² IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 3.

⁷³ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 3.

had violated Ms. da Penha's right to justice (Article XVIII ADRDM), her right to a fair trial (Article 8 ACHR) and right to judicial protection (Article 25 ACHR) in relation to the State's obligation to respect and guarantee rights (Article 1(1) ACHR), and to her right to equality before the law (Article 24 ACHR and Articles II and XVIII ADRDM). The Commission also found that Brazil had violated Article 7 of the Convention of Belém do Pará.⁷⁴ The following subsections discuss the Commission's legal analysis of these violations in more detail.

(1) Violation of Article XVIII ADRDM (Right to Justice), and Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) ACHR in relation to Article 1(1) (Obligation to Respect and Guarantee Rights) ACHR

First, the Commission found that Brazil had violated Ms. da Penha's right to justice, to a fair trial, and to judicial protection. It noted that "Articles XVIII of the Declaration and 8 and 25 of the American Convention on Human Rights stipulate that all persons are entitled to access to judicial remedies and to be heard by a competent authority or court when they think that their rights have been violated... all in relation to the obligation set forth in Article 1(1) of the Convention."⁷⁵ Article 8(1) requires that access to judicial remedies take place within "a reasonable time," and the Inter-American Court has looked to the jurisprudence of the European Court of Human Rights in developing a test to determine whether this requirement has been met.⁷⁶

On the facts of this case, the Commission considered that more than seventeen years had elapsed since the beginning of the investigation into the attack on the Ms. da Penha; that the case against Mr. Viveiros was still open; and, that remedies had not been provided to Ms. da Penha for the consequences of the attempted murder.⁷⁷ The Commission found that under these circumstances, Brazil had not provided Ms. da Penha with access to judicial remedies within "a reasonable time," in violation of Articles 8 and 25 of the Convention in relation to Article 1(1), and Articles II and XVIII of the American Declaration.⁷⁸

⁷⁴ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 3. Despite the fact that the assault occurred before the Convention of Belém do Pará was ratified, the Commission nevertheless held that the Convention was applicable because of Brazil's ongoing failure to prosecute the perpetrator. See IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 27.

⁷⁵ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 37.

⁷⁶ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 38.

⁷⁷ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 38.

⁷⁸ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 44.

**(2) Violation of Article 24 ACHR and Articles II and XVIII
ADRDM (Right to Equality before the Law)**

The Commission also found that the attack on Ms. da Penha was part of a pattern of discrimination against women in Brazil, which condoned domestic violence through ineffective judicial action, all of which constitutes a violation of the right to equality before the law.⁷⁹ In reaching this conclusion, the Commission considered background information on the prevalence of domestic violence in Brazil and in Ceará State.⁸⁰ This evidence showed a high rate of domestic violence in Brazil,⁸¹ and showed that women are the victims of such violence in disproportionate numbers.⁸² It also demonstrated that very few cases of domestic violence are investigated,⁸³ and even fewer result in conviction of the perpetrator.⁸⁴ The Commission also noted that while Brazil has made some significant advances in responding to domestic violence, implementation has been limited and that “[i]n this case... these initiatives have not had any effect whatsoever.”⁸⁵

**(3) Violation of Article 7 of the Convention of Belém do Pará
(VAW)**

Finally, the Commission held that Brazil violated Articles 7(b), (d), (e), (f), and (g) of the Convention of Belém do Pará in relation to a woman’s right to live free of violence, to personal integrity, to equal protection of the law, and to judicial protection.⁸⁶ This holding made this case the first in the Inter-American Human Rights System to find violations of the Convention of Belém do Pará.

Significantly, the Commission found that although Brazil did not ratify the Convention until November 27, 1995, more than twelve years after the attacks upon Ms. da Penha,⁸⁷ it could still apply the Convention to her claims because of the ongoing nature of the “violation of the right to effective legal procedures, and, consequently, the tolerance that this would imply of violence against women.”⁸⁸

In its analysis of Article 7 of the Convention of Belém do Pará, the Commission held that the violence suffered by Ms. da Penha was part of a general pattern of ineffective state action in

⁷⁹ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 3.

⁸⁰ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), paras. 46-50.

⁸¹ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 46.

⁸² IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 47.

⁸³ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 48.

⁸⁴ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 49.

⁸⁵ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 50.

⁸⁶ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 58.

⁸⁷ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 51.

⁸⁸ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 52.

investigating, prosecuting, and convicting abusers, and that the State was also responsible for its failure to prevent domestic violence in the first place.⁸⁹ The Commission further held that despite the measures taken by the State to eliminate the condoning of domestic violence, these positive measures were far outweighed by the pattern of “ineffective judicial action, impunity, and the inability of victims to obtain compensation.”⁹⁰ According to the Commission, these persistent problems showed a lack of commitment to addressing domestic violence.⁹¹

e) Recommendations

The Commission issued a series of recommendations aimed at achieving the successful prosecution of Mr. Viveiros, the systematic reform of the Brazilian justice system to eliminate unreasonable judicial delays, providing training on domestic violence awareness, and developing judicial tools for domestic violence victims.⁹² Specifically, on the issue of domestic reforms, the Commission recommended that Brazil, *inter alia*:

1. Continue and expand the reform process that will put an end to the condoning by the State of domestic violence against women in Brazil and discrimination in the handling thereof. In particular, the Commission recommend[ed]:
 - a. Measures to train and raise the awareness of officials of the judiciary and specialized police so that they may understand the importance of not condoning domestic violence.
 - b. The simplification of criminal judicial proceedings so that the time taken for proceedings can be reduced, without affecting the rights and guarantees related to due process.
 - c. The establishment of mechanisms that serve as alternatives to judicial mechanisms, which resolve domestic conflict in a prompt and effective manner and create awareness regarding its serious nature and associated criminal consequences.
 - d. An increase in the number of special police stations to address the rights of women and to provide them with the special resources needed for the effective processing and investigation of all complaints related to domestic violence, as well as resources and assistance from the Office of the Public Prosecutor in preparing their judicial reports.
 - e. The inclusion in teaching curriculums of units aimed at providing an understanding of the importance of respecting women and their rights recognized in the Convention of Belém do Pará, as well as the handling of domestic conflict.⁹³

⁸⁹ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 56.

⁹⁰ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 57.

⁹¹ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 57.

⁹² IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 61.

⁹³ IACHR, *María da Penha Maia Fernandes v. Brazil*, Case 12.051, Report No. 54/01 (2001), para. 61.

f) Compliance

This section analyzes Brazil's compliance with the Commission's 2001 recommendations. In 2008, the Commission found that Brazil had fully complied with its recommendations to complete the criminal proceedings against Mr. Viveiros and to make monetary and symbolic reparations to Ms. da Penha.⁹⁴ The Commission also found that Brazil had significantly complied with its other recommendations and urged it to continue taking steps to address violence against women.⁹⁵

(1) Legal and Policy Reforms

In 2006, Brazil passed Law 11.340, known as the *María da Penha Law*.⁹⁶ The Law provided a framework for addressing violence against women by integrating local, state, and national government agencies through "joint network services."⁹⁷ It established new criminal sanctions for domestic violence and increased previous punishments, integrated services for victims with the national domestic violence call center, required health facilities to inform police officials of cases of suspected domestic violence, and created a special police force and special courts for domestic violence cases.⁹⁸

In August 2011, five years after the *María da Penha Law* was enacted, the National Council of Justice of Brazil collected data showing positive results from the Law. In that time, more than 331,000 cases of domestic violence were prosecuted, with 110,000 resulting in final judgments, and the call center received nearly two million calls.⁹⁹ However, obstacles to fully implementing the Law still remain, particularly a need for more financial resources.¹⁰⁰ Activists monitoring the

⁹⁴ IACHR, Annual Report 2008, Status of compliance with the recommendations of the IACHR, Case 12.051, Report No. 54/01, *María da Penha Maia Fernandes* (Brazil), paras. 101 and 103, available at <http://www.cidh.oas.org/annualrep/2008eng/Chap3.g.eng.htm>.

⁹⁵ IACHR, Annual Report 2008, Status of compliance with the recommendations of the IACHR, Case 12.051, Report No. 54/01, *María da Penha Maia Fernandes* (Brazil), para. 110.

⁹⁶ Carmen Hein de Campos, *Access to Justice and the Permissive State: The Brazilian Experience*, Univ. of Miami L. Rev. Vol. 65 Issue 3, pp. 893-895 (2011); available at http://lawreview.law.miami.edu/wp-content/uploads/2011/12/v65_i3_ccampos.pdf. See also Center for Justice and International Law, *María da Penha – Brazil*, available at <http://cejil.org/en/cases/Maria-da-penha>; and UN Women, *María da Penha law: A Name that Changed Society* (2011), available at <http://www.unwomen.org/en/news/stories/2011/8/Maria-da-penha-law-a-name-that-changed-society>.

⁹⁷ Carmen Hein de Campos, *Access to Justice and the Permissive State: The Brazilian Experience*, Univ. of Miami L. Rev. Vol. 65 Issue 3, pp. 893-895 (2011).

⁹⁸ Carmen Hein de Campos, *Access to Justice and the Permissive State: The Brazilian Experience*, Univ. of Miami L. Rev. Vol. 65 Issue 3, pp. 893-895 (2011). See also Center for Justice and International Law, *María da Penha – Brazil*; and UN Women, *María da Penha law: A Name that Changed Society* (2011).

⁹⁹ UN Women, *María da Penha law: A Name that Changed Society* (2011).

¹⁰⁰ Carmen Hein de Campos, *Access to Justice and the Permissive State: The Brazilian Experience*, Univ. of Miami L. Rev. Vol. 65 Issue 3, p. 893 (2011). See also, UN Women, *María da Penha Law: A Name that Changed Society* (2011).

implementation of the Law have identified a number of areas where improvements are needed, including: disseminating information about the Law; comprehensive training and better incentives (such as career progression) for all staff; improved data collection; and better coverage for young girls and teenagers.¹⁰¹ Critics of the Law also point out that a purely criminal justice response misses important opportunities for women and may have counterproductive effects.¹⁰²

In 2011, the Inter-American Commission held a hearing on barriers to the implementation of the *María da Penha* Law. At the hearing, Brazil reiterated its commitment to the Law, and the Commission urged Brazil to continue adopting measures to guarantee its effective implementation.¹⁰³

g) Conclusion

The case of *María da Penha* is important because it was the first time that the Inter-American Human Rights System applied and developed the norms laid out in the Convention of Belém do Pará. Specifically, the case highlights a State Party's obligation to investigate and to prevent domestic violence, particularly in a context of systematic impunity of perpetrators. Finally, the far-reaching and wide-ranging reparations in this case made a significant impact on how Brazil addresses VAW.

2. *Jessica Lenahan (Gonzales) v. United States of America* (2011)

a) Introduction and importance of the case

The second landmark case from the Inter-American Commission on Human Rights that analyzes State responsibility for acts of domestic violence under international human rights law is the *Jessica Lenahan (Gonzales)* case against the United States. Although the Commission found the United States responsible for violations of the American Declaration on the Rights and Duties of Man because the United States had not ratified any applicable OAS treaties, it drew upon the Convention of Belém do Pará and related Inter-American Court jurisprudence in its analysis. This case is significant for its discussion and development of the law regarding states' duty to exercise due diligence to prevent and protect women from acts of domestic violence, to

¹⁰¹ UN Women, *2011-2012 Report on the Progress of the World's Women*, "Women's police stations and special courts in Brazil," p. 58, (2011), available at <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>.

¹⁰² Mimi Kim, *Brazil and the Paradox of Gender Justice*, commenting on Marta Rodriguez de Assis Machado, *Punishing Gender Violence: Brazil's "María da Penha Law"* (2012) Univ. of Cal. Berkeley, Center for Latin American Studies, available at <http://clas.berkeley.edu/event/punishing-gender-violence-brazil-s-Maria-da-penha-law>"; see also Carmen Hein de Campos, *Access to Justice and the Permissive State: The Brazilian Experience*, Univ. of Miami L. Rev. Vol. 65 Issue 3, pp. 900-901 (2011).

¹⁰³ IACHR, Annex to Press Release 117/11 on the 143rd Regular Session of the IACHR, (Nov. 4, 2011), available at http://www.oas.org/en/iachr/media_center/PReleases/2011/117A.asp.

investigate and punish such human rights violations, and to compensate victims.¹⁰⁴ It also highlights the need to address federalism concerns in the implementation of international norms and decisions.

b) Facts

Ms. Jessica Lenahan is a domestic violence survivor from Castle Rock, Colorado.¹⁰⁵ The Commission found that “Jessica Lenahan possessed a valid restraining order against [her ex-husband] Simon Gonzales.”¹⁰⁶ This restraining order protected both Ms. Lenahan and their three daughters from Mr. Gonzales.¹⁰⁷ Under the permanent restraining order, Ms. Lenahan had temporary sole physical custody of her three daughters, with her ex-husband permitted to arrange a “mid-week dinner visit” “upon reasonable notice[,]” ordinarily scheduled for Wednesday nights.¹⁰⁸ Mr. Gonzales had a documented history of violent and erratic behavior toward Ms. Gonzales and their children, as well as a history of negative interactions with the Castle Rock Police Department (CRPD).¹⁰⁹

Ms. Lenahan claimed that on June 22, 1999, a Tuesday, Mr. Gonzales “abducted his three daughters and their friend from the street in front of Jessica Lenahan’s home[.]” in violation of the restraining order.¹¹⁰ From the evening of June 22, 1999 to the early morning of June 23, 1999, Ms. Lenahan called the CRPD five separate times to request help locating her children and to express her fear that their father had kidnapped them.¹¹¹ She spoke with two CRPD officers who were dispatched to her home after the first call, and she also visited the CRPD station after her other requests for help were ignored.¹¹² According to the Commission’s factual findings, “[d]uring each of these contacts, she reported to the police dispatchers that she held a restraining order against Simon Gonzales, that she did not know where her daughters were, that they were children, and that perhaps they could be with their father.”¹¹³ By the time Ms. Lenahan made her

¹⁰⁴ For more information about the *Jessica Lenahan* case, see University of Miami School of Law International Human Rights Clinic, available at <http://www.law.miami.edu/human-rights-clinic/hrc-González-usa.php?op=6>.

¹⁰⁵ Caroline Bettinger-Lopez, *Introduction: Jessica Lenahan (Gonzales) v. United States: Implementation, Litigation, and Mobilization Strategies* (2012). American University Journal of Gender, Social Policy & the Law, Vol. 21, No. 2, pp. 208-209, 2012, available at SSRN: <http://ssrn.com/abstract=2241796>; see also, IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, paras. 65-69 (2011).

¹⁰⁶ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 62 (2011).

¹⁰⁷ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, paras. 62-63 (2011).

¹⁰⁸ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 63 (2011).

¹⁰⁹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, paras. 65-69 (2011).

¹¹⁰ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, paras. 24, 70 (2011).

¹¹¹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 71 (2011).

¹¹² IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 71, 79 (2011).

¹¹³ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 71 (2011).

second call to the CRPD, she confirmed that Mr. Gonzales had the children and “informed [the police] that she had learned that her husband had taken their daughters to Denver, outside of the Castle Rock police department jurisdiction, without her knowledge.”¹¹⁴ Throughout these contacts, the CRPD took little action, insisted that the children were safe, and indicated that Mr. Gonzales had not violated the restraining order.¹¹⁵

At 3:25am on the morning of June 23, 1999, Mr. Gonzales drove his truck to the CRPD station and opened fire; in the resulting shoot-out, he was killed.¹¹⁶ The CRPD officers subsequently found the bodies of Ms. Lenahan’s three daughters in the bed of Mr. Gonzales’ truck.¹¹⁷

The CRPD never fully investigated the cause of death for Ms. Lenahan’s three daughters.¹¹⁸ The Commission noted that “[t]he autopsy reports do not identify which bullets, those of the CRPD or Simon Gonzales, struck Leslie, Katheryn and Rebecca Gonzales.”¹¹⁹

On January 23, 2001, Ms. Lenahan filed suit in federal district court against the City of Castle Rock under 42 U.S.C. §1983 (the Civil Rights Act), alleging that the CRPD “had violated her rights under the Due Process Clause of the Fourteenth Amendment [of the U.S. Constitution.]”¹²⁰ Ultimately, after several appeals, “[o]n June 27, 2005, the Supreme Court rejected all of Jessica Lenahan’s claims by holding that under the Due Process Clause of the 14th Amendment of the U.S. Constitution, Colorado’s law on the police enforcement of restraining orders did not give Jessica Lenahan a property interest in the enforcement of the restraining order against her former husband.”¹²¹ Essentially, the Supreme Court ruled that the police could choose not to enforce a restraining order in a domestic violence situation, and that therefore Ms. Lenahan did not have a right to have her restraining order enforced by the police.

c) Procedural History before the Inter-American Commission

On December 27, 2005, several attorneys¹²² from the American Civil Liberties Union submitted a petition to the Inter-American Commission of Human Rights on behalf of Ms. Lenahan and her

¹¹⁴ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 74 (2011).

¹¹⁵ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, paras. 73, 74, 76, 77, 78, 79, 80 (2011).

¹¹⁶ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 81 (2011).

¹¹⁷ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 85 (2011).

¹¹⁸ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, paras. 82-85 (2011).

¹¹⁹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 81 (2011).

¹²⁰ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 86 (2011).

¹²¹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 90 (2011).

¹²² Ms. Lenahan was represented by American Civil Liberties Union attorneys Caroline Bettinger-Lopez, Emily J. Martin, Lenora Lapidus, Stephen Mcpherson Watt, and Ann Beeson. IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 1 (2011).

three deceased daughters.¹²³ The petition alleged that the United States had violated Articles I (Right to life, liberty and personal security), II (Right to equality before law), V (Right to protection of honor, personal reputation, and private and family life), VI (Right to a family and to protection thereof), VII (Right to protection for mothers and children), IX (Right to inviolability of the home), XVIII (Right to a fair trial), and XXIV (Right of petition) of the American Declaration on the Rights and Duties of Man by failing to act with due diligence to protect Ms. Lenahan and her daughters from Mr. Gonzales despite the restraining order and by failing to investigate the circumstances of the deaths of Ms. Lenahan’s three daughters.¹²⁴ The petitioners did not allege violations of the American Convention on Human Rights or of the Belém do Pará Convention because the United States is not a party to either treaty. On July 24, 2007, the Commission declared the petition admissible with respect to the claims under Articles I (Right to life, liberty and personal security), II (Right to equality before law), V (Right to protection of honor, personal reputation, and private and family life), VI (Right to a family and to protection thereof), VII (Right to protection for mothers and children), XVIII (Right to a fair trial), and XXIV (Right of petition) of the American Declaration and proceeded to the merits.¹²⁵

d) Decision on the Merits

The Commission found that the United States violated Articles I (Right to life, liberty and personal security), II (Right to equality before law), VII (Right to protection for mothers and children), and XVIII (Right to a fair trial) of the American Declaration by failing to adopt reasonable measures and act with due diligence to protect Ms. Lenahan and her daughters from acts of violence committed by Mr. Gonzales.¹²⁶

(1) Violation of Article II ADRDM (Right to equality before law)

First, the Commission held that “the State failed to act with due diligence to protect Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales from domestic violence, which violated the State’s obligation not to discriminate and to provide for equal protection before the law under Article II of the American Declaration.”¹²⁷ The Commission found that the United States discriminated against Ms. Lenahan on the basis of gender by failing “to offer a coordinated and effective response to protect [her] and her daughters from domestic violence[.]”¹²⁸

¹²³ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 1 (2011).

¹²⁴ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 2 (2011).

¹²⁵ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 4 (2011); *see also* IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 52/07 (2007).

¹²⁶ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 5 (2011).

¹²⁷ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 5 (2011).

¹²⁸ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 170 (2011).

In its analysis of Article II ADRDM, the Commission indicated that the State had an obligation to protect Ms. Lenahan and her daughters from domestic violence with due diligence, and “[t]he state apparatus was not duly organized, coordinated, and ready to protect these victims from domestic violence by adequately and effectively implementing the restraining order at issue[.]”¹²⁹ The Commission also highlighted the State’s affirmative “legal obligation to protect women from domestic violence[.]”¹³⁰ giving special weight to the historical problem of domestic violence and the disproportionate effect it has upon women. In this regard, the Commission noted that “State inaction towards cases of violence against women fosters an environment of impunity and promotes the repetition of violence[.]”¹³¹

The Commission reiterated (but did not find a violation of) equal protection and due diligence standards established under the Convention of Belém do Pará,¹³² its previous decision in the case of *María da Penha v. Brazil*,¹³³ as well as General Comment 19 by the United Nations Committee on the Elimination of Discrimination Against Women,¹³⁴ and resolved to “apply these considerations to the specific case of Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales.”¹³⁵ The Commission based its finding of a violation of Article II on the conclusion that this due diligence obligation “is part of [States’] legal obligation to respect and ensure the right not to discriminate and to equal protection of the law.”¹³⁶

(2) Violation of Article I (Right to life, liberty and personal security), in relation to Article VII ADRDM (Right to protection for mothers and children)

Next, the Commission held that “[t]he State also failed to undertake reasonable measures to protect the life of Leslie, Katheryn and Rebecca Gonzales in violation of their right to life under Article I of the American Declaration, in conjunction with their right to special protection as girl-children under Article VII of the American Declaration.”¹³⁷ The Commission reasoned that Article I includes not only a negative obligation to respect the right to life, but also “a positive

¹²⁹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 160 (2011).

¹³⁰ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 162 (2011).

¹³¹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 168 (2011).

¹³² IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 124 (2011).

¹³³ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 131 (2011).

¹³⁴ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, paras. 122-136 (2011).

¹³⁵ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 136 (2011).

¹³⁶ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 162 (2011).

¹³⁷ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 5 (2011).

obligation to protect and prevent violations to this right, through the creation of the conditions that may be required for its protection.”¹³⁸

The Commission applied this reasoning to the situation of Ms. Lenahan’s daughters, finding that “[i]n the case of Leslie, Katheryn and Rebecca Gonzales, the State had a reinforced duty of due diligence to protect them from harm and from deprivations of their life due to their age and sex, with special measures of care, prevention and guarantee.”¹³⁹ This heightened due diligence obligation includes the requirement that responsible State officials understand domestic violence and can respond immediately to reports of missing persons in domestic violence cases.¹⁴⁰ The Commission found that the State’s lack of a coordinated response that took into account well-known features of domestic violence situations and the effect of restraining orders upon these dynamics, amounted to a “State failure to undertake reasonable measures to protect the life of Leslie, Katheryn and Rebecca Gonzales, and that this failure constituted a violation of their right to life established in Article I of the American Declaration, in relation to their right to special protection contained in Article VII of the American Declaration.”¹⁴¹

(3) Violations of Article XVIII ADRDM (Right to a fair trial)

Finally, the Commission held that “the State violated the right to judicial protection of Jessica Lenahan and her next-of kin, under Article XVIII of the American Declaration.”¹⁴² This article “establishes that all persons are entitled to access judicial remedies when they have suffered human rights violations.”¹⁴³ The Commission reiterated that “it is not the formal existence of such remedies that demonstrates due diligence, but rather that they are available and effective.”¹⁴⁴ Ms. Lenahan claimed that the United States violated her rights under this article both by failing to provide “a remedy for the non-enforcement of her protection order” and by failing to perform “a diligent investigation into her daughters’ deaths.”¹⁴⁵ The Commission held that the United States violated Article XVIII in both respects,¹⁴⁶ though it declined to find a violation of Article XXIV for the alleged failure “to grant Jessica Lenahan an adequate access to courts[.]”¹⁴⁷

¹³⁸ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 164 (2011).

¹³⁹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 164 (2011).

¹⁴⁰ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 165 (2011).

¹⁴¹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 170 (2011).

¹⁴² IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 5 (2011).

¹⁴³ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 172 (2011).

¹⁴⁴ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 173 (2011).

¹⁴⁵ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 174 (2011).

¹⁴⁶ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 196 (2011).

¹⁴⁷ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 197 (2011).

As to the State's failure to provide a remedy for non-enforcement of the restraining order, the Commission concluded that "the failures of the State in this case to adequately and effectively organize its apparatus to ensure the implementation of the restraining order also violated the right to judicial protection of Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales."¹⁴⁸ It reasoned that restraining orders are among those judicial protection measures that States must provide to victims of human rights violations, and that Article XVIII imposes upon States an obligation to ensure that they are adequately and effectively enforced.¹⁴⁹

The Commission further analyzed Article XVIII in the context of domestic violence to find "that when there are State failures, negligence and/or omissions to protect women from imminent acts of violence, the State also has the obligation to investigate systemic failures to prevent their repetition in the future . . . [by conducting] an impartial, serious and exhaustive investigation of the State structures that were involved in the enforcement of a protection order, including a thorough inquiry into the individual actions of the public officials involved."¹⁵⁰ Because the Commission found that the State had failed to undertake any of these measures in this case, it held that the United States violated Article XVIII as to the lack of a remedy for the non-enforcement of Ms. Lenahan's restraining order.¹⁵¹

The Commission found that the United States violated its obligations under Article XVIII by failing to "perform a prompt, thorough, exhaustive and impartial investigation into the deaths of Leslie, Katheryn and Rebecca Gonzales, and fail[ing] to convey information to the family members related to the circumstances of their deaths."¹⁵² In its analysis under Article XVIII, the Commission noted that "the ability of victims of violence against women to access judicial protection and remedies includes ensuring clarification of the truth of what has happened."¹⁵³ This obligation requires that the State must undertake investigation of the truth "on its own initiative"¹⁵⁴ and that "[i]nvestigations must be serious, prompt, thorough, and impartial, and must be conducted in accordance with international standards in this area."¹⁵⁵ The Commission additionally noted that the State violated the right to truth aspect of Article XVIII, identifying

¹⁴⁸ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 177 (2011).

¹⁴⁹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 177 (2011).

¹⁵⁰ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 178 (2011).

¹⁵¹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 180 (2011).

¹⁵² IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 196 (2011).

¹⁵³ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 181 (2011).

¹⁵⁴ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 181 (2011).

¹⁵⁵ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 181 (2011). For a discussion of applicable international legal standards for such investigations, see IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, paras. 182-183 (2011).

“the right to access information in respect to existing investigations as a crucial component of a victim’s adequate access to judicial remedies.”¹⁵⁶

The Commission’s analysis also connected the Article XVIII obligation to investigate with the due diligence obligations described in its analysis of Articles I and II in this type of case. In this regard, the Commission found that “[i]n accordance with its special protection obligation and the due diligence principle, this obligation [to investigate] is particularly critical in cases implicating the right to life of girl-children.”¹⁵⁷ The Commission emphasized that fulfillment of this “obligation is critical to sending a social message in the United States that violence against girl-children will not be tolerated, and will not remain in impunity, even when perpetrated by private actors.”¹⁵⁸

(4) No Violation of other Articles

With respect to Ms. Lenahan’s remaining claims, “[t]he Commission [found] that it [did not have] sufficient information to find violations of articles V [Right to protection of honor, personal reputation, and private and family life], and VI [Right to a family and to protection thereof].”¹⁵⁹ “As to Articles XXIV [Right of petition] and IV [Right to freedom of investigation, opinion, expression and dissemination] of the American Declaration,” the Commission held that “the claims related to these articles [were] addressed under Article XVIII [Right to a fair trial] of the American Declaration.”¹⁶⁰

e) Recommendations

The Commission made seven recommendations to the United States based on its analysis and conclusions on the merits of Ms. Lenahan’s petition. Specifically, it recommended to the United States to investigate the deaths of the three girls, investigate the failure to enforce Ms. Lenahan’s protection order, offer full reparations to Ms. Lenahan and her next-of-kin, and to do the following:

4. [...] adopt multifaceted legislation at the federal and state levels, or to reform existing legislation, making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, and to create effective implementation mechanisms. These measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country.

¹⁵⁶ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 193 (2011).

¹⁵⁷ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 181 (2011).

¹⁵⁸ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 195 (2011).

¹⁵⁹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 5 (2011).

¹⁶⁰ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 5 (2011).

5. [...] adopt multifaceted legislation at the federal and state levels, or reform existing legislation, including protection measures for children in the context of domestic violence. Such measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country.

6. To continue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs.

7. To design protocols at the federal and state levels specifying the proper components of the investigation by law enforcement officials of a report of missing children in the context of a report of a restraining order violation.¹⁶¹

f) Compliance

According to information made public by Ms. Lenahan's attorneys, the United States has made limited progress in the implementation of the Commission's recommendations in this case. The United States has consistently maintained its position that neither the American Declaration nor the decisions of the Inter-American Commission are legally binding, and it has relied upon this position in frequently ignoring the Commission's recommendations.¹⁶² The United States federal government also maintains that because implementation of certain recommendations fall within the jurisdiction of the Colorado state government, it cannot comply with these aspects of the Commission's report.¹⁶³

However, since 2013 the United States Department of State has begun work to establish a Federal Advisory Committee working group that would seek to work with other federal agencies, as well as state and local governments and civil society, to promote the implementation of the Commission's recommendations in cases involving the U.S.¹⁶⁴ Furthermore, in 2014, the

¹⁶¹ IACHR, *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Report No. 80/11, para. 201(1)-(7) (2011).

¹⁶² Caroline Bettinger-Lopez, *Introduction: Jessica Lenahan (Gonzales) v. United States: Implementation, Litigation, and Mobilization Strategies* (2012). American University Journal of Gender, Social Policy & the Law, Vol. 21, No. 2, pp. 223-224, 2012, available at SSRN: <http://ssrn.com/abstract=2241796>; IACtHR, *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89*, Ser. A, No. 10, para. 37 (July 14, 1989).

¹⁶³ See IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014, available at <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=136>.

¹⁶⁴ See generally, United States Department of State, *Federal Advisory Committee*, available at <http://www.state.gov/s/sacsed/c47726.htm>.

petitioners held a roundtable discussion with approximately sixty representatives from the Department of Justice, the Department of Health and Human Services, the Department of Housing and Urban Development, academia, and non-governmental organizations associations.¹⁶⁵ The purpose of the roundtable was to introduce state officials to human rights norms and resources.¹⁶⁶

At the Commission's October 2014 session, the Commission convened a hearing to receive updates from the petitioners and the United States regarding implementation of the Commission's recommendations.¹⁶⁷ At the hearing, the petitioners urged the United States to follow up on the 2014 roundtable and to incorporate human rights standards into its guidelines.¹⁶⁸ Although the United States federal government notified Colorado state government officials of the hearing, none participated.¹⁶⁹ The Commission found that the United States had not implemented its recommendations to investigate, pay reparations, or reform law and policy in Colorado.¹⁷⁰ It also noted that federalism should not be an obstacle to investigation and requested further information from the United States on alternative ways to accomplish the investigation if Colorado refused to cooperate, as well as steps taken to follow up on the 2014 roundtable.¹⁷¹

(1) Investigation

To date, no investigation has been conducted regarding the deaths of Ms. Lenahan's children. At the Commission's October 2014 session, the United States indicated that the Castle Rock Chief of Police had requested the Colorado Bureau of Investigations to review the case and conduct an investigation.¹⁷² However, thus far the Colorado Bureau of Investigations has refused to do so.¹⁷³

¹⁶⁵ See generally, ACLU, *Groups Seek Justice for Domestic Violence Survivor and Policy Reforms at Hearing* (2014), available at <https://www.aclu.org/news/us-fails-adequately-comply-domestic-violence-recommendations-issued-inter-american-commission>.

¹⁶⁶ See generally, ACLU Women's Rights Project, the Human Rights Institute at Columbia Law School and the Human Rights Clinic at University of Miami School of Law, *Domestic Violence and Sexual Assault in the United States: A Human Rights Based Approach and Practice Guide* (2014), p. 8, available at http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/dv_sa_hr_guide_reduce.pdf.

¹⁶⁷ IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014.

¹⁶⁸ IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014.

¹⁶⁹ IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014.

¹⁷⁰ IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014.

¹⁷¹ IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014.

¹⁷² IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014.

Furthermore, the federal government has said that it cannot conduct an investigation either because the Department of Justice does not have authority to investigate individual complaints.¹⁷⁴ Rather, it only has authority to investigate patterns of conduct and to seek prospective injunctive relief.¹⁷⁵

(2) Monetary Reparations

The United States maintains its position that absent an act of Congress, the federal government does not have the authority to pay individual reparations recommended by international human rights bodies, such as the Inter-American Commission.¹⁷⁶ The state of Colorado has thus far not responded to the Commission's recommendation either.¹⁷⁷

(3) Legal and Policy Reform

In response to the Commission's decision in this case, civil society has successfully lobbied city governments in several jurisdictions to issue resolutions recognizing that freedom from domestic violence is a fundamental human right and that government has the obligation to secure this right, including in cities such as Cincinnati and Baltimore.¹⁷⁸ Miami-Dade County and several other localities have also issued similar resolutions.¹⁷⁹

The United States Department of Justice's Civil Rights Division (DOJ) investigated the police departments of New Orleans, Louisiana; Puerto Rico; Maricopa County, Arizona; and Missoula, Montana, and found that all were "engage[d] in a pattern or practice of unconstitutional gender-biased policing in their failure to respond adequately to allegations of sexual assault and

¹⁷³ IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014.

¹⁷⁴ IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014.

¹⁷⁵ IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014.

¹⁷⁶ IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014.

¹⁷⁷ Caroline Bettinger-Lopez, *Introduction: Jessica Lenahan (Gonzales) v. United States: Implementation, Litigation, and Mobilization Strategies* (2012). American University Journal of Gender, Social Policy & the Law, Vol. 21, No. 2, p. 224, 2012, available at SSRN: <http://ssrn.com/abstract=2241796>.

¹⁷⁸ Caroline Bettinger-Lopez, *Introduction: Jessica Lenahan (Gonzales) v. United States: Implementation, Litigation, and Mobilization Strategies* (2012). American University Journal of Gender, Social Policy & the Law, Vol. 21, No. 2, p. 226, 2012.

¹⁷⁹ Columbia University Law School Human Rights Clinic & University of Miami School of Law Human Rights Clinic, *Recognizing Freedom from Domestic Violence as a Fundamental Human Right: Local Resolutions Across the United States* (April 14, 2014), available at <http://www.law.miami.edu/human-rights-clinic/pdf/2014/local-resolutions-2014.pdf> (listing Albany, NY; Baltimore, MD; Cincinnati, OH; Erie County, NY; Miami Springs, FL; Miami-Dade, FL; Montgomery City and County, AL; Seattle, WA; Travis County, TX; and Washington, D.C.). Boston, MA is one of the most recent cities to pass such a resolution, which it did on May 7, 2014. Margaret Drew, *Boston Implements Lenahan v. U.S.*, (May 13, 2014), available at http://lawprofessors.typepad.com/human_rights/2014/05/boston-impelments-lenehan-v-us.html.

domestic violence.”¹⁸⁰ The New Orleans Police Department subsequently entered into a consent decree with the DOJ, where they agreed, among other things, to “overhaul [] the way in which the NOPD responds to domestic violence and sexual assault calls for service.”¹⁸¹ Advocates hope that these investigations will lead to the establishment of national guidance and met with the DOJ twice in 2012 to urge the agency to “formaliz[e] the protocols the DOJ used in the NOPD and PRPD investigations into guidance [on gender-biased policing] that can be disseminated nationwide.”¹⁸² Ms. Lenahan’s counsel repeated the request for the issuance of such guidance at the Commission’s October 2014 session¹⁸³ and before the U.S. Senate in December 2014.¹⁸⁴ Although no such formal guidance has yet been released, on June 20, 2013, the DOJ’s Office of Community Oriented Policing Services, the Office for Victims of Crimes, and the Office on Violence Against Women released a “Joint Statement on . . . Addressing Gender-Discrimination in Policing.”¹⁸⁵ The Joint Statement announces that the prevention of gender-based discrimination by police departments is a “top priority” for the DOJ’s Civil Rights Division and provides some guidance and resources to police departments on avoiding gender-

¹⁸⁰ Caroline Bettinger-Lopez, *Introduction: Jessica Lenahan (Gonzales) v. United States: Implementation, Litigation, and Mobilization Strategies* (2012). American University Journal of Gender, Social Policy & the Law, Vol. 21, No. 2, p. 225, 2012. See also CIVIL RIGHTS Div., U.S. DEPT OF JUSTICE, INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT (2011), available at <http://www.justice.gov/crt/about/spl/nopdreport.pdf>; CIVIL RIGHTS Div., U.S. DEPT OF JUSTICE, INVESTIGATION OF THE PUERTO RICO POLICE DEPARTMENT (2011) available at <http://www.justice.gov/crt/about/spl/documents/prpdletter.pdf>; Sandra S. Park, American Civil Liberties Union, “Justice Department: Police Misconduct in Responding to Domestic and Sexual Violence Can Violate Survivors’ Civil Rights” (June 25, 2013), available at <https://www.aclu.org/blog/criminal-law-reform-womens-rights/justice-department-police-misconduct-responding-domestic-and>.

¹⁸¹ Caroline Bettinger-Lopez, *Introduction: Jessica Lenahan (Gonzales) v. United States: Implementation, Litigation, and Mobilization Strategies* (2012). American University Journal of Gender, Social Policy & the Law, Vol. 21, No. 2, p. 225, 2012. See also Consent Decree ¶ 213, *United States v. New Orleans*, No. 12-1924 (E.D. La. July 24, 2012), available at http://www.laed.uscourts.gov/general/Notices/12cv01924_Doc7.pdf.

¹⁸² Caroline Bettinger-Lopez, *Introduction: Jessica Lenahan (Gonzales) v. United States: Implementation, Litigation, and Mobilization Strategies* (2012). American University Journal of Gender, Social Policy & the Law, Vol. 21, No. 2, p. 225, 2012.

¹⁸³ IACHR, *Jessica Lenahan (Gonzales) v. United States (Follow up of Recommendations)*, Case 12.626, 153rd Period of Sessions, October 27, 2014, available at <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=136>.

¹⁸⁴ American Civil Liberties Union, Written Statement of the American Civil Liberties Union for a Hearing on “The State of Civil and Human Rights in the United States,” Submitted to the U.S. Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Human Rights (December 16, 2014), pp. 5-6, available at https://www.aclu.org/sites/default/files/assets/aclu_statement-state_of_civil_and_human_rights-senate_judiciary-gender_biased_policing-12-16-14-final_2.pdf.

¹⁸⁵ United States Department of Justice, Office on Violence Against Women Blog, *Joint Statement of The Office of Community Oriented Policing Services, The Office for Victims of Crime, and The Office on Violence Against Women on Addressing Gender-Discrimination in Policing*, (June 20, 2013), available at <http://blogs.justice.gov/ovw/archives/2406>.

biased policing; advocates hope it will serve as a precursor to more detailed formal guidance on this subject.¹⁸⁶

Jessica Lenahan has become a recognized advocate for women's rights and her story will be the subject of a forthcoming documentary, *Jessica Gonzales vs. The United States of America*.¹⁸⁷ Most recently, Colorado State Senator Irene Aguilar presented a tribute to Jessica Lenahan in the Colorado State Senate, honoring Ms. Lenahan's work to "to raise awareness of the failure of the legal system and law enforcement in many states to adequately protect victims of domestic violence[]" and "reaffirm[] the fact that freedom from domestic violence is a basic human right that government must ensure for all."¹⁸⁸

g) Conclusion

The case of Jessica Lenahan is significant for its discussion and development of the law regarding states' affirmative duty to exercise due diligence to protect women from domestic violence. Despite the fact that the United States has not ratified either the American Convention or the Convention of Belém do Pará, the Commission looked to these instruments for guidance in determining the substantive content of the United States' obligations under the American Declaration on the Rights and Duties of Man. This case highlights the positive effects that the existence of a binding treaty on violence against women has had on the development of the law in this area. This case also stresses the important role of the State in preventing domestic violence, particularly the crucial need for effective enforcement of protective orders and prompt investigations of complaints of domestic violence in protecting women from such violence.

B. Inter-American Court of Human Rights

1. *Castro-Castro Prison v. Peru (2006)*

a) Introduction and importance of the case

The *Castro Castro* case stands out as a landmark judgment in the Inter-American Court of Human Rights' treatment of the issue of violence against women, as the first case where the Court specifically addressed violence against women and applied the Convention of Belém do

¹⁸⁶ United States Department of Justice, Office on Violence Against Women Blog, *Joint Statement of The Office of Community Oriented Policing Services, The Office for Victims of Crime, and The Office on Violence Against Women on Addressing Gender-Discrimination in Policing*, (June 20, 2013). See also Sandra S. Park, American Civil Liberties Union, "Justice Department: Police Misconduct in Responding to Domestic and Sexual Violence Can Violate Survivors' Civil Rights" (June 25, 2013), available at <https://www.aclu.org/blog/criminal-law-reform-womens-rights/justice-department-police-misconduct-responding-domestic-and>.

¹⁸⁷ See *Jessica Gonzales v. the United States of America*, available at http://www.jessicagonzalesvsunitedstates.com/Jessicas_Story.html.

¹⁸⁸ Colorado State Senate, *Senate pays tribute to champion for victims of domestic violence*, (May 8, 2014), available at <http://www.coloradosenate.org/#!senate-pays-tribute-to-champion-for-vict/c9q1>. Full text of tribute available at <https://www.aclu.org/files/assets/JessicaLenahanTribute.pdf>.

Pará¹⁸⁹ in its analysis.¹⁹⁰ According to the Harvard Human Rights Journal, “[t]he Court's incorporation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”), into its analysis (for example, in its analysis of the right to humane treatment and the duty to investigate) gives full recognition to the human rights of women in the Inter-American context.”¹⁹¹ The *Castro Castro* case is also significant because the Court not only applied the Convention of Belém do Pará for the first time, but it did so despite the fact that Peru had not ratified the Convention at the time the facts of the case occurred.¹⁹²

Additionally, this case is significant because the Court recognized sexual rape as a form of torture while recognizing the gender-based nature of the violations. As with the “*Las Dos Erres*” case,¹⁹³ the Court addressed violence against women in the context of a broader pattern of systematic human rights violations – here, an internal armed conflict.¹⁹⁴ With this judgment, the Court played a key role in recognizing the disparate impact that armed conflicts and situations of massive human rights violations have on women, particularly with regard to sexual violence, and developing its analysis of State obligations under these circumstances.

b) Facts

The events giving rise to this case took place at the Miguel Castro Castro prison in May 1992, in a context of an internal armed conflict between Maoist guerilla groups¹⁹⁵ and the Peruvian police and military, led by ex-president Alberto Fujimori.¹⁹⁶ This internal armed conflict was

¹⁸⁹ Organization of American States (OAS), *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará,”* 9 June 1994, available at <http://www.oas.org/juridico/english/treaties/a-61.html>.

¹⁹⁰ See Karla I. Quintana Osuna, “Recognition of Women’s Rights before the Inter-American Court of Human Rights,” 21 Harv. Hum. Rts. J. 301 (2008).

¹⁹¹ Karla I. Quintana Osuna, “Recognition of Women’s Rights before the Inter-American Court of Human Rights,” 21 Harv. Hum. Rts. J. 301 (2008) (citing *Castro Castro* Judgment at paras. 344-50).

¹⁹² IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 344-46, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_181_ing.pdf.

¹⁹³ See *infra* p. 58.

¹⁹⁴ See IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 197(1), 202-203, 206, 222-226, 270.

¹⁹⁵ These groups were the Sendero Luminoso (“Shining Path”) and the Túpac Amaru Revolutionary Movement. See IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 197(1).

¹⁹⁶ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 197(1)-197(2).

characterized by systematic attacks and sexual violence against the civilian population, which amounted to a generalized context of gross human right violations.¹⁹⁷

From May 6 to May 9, 1992, allegedly in response to the inmates' objection to the transfer of female inmates to a different detention facility,¹⁹⁸ Peruvian military and police personnel attacked and abused hundred of Castro Castro prison inmates with firebombs and other weapons, killing 41 and injuring 190.¹⁹⁹ The Court found that "[t]he real objective . . . was not the mentioned transfer of the inmates, but instead it was a premeditated attack, . . . designed to attack the life and integrity of the prisoners[.]"²⁰⁰ The majority of the targeted inmates were allegedly connected to the guerrilla groups in the internal armed conflict; this group included approximately 135 women, three of whom were in advanced stages of pregnancy at the time of the attack.²⁰¹ In the wake of the attack, "[t]he surviving female detainees were subsequently subjected to various forms of torture and sexual violence."²⁰²

After the attack, Peruvian authorities relocated some of the inmates to other prisons, and the injured were transferred to the Police Sanity Hospital.²⁰³ At the hospital, injured female inmates did not received proper medical treatment and were forced to remain naked for extended periods of time while being watched by male armed guards, even when the women went to the restroom.²⁰⁴ Further, one of the injured female inmates was subject to an abrupt finger vaginal penetration by "several hooded persons", under the guise of an "inspection."²⁰⁵

The Castro Castro prisoners that were transferred to other prisons experienced "constant physical and psychological mistreatment."²⁰⁶ Female prisoners "were the object of constant inspections,

¹⁹⁷ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 201-209.

¹⁹⁸ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 197(15).

¹⁹⁹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 197(20)-197(27), 217, 243.

²⁰⁰ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 197(16).

²⁰¹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 197(13), 197(57), 292.

²⁰² Women's Link Worldwide, "Gender Justice Observatory: *Miguel Castro-Castro Prison v. Peru*," available at http://www.womenslinkworldwide.org/wlw/new.php?modo=observatorio&id_decision=385.

²⁰³ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 197(44).

²⁰⁴ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 197(49), 304, 306.

²⁰⁵ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 197(50), 309.

²⁰⁶ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras.197(51).

during which they were beaten, kicked, given electrical shocks and beatings to the soles of their feet with sticks.”²⁰⁷ Moreover, “they did not have access to products of personal hygiene, such as soap, toilet paper, feminine pads, or additional underwear, as well as warm clothes . . . and they were threatened with being killed.”²⁰⁸ Prison authorities also subjected the female prisoners to psychological mistreatment by cutting them off from “[any] contact with the outside world[,]” including with their children, and prohibiting them from speaking among themselves.²⁰⁹

The three pregnant inmates were subject to the same conditions despite their particular vulnerability and medical needs.²¹⁰ Like the other inmates, the pregnant women were also forced to lie face down, while being watched by armed security agents.²¹¹ Additionally, two of them “did not receive medical attention until they were taken to the hospital for their labor[,]” and the third one “did not receive post-partum medical attention.”²¹²

The State did not conduct an adequate investigation of these facts and failed to prosecute those responsible in a timely and complete manner.²¹³ The State only initiated criminal proceedings as to the deaths of the 41 inmates, and these prosecutions did not occur until thirteen years after these deaths occurred.²¹⁴

c) Procedural History before the Inter-American Commission

On May 18, 1992, Mrs. Sabina Astet and the Committee of Relatives of Political and War Prisoners submitted the initial petition to the Inter-American Commission on Human Rights.²¹⁵ On August 18, 1992 the Commission requested that the State adopt precautionary measures to

²⁰⁷ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras.197(51).

²⁰⁸ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras.197(51).

²⁰⁹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras.197(51).

²¹⁰ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 298.

²¹¹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 197(42).

²¹² IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 197(57).

²¹³ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 385.

²¹⁴ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 386, 197(70), 197(75). The State began the first criminal proceeding to investigate the deaths on June 16, 2005. On August 29, 2006 a second criminal proceeding started against former president Fujimori to investigate his responsibility for these deaths.

²¹⁵ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 6.

reestablish contact between inmates and their next of kin and attorneys.²¹⁶ On March 5, 2001 the Commission declared the case admissible, and it held a merits hearing on November 14, 2001.²¹⁷ The Commission issued its merits report on October 23, 2003.²¹⁸ After Peru failed to comply with its recommendations, the Commission submitted the case to the Inter-American Court of Human Rights on August 13, 2004.²¹⁹ The Court issued its judgment on November 25, 2006²²⁰ and has continued to monitor Peru's compliance with the judgment, issuing orders in 2009, 2010, 2013, 2014, and 2015.²²¹

d) Decision on the Merits

For the first time in its jurisprudence, the Court assessed a State's violations of the American Convention for abuses directly related to gender. Additionally, "the Court examined the violations of [American] Convention rights for the first time in conjunction with the Convention [of] Belém do Pará and the Inter American Convention to prevent and punish torture."²²² The Court incorporated the Convention of Belém do Pará as a legal source throughout the whole case and based much of its reasoning on the recognition that Peru's internal conflict affected women differently than men.²²³ With respect to specific violations, the Court declared that the acts of gender-related violence violated the right to humane treatment enshrined in Article 5 of the American Convention and can constitute torture.²²⁴ The Court also declared a violation of the right to a fair trial and judicial protection for failure to investigate these acts.²²⁵

²¹⁶ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 8.

²¹⁷ IACHR, *Hugo Juárez Cruzat, et al. (Miguel Castro Castro Prison) v. Peru*, Case 11.015, Admissibility Report 43/01 (March 5, 2001); Inter-American Court of Human Rights, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 23.

²¹⁸ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 25.

²¹⁹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 32.

²²⁰ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160.

²²¹ IACtHR, "Monitoring Compliance with Judgment," available at http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_supervision_cumplimiento.cfm?lang=en. See *infra*. at p. 45 for discussion of Peru's compliance with the judgment.

²²² Women's Link Worldwide, "Gender Justice Observatory: *Miguel Castro-Castro Prison v. Peru*," available at http://www.womenslinkworldwide.org/wlw/new.php?modo=observatorio&id_decision=385.

²²³ See IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 197(1), 202-203, 206, 222-226, 270.

²²⁴ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 308, 312.

²²⁵ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 408.

(1) VAW in Context: Peru's Internal Conflict Affected Women Differently than Men

Significantly, the Court framed its analysis with the understanding that, during the internal armed conflict, the State targeted women and treated them differently from men.²²⁶ It recognized that in this case, “[a]t the time of the facts, high state authorities considered that these women . . . were members of subversive organizations, and that determined, in great measure, the state’s actions.”²²⁷ The Court specifically recognized a statement by “the Ombudsman of the People of Peru . . . that the involvement of women in the armed conflict changed the perception of women and caused “a more cruel and violent treatment regarding those women considered ‘suspects’.”²²⁸ By highlighting the fact that “the attack started specifically in the prison’s pavilion occupied by the female inmates accused or convicted of crimes of terrorism and treason[,]”²²⁹ the Court demonstrated its understanding of the connection between this context and the underlying facts of the case.

The Court highlighted that “during domestic and international armed conflicts the confronting parties [use] sexual violence against women as a means of punishment and repression[,]”²³⁰ and cited to the Peruvian Truth and Reconciliation Commission’s findings that the State employed sexual violence against women as part of its response to the conflict and that “during the [] conflict the acts of sexual violence against the women were intended to punish, intimidate, pressure, humiliate, and degrade the population.”²³¹ On this basis, the Court concluded that the violence against the female inmates was part of this “context of violence against women in [the] armed conflict[]”²³² and “acknowledge[d] that sexual violence against women has devastating physical, emotional, and psychological consequences for them, which are exacerbated in the cases of women who are imprisoned.”²³³

²²⁶ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 223, 226.

²²⁷ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 222.

²²⁸ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 270 (citing Ombudsman of the People of Peru. Defense Report No. 80, Political Violence in Peru: 1980-1996, page 33.).

²²⁹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 270 (referring to paras. 197(13) and 197(20)).

²³⁰ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 224.

²³¹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 225.

²³² IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 226.

²³³ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 313.

(2) The Court's Competence to Use the Belém do Pará Convention and CEDAW to Interpret Peru's Obligations under ACHR

As a result of the Court's awareness of the gender-specific dimensions of the case, it reached beyond the American Convention on Human Rights to use the Convention of Belém do Pará and CEDAW "as a reference of interpretation" to analyze the right to personal integrity with respect to the "aspects specific to violence against women[.]"²³⁴ The Court also applied the obligation in Article 7(b) CBP that States must act with due diligence in investigating and punishing acts of violence against women.²³⁵ The Court's use of CBP is particularly significant both because it represented the first time the Court applied CBP and because Peru had not yet ratified CBP at the time the facts occurred.²³⁶ Recognizing the significance of CBP for universal standards on violence against women, the Court justified doing so on the basis that "these instruments complement the international corpus juris in matters of protection of women's right to humane treatment, of which the American Convention forms part."²³⁷

(3) Right to Humane Treatment and Personal Integrity

The Court found multiple violations of the ACHR Article 5 right to humane treatment and personal integrity with respect to incidents of violence against the women prisoners (see discussion *infra*).²³⁸ The Court identified six groups of facts relating to VAW: 1) the suffering of pregnant women during the attack; 2) the fact that women were forced to be naked in front of armed men in the hospital; 3) the fact that some women were not provided sanitary conditions or supplies; 4) the vaginal "inspection"; 5) solitary confinement of women, especially mothers; and 6) the lack of pre- and post-partum attention for the pregnant women.²³⁹ Each of these sets of facts constitutes a specific breach of the right to humane treatment.

The Court indicated that it should interpret the general rights contained within the ACHR in light of more specific treaties such as CBP. In interpreting the right to humane treatment in light of CBP and CEDAW (see discussion *supra*), the Court emphasized Peru's obligation under Art. 7

²³⁴ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 276.

²³⁵ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 344-46 (see discussion *infra* at p. 43).

²³⁶ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 276; Women's Link Worldwide, "Gender Justice Observatory: *Miguel Castro-Castro Prison v. Peru*."

²³⁷ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 276.

²³⁸ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 293.

²³⁹ These six groups of facts were created by Karla I. Quintana Osuna in her article, "Recognition of Women's Rights before the Inter-American Court of Human Rights," 21 Harv. Hum. Rts. J. 301, 304 (2008).

CBP to “abstain from any action or practice of violence against women[.]”²⁴⁰ Fundamentally, the Court applied CBP to find that “[t]he physical attacks on pregnant women, the forced nudity, the rapes . . . , all committed against detainees who, as such, were particularly vulnerable, constituted a violation of the State’s duty to prevent violence[.]”²⁴¹ It also used a similar logic to apply the Inter-American Convention to Prevent and Punish Torture, finding that the State’s actions caused the inmates “psychological and emotional suffering [which] constituted a psychological torture[.]”²⁴² The following subsections detail the Court’s analysis of specific facts in light of this interpretive approach.

(4) Sexual rape can constitute torture

With respect to the digital vaginal “inspection” of one inmate, the Court found that this act amounted to “sexual rape that due to its effects constituted torture.”²⁴³ In reaching this conclusion, the Court looked to international criminal law in holding that “[s]exual rape must also be understood as [an] act of vaginal or anal penetration, without the victim’s consent, through the use of other parts of the aggressor’s body or objects[.]”²⁴⁴ The Court also gave special consideration to the fact that the act was committed against a detainee by State agents, acknowledging “that the sexual rape of a detainee by a State agent is an especially gross and reprehensible act, taking into account the victim’s vulnerability and the abuse of power displayed by the agent.”²⁴⁵ Likewise, the Court recognized the traumatic effects of rape upon the victim, noting that it “causes great physical and psychological damage[,] [beyond] what happens with other traumatic experiences.”²⁴⁶ Given these intensifying factors, the Court found that Peru violated the right to humane treatment “as well as . . . Articles 1, 6, and 8 of the [] Inter-American Convention to Prevent and Punish Torture[.]”²⁴⁷

²⁴⁰ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 292.

²⁴¹ Laurence Burgorgue-Larsen, Amaya Ubuda de Torres, and Rosalind Greenstein, *The Inter-American Court of Human Rights: Case Law and Commentary*, (Oxford University Press, 2011), p. 447.

²⁴² IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 293.

²⁴³ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 312.

²⁴⁴ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 310.

²⁴⁵ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 311.

²⁴⁶ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 311.

²⁴⁷ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 312.

(5) Subjecting women to prolonged detention while being semi-nude and watched by armed men was a form of sexual violence in light of CBP

With respect to female inmates transferred to other prisons, the Court found that subjecting women to prolonged detention while being semi-nude and watched by armed men was a form of sexual violence in light of CBP.²⁴⁸ The legal formulation the Court used was to declare a violation of Art. 5 ACHR (right to personal integrity),²⁴⁹ but the Court emphasized that not only did their maltreatment constitute a violation of the right to personal integrity, but that they “were also victims of sexual violence, since they were naked and covered only with a sheet, while armed men, who apparently were members of the State police force, surrounded them.”²⁵⁰ In reaching this conclusion, the Court relied upon the CBP to hold “that sexual violence consists of actions with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever.”²⁵¹ The Court declared a violation of the right to humane treatment because the “acts of sexual violence directly endangered the dignity of [the] women.”²⁵²

(6) Acts of violence against women constituted violations of the right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment

The Court found that acts of violence against women constituted violations of the right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.²⁵³ In analyzing whether the post-attack conditions of detention and treatment of detainees constituted a violation of this aspect of the right to humane treatment, the Court specifically “analyze[d] the special consequences that some of them had on women in general, pregnant women, and the inmates who were mothers.” Ultimately, “[i]t considered that the crimes specifically targeting women were a form of torture[.]”²⁵⁴

²⁴⁸ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 306.

²⁴⁹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 308.

²⁵⁰ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 306.

²⁵¹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 306.

²⁵² IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 308.

²⁵³ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 330-333.

²⁵⁴ Laurence Burgorgue-Larsen, Amaya Ubuda de Torres, and Rosalind Greenstein, *The Inter-American Court of Human Rights: Case Law and Commentary*, (Oxford University Press, 2011), p. 447. See also IACtHR, *Miguel*

In considering the particular impacts on women, the Court analyzed the ways in which the lack of sanitary conditions, excessive use of solitary confinement, and the refusal of prenatal and postnatal care for pregnant women violated the female inmates' right to humane treatment. First, the Court relied upon guidance from the International Committee of the Red Cross in finding that lack of sanitary conditions and supplies "causes special and additional suffering to imprisoned women."²⁵⁵ With respect to solitary confinement, the Court found that this treatment "had specific effects on the inmates that were mothers[]" because their inability "to communicate with their children caused an additional psychological suffering" for these inmates.²⁵⁶ Finally, the "Court consider[ed] the violation to the right to humane treatment of [the three pregnant inmates] was exacerbated by the fact that they were pregnant, thus the acts of violence had a greater effect on them."²⁵⁷ Specifically, the Court found that the lack of access to prenatal and postnatal care constituted "an additional violation to their right to humane treatment."²⁵⁸ Ultimately, the Court found "that the totality of detention and treatment conditions to which the inmates were submitted in the criminal centers where they were transferred or relocated after the [attack], constituted physical and psychological torture [] in violation of Articles 5(2) of the American Convention and 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture."²⁵⁹

(7) Peru failed in its obligation under CBP to investigate and punish acts of VAW with due diligence

The Court also cited and applied CBP to highlight Peru's obligation to act with due diligence to investigate and punish acts of violence against women.²⁶⁰ The Court held that the obligation to investigate found in CBP is "applicable to the case since [it] specif[ies] and complement[s] the State's obligation" to ensure "the rights enshrined in the American Convention."²⁶¹ The Court

Castro Castro Prison v. Peru. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 333.

²⁵⁵ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 331.

²⁵⁶ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 330.

²⁵⁷ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 293.

²⁵⁸ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 332.

²⁵⁹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 333.

²⁶⁰ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 344.

²⁶¹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 346.

found a violation of the right to access to justice under ACHR, “in connection to” Art. 7(b) of CBP.²⁶²

e) Reparations

The Court ordered a number of reparations, focusing on the “extreme seriousness”²⁶³ of the case, the victims’ right to truth,²⁶⁴ and the State’s obligation to guarantee the non-repetition²⁶⁵ of these types of violations. First, the Court required Peru to investigate the facts and prosecute the responsible individuals.²⁶⁶ It also ordered Peru to provide medical and psychological treatment for victims,²⁶⁷ implement police trainings on human rights standards for treatment of detained persons,²⁶⁸ publish the judgment,²⁶⁹ establish a public monument,²⁷⁰ and carry out “a public act of acknowledgment of [Peru’s] international responsibility[.]”²⁷¹ Finally, the Court ordered Peru to pay compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses to the victims and their families.²⁷²

The Court appears to have missed the opportunity to address violence against women during Peru’s internal armed conflict through the reparations, as the majority of the reparations did not have a specific gender focus. With respect to the monetary compensation ordered by the Court, it

²⁶² IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 408. The Court was able to apply CBP more directly as to the violation of the right to access to justice, because the State’s failure to investigate and punish the acts of violence against women continued beyond the date when Peru ratified CBP. See IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 344.

²⁶³ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 435.

²⁶⁴ See IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, paras. 440-41.

²⁶⁵ See IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 442.

²⁶⁶ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 470(8-9).

²⁶⁷ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 470(13).

²⁶⁸ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 470(15).

²⁶⁹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 470(17).

²⁷⁰ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 470(16).

²⁷¹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 445.

²⁷² IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 470(18-23).

did require Peru to pay additional compensation to the pregnant inmates,²⁷³ the woman subjected to the digital vaginal “inspection”²⁷⁴ and the six women who suffered from sexual violence at the other prison after the attack.²⁷⁵ However, none of the other forms of reparation address gender specifically; rather they focus on broad measures of satisfaction and seek to guarantee non-repetition of the violations.²⁷⁶ Although the Court did not tailor the reparations to the needs of the female victims, the more general reparations may still have a positive impact on the situation of women in Peru. Some experts suggest that “while being gender neutral, [certain of the reparations] may have an impact on women[,]”²⁷⁷ including the investigation of the facts and punishment of perpetrators,²⁷⁸ the provision of psychological and medical treatment to the victims,²⁷⁹ and the implementation of human rights education programs.²⁸⁰

f) Compliance

On April 17, 2015, the Inter-American Court of Human Rights issued a court order of supervision of compliance with the judgment (8 years after the judgment and 21 years after the massacre).²⁸¹ The Court noted that the State failed to provide the detailed information requested²⁸² and essentially found that Peru had failed to comply with all of the reparations.

The Court found partial compliance with three reparations. First, with respect to the State’s obligation to investigate and prosecute, the Court found that some criminal proceedings were ongoing but appeared to still be at an early stage, which “reflects the absence of due diligence in

²⁷³ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 433 (c) viii.

²⁷⁴ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 433 (c) ix.

²⁷⁵ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 433 (c) x.

²⁷⁶ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 435.

²⁷⁷ Karla I. Quintana Osuna, “Recognition of Women’s Rights before the Inter-American Court of Human Rights,” 21 Harv. Hum. Rts. J. 301, 309 (2008).

²⁷⁸ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 436-442.

²⁷⁹ IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 449.

²⁸⁰ Karla I. Quintana Osuna, “Recognition of Women’s Rights before the Inter-American Court of Human Rights,” 21 Harv. Hum. Rts. J. 301, 309-310 (2008); IACtHR, *Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 452.

²⁸¹ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, available at http://www.corteidh.or.cr/docs/supervisiones/penalcastro_17_04_15.pdf (only in Spanish).

²⁸² IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 9.

the obligation to investigate.”²⁸³ The State failed to provide detailed information about these proceedings, nor did it provide any information on how it is investigating acts of violence against women.²⁸⁴ In its previous compliance order, the Court noted that most investigations that are still open focused on the homicides, but not on the specific violations to the physical and mental integrity and dignity of the women who were raped and who suffered other forms of violence.²⁸⁵ The Court emphasized that the State must investigate these acts to prevent impunity.²⁸⁶

Second, as to the implementation of training on human rights standards for the treatment of detained persons, the Court found that although Peru reported that it had trained 4,512 police officials in 2014, it did not provide any specific information to show that it had targeted the types of officials required by the Court or that the training comported with international standards.²⁸⁷ Additionally, the training did not address the prevention of violence against women.²⁸⁸

Finally, the Court also found partial compliance with Peru’s obligation to provide medical and psychological treatment for the victims.²⁸⁹ Although Peru nominally offered these services to the victims, it required them to register for a public health plan in order to receive the services and did not provide any specialized treatment or access to services for the victims.²⁹⁰ Peru also failed to provide any specialized treatment for the victims of violence against women.²⁹¹

The Court also found that Peru had not complied with the ordered reparations to publish the judgment, carry out a public act in recognition of its international responsibility, and create a public monument honoring the victims.²⁹² Peru either provided no information or simply

²⁸³ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 10.

²⁸⁴ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 10.

²⁸⁵ IACtHR, Resolution of the Inter-American Court of Human Rights of March 31, 2014, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 6, available at http://www.corteidh.or.cr/docs/supervisiones/castro_31_03_14.pdf (only in Spanish).

²⁸⁶ IACtHR, Resolution of the Inter-American Court of Human Rights of March 31, 2014, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 7.

²⁸⁷ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 14.

²⁸⁸ The Court did not order that the training address VAW specifically, which reflects the missed opportunity represented by the lack of gender-focused reparations.

²⁸⁹ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 13.

²⁹⁰ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 13.

²⁹¹ The Court did not order that the services address VAW specifically, which again reflects the missed opportunity represented by the lack of gender-focused reparations.

²⁹² IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 15.

reported that it had not complied with these reparations.²⁹³ The Court asked Peru to justify the delay in complying with these aspects of the judgment but received no response.²⁹⁴

Finally, as to the monetary compensation for the victims and their families, the Court also found that Peru had completely failed to comply with this set of reparations.²⁹⁵ The Court noted that Peru's initiation of an internal judicial process to implement this aspect of the judgment was insufficient because it subjected the victims to an additional judicial process, had been unaccountably delayed, and Peru had failed to provide sufficient information to the Court.²⁹⁶ The Commission informed the Court that no victim had received monetary compensation to date.²⁹⁷

Ultimately, the Court concluded that Peru's failure to comply with its obligations under the judgment and ACHR was unacceptable.²⁹⁸ It ordered Peru to do everything necessary to achieve full compliance with the judgment without further delay.²⁹⁹

g) Conclusion

This judgment represents a landmark decision in the area of VAW in the IAHRs. Not only did the Court apply CBP for the first time, but it also established precedent for three important features of its subsequent jurisprudence in this area. First, it took the key step of interpreting the general provisions of ACHR in light of the more specific requirements of CBP, an analytical approach that the Court has continued to use in women's rights cases. Second, the Court recognized the importance of incorporating the broader context of VAW in a country into its analysis of specific violations and highlighted the particular vulnerability of women in situations of armed conflict. Finally, the Court recognized the heightened severity of violations against pregnant women and mothers. Although the Court missed an important opportunity to issue reparations that explicitly addressed the VAW aspect of the case, its analysis of these violations and conclusion that sexual violence may constitute torture represents a huge leap forward in the Court's treatment of VAW that paved the way for increased attention to CBP in its jurisprudence.

²⁹³ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 15.

²⁹⁴ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 15.

²⁹⁵ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 16.

²⁹⁶ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 16.

²⁹⁷ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 26.

²⁹⁸ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 19.

²⁹⁹ IACtHR, Resolution of the Inter-American Court of Human Rights of April 17, 2015, *Case of the Miguel Castro Castro Prison vs. Peru*, Supervision of Compliance with the Judgment, Considerations para. 22.

2. *González et al. (“Cotton Field” or “Campo Algodonero”) v. Mexico (2009)*

a) Introduction and importance of the case

The “Cotton Field” judgment represents a landmark decision in the area of violence against women in the Inter-American Human Rights System. The case addressed the disappearance and death of women in Ciudad Juarez, Mexico, and the State’s failure to prevent and investigate these violations. According to law professor and [White House Advisor on Violence Against Women](#), Caroline Bettinger-Lopez, “[t]he decision is important for a number of reasons, including the fact that, for the first time, the Court considers States’ affirmative obligations to respond to violence against women by private actors, looks at the cases at issue in the context of mass violence against women and structural discrimination, and finds that gender-based violence can constitute gender discrimination.”³⁰⁰

In this judgment, the Court was particularly sensitive to the context of high levels of gender-based violence in Ciudad Juarez and explicitly linked this violence to discrimination against women in its analysis. The Court determined that the homicides at issue should be classified as gender-based homicides. It is the first case where the Court dealt directly with a situation of gender-based violence and discrimination as such. Additionally, it is the first case where the Court “[c]onsidered states’ affirmative obligations to respond to violence against women by private actors.”³⁰¹ The Court reinforced the elements of due diligence, including the State’s duties to prevent, investigate, punish, and compensate human rights violations, including those committed by private actors.³⁰²

Perhaps most importantly, it is also the first case where the Court determined that it has jurisdiction over claims brought under Article 7 of the Convention of Belém do Pará, which provides that states must “condemn all forms of violence against women and agree to pursue, by all appropriate measures and without delay, policies to prevent, punish, and eradicate such violence” through legal, legislative, administrative, and policy initiatives.³⁰³ The Court also found that while it does not have jurisdiction to consider claims brought under Articles 8 and 9 of the Convention of Belém do Pará, it may use all articles of that Convention to interpret a

³⁰⁰ Caroline Bettinger-Lopez, *More Commentary on the Ciudad Juarez Case*, Feminist Law Professors, December 23, 2009, available at <http://www.feministlawprofessors.com/2009/12/more-commentary-on-ciudad-juarez-case/>.

³⁰¹ Caroline Bettinger-Lopez, *Inter-American Court rules against Mexico on gender violence in Ciudad Juarez*, IntlLawGrrls, January 18, 2010, available at <http://www.intlawgrrls.com/2010/01/inter-american-ruling-on-juarez-gender.html>.

³⁰² See generally, IACtHR, *Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988, Series C No. 4, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf.

³⁰³ OAS, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará,”* Article 7, available at <http://www.oas.org/juridico/english/treaties/a-61.html>.

State's obligations under Article 7 and under other relevant Inter-American Human Rights System's instruments.³⁰⁴

Notably, the Court addressed the role of stereotypes in VAW. “The creation and use of stereotypes,” the Court found, “becomes one of the causes and consequences of gender-based violence against women.”³⁰⁵

b) Facts

This case is about the disappearances and murders of three poor migrant women, two of whom were minors. These incidents took place in a context of systematic failed investigations into hundreds of disappearances, rapes and murders of young, predominantly migrant women and girls in Ciudad Juárez, a Mexican city across the border from El Paso, Texas, with a population of 1.5 million.³⁰⁶

The first victim was 17-year-old high school student Laura Berenice Ramos Monárrez³⁰⁷. The report filed about her disappearance indicated that she disappeared on Tuesday, September 25, 2001.³⁰⁸ The second victim, Claudia Ivette González, was 20 years old and worked for a maquila plant.³⁰⁹ On October 10, 2001, she arrived two minutes late to work and was not allowed in; she disappeared that day.³¹⁰ The third victim was 15-year-old student Esmeralda Herrera Monreal.³¹¹ She disappeared on Monday, October 29, 2001, after leaving the house where she worked as a domestic employee.³¹²

³⁰⁴ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 79.

³⁰⁵ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 401.

³⁰⁶ Caroline Bettinger-Lopez, *The Challenge of Domestic Implementation of the International Human Rights Law in the Cotton Field Case*, 15 CUNY L. Rev. 315, Summer 2012, p. 318-319.

³⁰⁷ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 165.

³⁰⁸ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 166.

³⁰⁹ A maquila plant is a manufacturing operation in a free trade zone (FTZ), where factories import material and equipment on a duty-free and tariff-free basis for assembly, processing, or manufacturing and then export. IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 167.

³¹⁰ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 167.

³¹¹ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 168.

³¹² IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 168.

On November 6, 2001, the bodies of all three women were found in a cotton field in Ciudad Juárez.³¹³ “The way in which the bodies [of the three victims] were found suggests that they were raped and abused with extreme cruelty.”³¹⁴ Despite deficiencies in the autopsy reports, the Court concluded that the victims were also deprived of their liberty before they died; nevertheless, the Court was unable to establish the length of their captivity with certainty.³¹⁵

After the women disappeared, the State failed to adequately and timely respond to their disappearances. The police refused to search for the women until 72 hours had passed.³¹⁶ The families were left alone searching for the victims,³¹⁷ and The State’s inaction appeared to be influenced by stereotypes of a woman’s behavior.³¹⁸ For example, officials commented “that the victims had gone off with a boyfriend or that they led a disreputable life []. In addition, both the attitude and statements of the officials reveal[ed] that, at the very least, they were indifferent towards the next of kin of the victims and their complaints.”³¹⁹

According to the Court, the disappearance of these three women fit into a broader phenomenon of systematic violence against women and girls in Ciudad Juarez.³²⁰ Although the judgment itself addresses three specific killings, the judgment took notice of the 260-270 killings of women and girls that took place in Ciudad Juarez from 1993 to 2003, with high numbers continuing beyond.³²¹ The Court used the term “femicide” to describe what it called “homicide of women on the basis of gender”, but fell short of using that term to characterize the broader context of disappearances of women in Ciudad Juarez.³²² The Court did not distinguish between the terms *femicide* and *feminicide*, but some experts differentiate these terms by stating that a feminicide

³¹³ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 209.

³¹⁴ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 210.

³¹⁵ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 221.

³¹⁶ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 161-181.

³¹⁷ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 182-195.

³¹⁸ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 196.

³¹⁹ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 208.

³²⁰ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 113-164.

³²¹ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 118.

³²² IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 143-145.

involves the killing of women in a context of impunity due to a State's failure to protect, prevent, investigate and punish VAW.³²³ Mexico defines femicide violence as “the extreme form of gender violence against women, resulting from the violation of their human rights in the public and private sphere, comprising a series of misogynous conduct[] that can lead to the impunity of the State and society and may culminate in the homicide or other forms of violent death of women.”³²⁴

The Court noted, “it is a matter of concern that some of these crimes appear to have involved extreme levels of violence, including sexual violence and that, in general, they have been influenced, as the State has accepted, by a culture of gender-based discrimination which, according to various probative sources, has had an impact on both the motives and the method of the crimes, as well as on the response of the authorities.”³²⁵ It further found that “up until 2005, most of the crimes had not been resolved, and murders with characteristics of sexual violence present higher levels of impunity.”³²⁶

c) Procedural History before the Inter-American Commission

On March 6, 2002, the mothers of the victims, with the assistance of the *Red Ciudadana de No Violencia y por la Dignidad Humana* [Citizen Network on Non-Violence and Human Dignity], submitted separate petitions against Mexico to the Inter-American Commission on Human Rights.³²⁷ The Commission found the petitions admissible on February 24, 2005 and joined the cases on January 30, 2007.³²⁸ It approved the merits report on March 9, 2007, and after finding that Mexico had not followed its recommendations, the Commission referred the case to the

³²³ Secretariat of the Campaign of the United Nations Secretary General “UNETE” to put an end to violence against women, *La Regulación del Delito de Femicidio/Feminicidio en América Latina y el Caribe (“Norms on the Crime of Femicide/Feminicide in Latin America and the Caribbean”)*, pp. 15-16, http://www.un.org/es/women/endviolence/pdf/reg_del_femicidio.pdf.

³²⁴ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 140.

³²⁵ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 164.

³²⁶ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para 164.

³²⁷ IACHR, *Application filed with the Inter-American Court of Human Rights in the case of Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez (Cases 12.496, 12.497 and 12.498) against the United Mexican States*, November 4, 2007, paras. 12, 23, 36; IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para 1.

³²⁸ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 1.

jurisdiction of the Court on November 4, 2007.³²⁹ The Court held a public hearing on April 28 and 29, 2009 and issued its judgment on November 16, 2009.³³⁰

The Commission asked the Court to declare Mexico “responsible for the violation of the rights embodied in Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 19 (Rights of the Child) and 25 (Right to Judicial Protection) of the Convention, in relation to the obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) [ACHR], together with the failure to comply with the obligations arising from Article 7 of the Convention [of Belém do Pará]”.³³¹

The victims’ representatives, including the *Asociación Nacional de Abogados Democráticos*, the Latin American and Caribbean Committee for the Defense of Women’s Rights (CLADEM), the *Red Ciudadana de No Violencia y por la Dignidad Humana* and the *Centro para el Desarrollo Integral of the Mujer*, agreed with the Commission but additionally “asked that the Court declare the State responsible for violating the rights embodied in Articles 7 (Right to Personal Liberty) and 11 (Right to Privacy [Dignity and Honor]) of [ACHR], all in relation to the general obligations arising from Articles 1(1) and 2 thereof, as well as Article 7 of the Convention of Belém do Pará, in connection with Articles 8 and 9 thereof.”³³² Finally, “they asked the Court to declare that the State had violated the right embodied in Article 5 of the American Convention to the detriment of the three alleged victims identified by the Commission.”³³³

Mexico made a partial acknowledgement of international responsibility and asked the Court to consider this acknowledgement when it rendered its decision.³³⁴ The Court still decided the entire factual framework of the case noting where it “accepts that a fact has been established based on the State’s acceptance, or has been proved by the evidence provided by the parties.”³³⁵

³²⁹ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 1.

³³⁰ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 12.

³³¹ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 3.

³³² IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 4.

³³³ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 4.

³³⁴ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 20-21.

³³⁵ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 28.

d) Competence of the Court to Review Claims under the Convention of Belém do Pará

(1) Article 7 of the Convention of Belém do Pará

Article 12 of the Convention of Belém do Pará provides that individuals may only lodge complaints of violations of Article 7 before the Inter-American Commission on Human Rights. For the first time, the Inter-American Court of Human Rights determined that it had jurisdiction over claims brought under Article 7 of the Convention of Belém do Pará, which requires states to “condemn all forms of violence against women and agree to pursue, by all appropriate measures, and without delay, policies to prevent, punish and eradicate such violence” through legal, legislative, administrative, and policy initiatives.³³⁶

(2) Articles 8 and 9 of the Convention of Belém do Pará

The Court concluded that it was not competent to consider alleged violations of Articles 8 and 9 of Belém do Pará as independent violations in a contentious case.³³⁷ However, the Court interpreted Article 7 of Belém do Pará in light of various other articles of said treaty (including 8 and 9) and other pertinent Inter-American instruments.³³⁸

Under Article 8 of Belém do Pará, States “agree to undertake progressively specific measures” to eradicate violence against women, including social public educational initiatives, institutional education, measures and programs supportive of victims (including social services readjustment, and training programs for affected persons), data collection, and international exchange. Article 9 provides that, with respect to the state obligations contained in Articles 7 and 8, States “shall take special account” of vulnerable groups of women who may experience gender-based violence on account of their multiply marginalized (“intersectional”) status (i.e., age, race, ethnicity, class, disability, etc.).

e) Decision on the Merits

The Court found Mexico violated the following international legal obligations: under the American Convention on Human Rights; Article 4 “right to life,” Article 5 “right to personal integrity,” Article 7 “right to personal liberty,” Article 19 “rights of the child,” Articles 8 & 25 “judicial protection/due process,” Article 1.1 “obligation to respect rights,” and Article 2 “duty

³³⁶ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 77, 248.

³³⁷ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 80.

³³⁸ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 79.

to adopt domestic legal effects”, and Article 7 of Belém do Pará. The Court rejected the petitioners’ allegations of Mexico’s violation of Article 11 (dignity and honor).³³⁹

In considering the violations of the rights mentioned above, the Court reiterated the elements of due diligence originally articulated in the seminal *Velasquez Rodriguez* case, when considering state responsibility to prevent, investigate, punish, and compensate for human rights violations committed by private actors.³⁴⁰

The Court divided its inquiry into two time frames: the time leading up to the disappearances (the duty to prevent and protect), and the time after authorities were informed about the disappearances (the duty to investigate, punish, compensate).

(1) Duty to prevent

Here, the Court found Mexico responsible for failing to prevent the disappearance and murder of the victims. Mexico failed to fulfill its duty to prevent (1) before the disappearances of the victims and (2) before the discovery of their bodies.³⁴¹ Specifically, the Court found the State did not adopt reasonable measures to find the victims alive, the State failed to act promptly during the first hours and days following the reports of the disappearances, and there were unjustified delays following the filing of the reports.³⁴² The Court cites to *Osman v UK* (ECHR) for its “real and immediate risk” standard, and concludes that the State did not act reasonably, with due diligence, especially in a situation involving vulnerable groups and violence against women.³⁴³ Thus, the Court found violations of Articles 1.2, 2, 4, 5, 7 of ACHR and 7(b) and (c) of BDP.³⁴⁴

(2) Duty to investigate

In regards to the duty to investigate, the Court found State responsibility for its failure to guarantee the families’ right to access to justice, effective judicial protection, and the right of the families and society to know the truth.³⁴⁵ The State failed to meet its obligation to properly secure the crime scene, carry out criminal investigations without unjustified delays, and

³³⁹ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 112.

³⁴⁰ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 236.

³⁴¹ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 281.

³⁴² IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 284.

³⁴³ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 280.

³⁴⁴ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 286.

³⁴⁵ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 389.

investigate and impose sanctions against public officials who were associated with the irregularities.³⁴⁶ The State's failure to investigate the disappearances in turn led to the State's responsibility for its failure to guarantee the physical integrity and personal liberty of the three victims.³⁴⁷

(3) State Obligation to Not Discriminate: Violence Against Women as Discrimination

The Court found that the VAW that is at issue in this case (and in the larger context of Ciudad Juárez) constitutes a form of gender discrimination.³⁴⁸ The Court declared that the State violated the obligation not to discriminate to the detriment of the three victims,³⁴⁹ which in turn violated the victims' next of kin's right to access to justice.³⁵⁰

The Court highlighted the definitions of gender discrimination that have been articulated by the CEDAW Committee, the European Court, and the Inter-American Court itself, emphasizing that discrimination includes gender-based violence, violence directed against a woman because she is a woman, or acts that affect women disproportionately.³⁵¹ The Court found that State inaction and indifference in the beginning of the investigation functioned to reproduce the violence against women.³⁵² The Court noted that subordination of women is associated with gender stereotypes, and that "the creation and use of stereotypes is one of the causes and consequences of gender-based violence against women."³⁵³

The Court noted that "the reports of the IACHR Rapporteur, CEDAW and Amnesty International, among others, indicate that many of the killings of women in Ciudad Juárez are

³⁴⁶ IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 295.

³⁴⁷ IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 389.

³⁴⁸ IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 402.

³⁴⁹ Recognized in Article 1(1) of the American Convention, in relation to the obligation to guarantee the rights embodied in Articles 4(1), 5(1), 5(2) and 7(1) of the American Convention. IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 402.

³⁵⁰ Recognized in Articles 8(1) and 25(1) of the American Convention. IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 402.

³⁵¹ IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 394-96.

³⁵² IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 400.

³⁵³ IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 401.

manifestations of gender-based violence.”³⁵⁴ Additionally, the three victims in this case were young, underprivileged women, workers or students, as were many of the victims of the murders in Ciudad Juárez.”³⁵⁵ These facts lead the Court “to conclude that Mss. González, Ramos and Herrera, were victims of violence against women according to the American Convention and the Convention of Belém do Pará. On the same basis, the Court consider[ed] that the murders of the victims were gender-based and were perpetrated in an acknowledged context of violence against women in Ciudad Juárez.”³⁵⁶

(4) Rights of the Child

The Court found that Mexico violated Article 19 (Rights of the Child) ACHR because the victims were also minors.³⁵⁷ The Court discussed the importance of the State adopting positive measures protect children against VAW, especially given the context in Juarez. The Court found that the State had the obligation to ensure that the victims were “found as soon as possible, once the next of kin had reported that they were missing; above all because the State was aware of the existence of a specific context in which girls were being disappeared.”³⁵⁸

(5) Family Members’ Right to Personal Integrity

The Court found that the victims’ family members had suffered mental and emotional health problems as a result of the disappearance and murders of the victims; in their search for truth; and in the threatening, intimidating, and hostile ways in which the families had been treated by the authorities.³⁵⁹ The Court found that the acts of harassment suffered by the next of kin constituted a violation of their own right to personal integrity.³⁶⁰

(6) Right to Dignity and Honor

The Court rejected the representatives’ arguments that the State violated an independent substantive right to dignity and honor of the three women and of their families. The Court considered that the underlying facts instead constituted a violation of the right to personal

³⁵⁴ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 229.

³⁵⁵ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 230.

³⁵⁶ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 231.

³⁵⁷ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 411.

³⁵⁸ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 409.

³⁵⁹ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 424.

³⁶⁰ Recognized in Article 5(1) and 5(2) of the American Convention. IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 424.

integrity under Article 5 ACHR and not a violation of the right to dignity and honor under Article 11 ACHR.³⁶¹

f) Reparations

The Court issued the following reparations, which according to Bettinger-Lopez were “guided by a holistic gender approach and a ‘transformative agenda.’ . . . and should be ‘designed to identify and eliminate the factors that cause discrimination.’”³⁶² In Bettinger-Lopez’ view, the Court gave important consideration to “the context of structural discrimination in which the facts of this case occurred,” and added that “the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, re-establishment of the same structural context of violence and discrimination is not acceptable.”³⁶³

The Court ordered the State to investigate the violations and prosecute those responsible,³⁶⁴ and include a gender perspective in the investigation;³⁶⁵ publish the judgment;³⁶⁶ publicly acknowledge the State’s responsibility in this case;³⁶⁷ erect a monument in memory of the women victims of gender-based murders in Ciudad Juárez;³⁶⁸ adapt its domestic norms in accordance with international standards to search for disappeared persons, based on a gender perspective, and international standards on the investigation of sexual abuse and murders of women;³⁶⁹ continue implementing a search-and-locate procedure for missing or disappeared women known as the Protocolo Alba;³⁷⁰ develop a website with information about missing girls

³⁶¹ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 445.

³⁶² Caroline Bettinger-Lopez, *The Challenge of Domestic Implementation of the International Human Rights Law in the Cotton Field Case*, 15 CUNY L. Rev. 315, Summer 2012, p. 324.

³⁶³ Caroline Bettinger-Lopez, *The Challenge of Domestic Implementation of the International Human Rights Law in the Cotton Field Case*, 15 CUNY L. Rev. 315, Summer 2012, p. 324.

³⁶⁴ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 452- 462.

³⁶⁵ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 455.

³⁶⁶ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, para. 468.

³⁶⁷ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 469 and 470.

³⁶⁸ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 471- 472.

³⁶⁹ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 497-502.

³⁷⁰ IACtHR, *González, et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 503-506.

and women in Chihuahua;³⁷¹ create a national database on disappeared women and girls;³⁷² create local and national education and training programs and courses for the general public and for public officials on human rights and gender;³⁷³ provide medical, psychological or psychiatric treatment to the victims' families,³⁷⁴ and pay compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses.³⁷⁵

g) Compliance

On May 21, 2013, the Inter-American Court of Human Rights issued a court order of supervision of compliance with the judgment (4 years after the judgment and 10 years after the homicides).³⁷⁶ The Court found the following levels of compliance with the reparations.

The Court found partial compliance with three reparations. First, with regards to the State's obligation to investigate, the Court recognized that "[i]nvestigations are ongoing, but the Court required more information about the details of the investigations, any potential linkages between the three murders, how these investigations are taking into account the context of VAW, and how these investigations are incorporating a gender perspective as ordered by the Court."³⁷⁷ Second, the Court found that Mexico reported that it had undertaken three separate lines of inquiry into investigation of state officials for their negligence in the investigations.³⁷⁸ The Court requested the State to submit more detailed information, including copies of the relevant documents, in order to determine whether the State had complied with this measure.³⁷⁹ Third, the Court found partial compliance with the development of a protocol to search for missing girls

³⁷¹ IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 507-508.

³⁷² IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 509- 512.

³⁷³ IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 531-543.

³⁷⁴ IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 544-549.

³⁷⁵ IACtHR, *González, et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objections, Merits, Reparations, and Costs), Series C No. 205, paras. 597-601.

³⁷⁶ IACtHR, *González et al. ("Cotton Field") v. Mexico*, Supervision of Compliance with the Judgment, Resolution of May 21, 2013, available at http://www.corteidh.or.cr/docs/supervisiones/González_21_05_13.pdf.

³⁷⁷ IACtHR, *González et al. ("Cotton Field") v. Mexico*, Supervision of Compliance with the Judgment, Resolution of May 21, 2013, paras. 10-31.

³⁷⁸ IACtHR, *González et al. ("Cotton Field") v. Mexico*, Supervision of Compliance with the Judgment, Resolution of May 21, 2013, paras. 32-34, 37.

³⁷⁹ IACtHR, *González et al. ("Cotton Field") v. Mexico*, Supervision of Compliance with the Judgment, Resolution of May 21, 2013, paras. 40-42.

and women and with the creation of a genetic database with information about missing girls and women in the state of Chihuahua.³⁸⁰

The Court found full compliance with a number of reparations. First, the State complied with the requirement to provide for monetary compensations. Second, the State complied with a nationwide publication of the judgment.³⁸¹ Third and fourth, the State also carried out a public act recognizing the State's responsibility for the violations in this case³⁸² and a public monument in memory of women victims of homicide in Ciudad Juarez. Fifth, almost every state in Mexico adopted protocols to investigate violence against women.³⁸³ Finally, the State created a webpage with information about missing girls and women in Chihuahua, education programs on violence against women and on adequate investigations of crimes of violence against women aimed at public officials, and education programs on violence against women aimed at the general public.³⁸⁴

The Court found that Mexico had not complied with reparations in the following instances. First, the State had not provided medical and psychological treatment to the victims' families.³⁸⁵ Second, the State had failed to investigate the threats against family members of the victims.³⁸⁶

h) Recent Updates on the Situation of Femicide in Ciudad Juarez

Crime reports indicate that in 2008-2011 there was a renewed wave of violence against women in Ciudad Juarez – approximately 700 women and girls murdered during this time.³⁸⁷ As of 2012, or three years after the judgment, the murder rate in Ciudad Juarez and the State of Chihuahua had not decreased.³⁸⁸ The high murder rate continues in Ciudad Juarez.³⁸⁹

³⁸⁰ IACtHR, *González et al. ("Cotton Field") v. Mexico*, Supervision of Compliance with the Judgment, Resolution of May 21, 2013, paras. 32-42.

³⁸¹ IACtHR, *González et al. ("Cotton Field") v. Mexico*, Supervision of Compliance with the Judgment, Resolution of May 21, 2013, paras. 50-55.

³⁸² IACtHR, *González et al. ("Cotton Field") v. Mexico*, Supervision of Compliance with the Judgment, Resolution of May 21, 2013, paras. 56-66.

³⁸³ IACtHR, *González et al. ("Cotton Field") v. Mexico*, Supervision of Compliance with the Judgment, Resolution of May 21, 2013, paras. 78-82.

³⁸⁴ IACtHR, *González et al. ("Cotton Field") v. Mexico*, Supervision of Compliance with the Judgment, Resolution of May 21, 2013, paras. 98, 99, 111, and 119.

³⁸⁵ IACtHR, *González et al. ("Cotton Field") v. Mexico*, Supervision of Compliance with the Judgment, Resolution of May 21, 2013, para. 126.

³⁸⁶ IACtHR, *González et al. ("Cotton Field") v. Mexico*, Supervision of Compliance with the Judgment, Resolution of May 21, 2013, paras. 43-49.

³⁸⁷ Intl. Law Grrls, *Revisiting Cottonfield Amid Continued Violence*, Blog Post, July 20, 2012, available at <http://www.intlawgrrls.com/2012/07/revisiting-cotton-field-amid-continued.html>.

³⁸⁸ Caroline Bettinger-Lopez, *The Challenge of Domestic Implementation of the International Human Rights Law in the Cotton Field Case*, 15 CUNY L. Rev. 315, Summer 2012.

i) Conclusion

In this judgment, the Court issued a landmark decision in the area of VAW in the IAHRs. It is the first case in which the Court addressed states' positive obligations to adopt measures to respond to violence against women by private actors, particularly in a context of structural gender-based discrimination. It is also the first case in which the Court found a violation of Article 7 of the Convention of Belém do Pará, which provides that states must "condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish, and eradicate such violence" through legal, legislative, administrative, and policy initiatives.³⁹⁰ Notably, in addressing the substantive violations in this case, the Court had to rely mostly on the legal norms found in the American Convention on Human Rights, perhaps because the Convention of Belém do Pará is not particularly well suited for litigation purposes. Finally, the Court ordered several measures of reparation aimed at addressing the structural context of VAW, and Mexico has taken positive steps to comply with the Court's order.

3. *Las Dos Erres Massacre v. Guatemala* (2009)

a) Introduction and Importance of the Case

The Court's judgment in the *Case of the "Las Dos Erres" Massacre v. Guatemala* represents another landmark case in the IAHRs jurisprudence on VAW. As in the *Castro Castro* case, the Court recognized the particular ways that women were affected by Guatemala's internal armed conflict and applied the CBP even though Guatemala had not ratified it at the time the facts occurred.³⁹¹ As the Utrecht Journal of International and European Law has observed, "[r]eiterating the precedent set in *Plan de Sánchez Massacre v. Guatemala*,"³⁹² the Court acknowledged that during the internal conflict, "the rape of women was a State practice, executed in the context of massacres, directed to destroying the dignity of women at a cultural, social, family, and individual level."³⁹³

³⁸⁹ See generally, *Mesa de Mujeres de Ciudad Juarez*, available at <http://www.mesademujeresjuarez.org/index.php> and <https://www.facebook.com/pages/Red-Mesa-de-Mujeres/123878907696482?fref=ts>.

³⁹⁰ OAS, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará"*, Article 7, available at <http://www.oas.org/juridico/english/treaties/a-61.html>.

³⁹¹ IACtHR, "*Las Dos Erres*" *Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 137-40, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_211_ing.pdf.

³⁹² Brooke Stedman, *The Leap from Theory to Practice: Snapshot of Women's Rights Through a Legal Lens*, Utrecht Journal of International and European Law, 29 (77) (2013), 4-28, at 10, available at <http://doi.org/10.5334/ujiel.bt>.

³⁹³ IACtHR, "*Las Dos Erres*" *Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 139.

Although the Court focused on the State's failure to ensure accountability for the massacre, it emphasized Guatemala's obligation to not only investigate extrajudicial killings but also VAW committed during the massacre.³⁹⁴ By categorizing acts of VAW as grave human rights violations, the judgment emphasizes that sexual VAW is a particularly grave form of human rights violation and that the State has an obligation to investigate, prosecute, and punish such crimes.³⁹⁵ According to Women's Link Worldwide, "[t]he Inter-American Court's ruling [] broadened the perspective of Guatemalan courts, drawing attention to violence against women and encouraging the State to conduct an investigation that has led to uncovering the truth and resulted in convictions for some of those responsible."³⁹⁶

b) Facts³⁹⁷

The facts of this case occurred in the context of an internal armed conflict in Guatemala, between guerrilla groups and a military junta led by then-president Efraín Ríos Montt.³⁹⁸ Under the auspices of the State's "National Security Doctrine,"³⁹⁹ the conflict featured numerous military incursions against the guerrilla, and "these military acts, performed "with the knowledge of or by order of the highest authorities of the State," consisted mainly of killings of defenseless population, known as massacres and "scorched earth operations."⁴⁰⁰ Also, "[s]exual violence against women was a widespread and systematic practice as part of the [State's]

³⁹⁴ IACtHR, "*Las Dos Erres*" Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, paras. 130, 140-41.

³⁹⁵ Brooke Stedman, *The Leap from Theory to Practice: Snapshot of Women's Rights Through a Legal Lens*, Utrecht Journal of International and European Law, 29 (77) (2013), 4-28, at 10, available at <http://doi.org/10.5334/ujiel.bt>.

³⁹⁶ Women's Link Worldwide, "Gender Justice Observatory: *Las Dos Erres Massacre v. Guatemala*," available at http://www.womenslinkworldwide.org/wlw/new.php?modo=observatorio&id_decision=430&lang=en.

³⁹⁷ It is beyond the scope of this report to address every aspect of this case; rather, this report focuses primarily on those aspects of the case that are relevant to the issue of VAW.

³⁹⁸ IACtHR, "*Las Dos Erres*" Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, paras. 70-72.

³⁹⁹ IACtHR, "*Las Dos Erres*" Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 71, (citing Commission for Historical Clarification, *Guatemala: Memory of Silence* (hereinafter "CEH, *Guatemala: Memory of Silence*"), Guatemala: United Nations Office for Project Services, 1999, Chapter I, "Immediate Background," para. 120). "From 1962 to 1996, Guatemala was wracked by internal armed conflict that left an estimated toll of 200,000 dead or missing. During the conflict, the State applied the "National Security Doctrine," under which any person or organization who represented any type of opposition to the State was considered an "internal enemy." The most violent period of hostilities was from 1978 to 1983, under the dictatorships of Generals Romeo Lucas García (1978-1982) and Efraín Ríos Montt (1982-1983)." Women's Link Worldwide, "Gender Justice Observatory: *Las Dos Erres Massacre v. Guatemala*."

⁴⁰⁰ IACtHR, "*Las Dos Erres*" Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 73.

counterinsurgency strategy and one of the most specific expressions of gender violence during the internal armed conflict in Guatemala.”⁴⁰¹

It is in the context of this “pattern of grave human rights violations”⁴⁰² that the massacre of the “Las Dos Erres” community took place. Based on a rumor that the inhabitants were part of the guerilla forces, a specialized group within the armed forces (the “Kaibiles”) launched a military action to destroy the community from December 6 to 8, 1982.⁴⁰³ Military personnel massacred the majority of the community, killing approximately 216 people.⁴⁰⁴ The community’s inhabitants included children, women and men; the Kaibiles subjected most of them to physical abuse before slaughtering them.⁴⁰⁵

The Kaibiles committed rape and other acts of extreme violence against the community’s women and girls during the massacre.⁴⁰⁶ These acts of VAW included violence specifically targeting pregnant women; as the Court described, “the cruelty displayed by the soldiers reached the point where they caused abortions to pregnant women by beating them or even jumping on their abdomen until the fetus came out miscarried.”⁴⁰⁷

Guatemala adopted measures to clarify, investigate, judge, and eventually sanction those responsible for the massacre of “Las Dos Erres,” however these measures were limited and significantly delayed.⁴⁰⁸ Between 1987 and 1999, a local criminal court ordered the exhumation of the bodies found in the village,⁴⁰⁹ and a prosecutor gathered evidence.⁴¹⁰ Between 1999 and

³⁹³ IACHR, “Application to the Inter-American Court of Human Rights in the Case of *The Las Dos Erres Massacre* (Case 11.681) against The Republic Of Guatemala,” para. 92 (July 30, 2008), available at <http://www.cidh.oas.org/demandas/11.681%20Masacre%20de%20las%20Dos%20Erres%20Guatemala%2030%20julio%202008%20ENG.pdf> (citing CEH, *Guatemala: Memory of Silence*, Tome III, *Human rights violations and the acts of violence* paras. 2350-51).

⁴⁰² IACtHR, “*Las Dos Erres*” *Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 82.

⁴⁰³ IACtHR, “*Las Dos Erres*” *Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 74-76.

⁴⁰⁴ IACtHR, “*Las Dos Erres*” *Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 79 (note that estimates as to the actual number of victims vary; the Court recognized 216 victims in its judgment).

⁴⁰⁵ IACtHR, “*Las Dos Erres*” *Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 79-80.

⁴⁰⁶ IACtHR, “*Las Dos Erres*” *Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 79-81.

⁴⁰⁷ IACtHR, “*Las Dos Erres*” *Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 81.

⁴⁰⁸ IACtHR, “*Las Dos Erres*” *Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 84, 125-27.

⁴⁰⁹ IACtHR, “*Las Dos Erres*” *Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 85-86.

2000, the local court ordered the arrest of 17 accused perpetrators for the crime of murder against the inhabitants of “Las Dos Erres” community.⁴¹¹ However, “a series of delay tactics kept the case paralyzed in its initial stages for years.”⁴¹²

c) Procedural History before the Inter-American Commission

The initial petition was submitted to the Inter-American Commission on Human Rights on September 13, 1996 by the Office of Human Rights of the Archdiocese of Guatemala (ODHAG) and the Center for Justice and International Law (CEJIL).⁴¹³ In 2008, the Commission issued a Merits Report⁴¹⁴ including recommendations “that the State perform, among other [measures], a special, rigorous, impartial, and effective investigation that would prosecute and punish those responsible, as well as remove all factual and legal obstacles that kept the case in impunity.”⁴¹⁵

On July 30, 2008 Guatemala’s failure to comply with the recommendations led the Commission to submit the case to the Court.⁴¹⁶ The Court issued its judgment on November 24, 2009⁴¹⁷ and delivered two orders of compliance in order to monitor Guatemala’s implementation of the judgment, on July 6, 2011 and September 4, 2012, respectively, as well as one joint order issued

⁴¹⁰ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, paras. 87-88.

⁴¹¹ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 89.

⁴¹² Women’s Link Worldwide, “Gender Justice Observatory: *Las Dos Erres* Massacre v. Guatemala,” available at http://www.womenslinkworldwide.org/wlw/new.php?modo=observatorio&id_decision=430&lang=en. The Constitutional Court granted the defendants legal protection under Guatemala’s Law on National Reconciliation, which resulted in the local court withdrawing the arrest orders and releasing at least one of the accused. Procedures before the Court of Appeal started on June 25, 2002, but numerous appeals delayed the criminal proceedings, including at least 33 appeals for legal protection, 19 appeals for reversal, 19 claims for remedy, 2 motions for amendment, and one constitutional motion filed by the accused. IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, paras. 98-100.

⁴¹³ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 1.

⁴¹⁴ IACHR, “Application to the Inter-American Court of Human Rights in the Case of *The Las Dos Erres* Massacre (Case 11.681) against The Republic Of Guatemala,” (July 30, 2008), available at <http://www.cidh.oas.org/demandas/11.681%20Masacre%20de%20las%20Dos%20Erres%20Guatemala%2030%20julio%202008%20ENG.pdf>.

⁴¹⁵ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 1.

⁴¹⁶ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 1; IACHR, “Application to the Inter-American Court of Human Rights in the Case of *The Las Dos Erres* Massacre (Case 11.681) against The Republic Of Guatemala,” (July 30, 2008).

⁴¹⁷ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211.

on August 21, 2014 regarding Guatemala's lack of compliance with its obligation to investigate as it relates to eleven judgments issued by the Court, including the *Las Dos Erres* case.⁴¹⁸

d) Decision on the Merits

Although this case is primarily about a massacre and Guatemala had not ratified CBP at the time of the events, the Court applied CBP in its analysis of the violations committed against women and girls.⁴¹⁹ The Court's analysis primarily focused on the State's ongoing violation of the obligation to investigate the massacre and prosecute and punish those responsible.

(1) The Court's Competence to Apply CBP

Because the obligation to investigate the 1982 massacre was still pending when Guatemala ratified CBP in 1995, the Court held that, as of 1995, Guatemala had an obligation to investigate with due diligence the acts of violence against women that occurred in 1982.⁴²⁰ The Court relied upon its findings in *Castro Castro*⁴²¹ to apply CBP, holding that, as of April 4, 1995, "the State ha[d] the duty to guarantee the right of access to justice . . . in conformity with the specific obligations set forth in the specialized convention . . . with regard to . . . the violence against women."⁴²² Accordingly, the Court found a violation of the obligation to investigate under ACHR, as well as under Art. 7(b) CBP.⁴²³

(2) Obligation to Investigate - Including Acts of VAW

In addition to other violations of the American Convention,⁴²⁴ the Court held that Guatemala violated the right to a fair trial and the right to judicial protection under article 8(1) and 25(1) of

⁴¹⁸ IACtHR, "*Las Dos Erres*" Massacre v. Guatemala, Order Monitoring Compliance with Judgment, July 6, 2011, available at http://www.corteidh.or.cr/docs/supervisiones/doserres_06_06_11_ing.pdf; IACtHR, "*Las Dos Erres*" Massacre v. Guatemala, Order Monitoring Compliance with Judgment, September 4, 2012, available at http://www.corteidh.or.cr/docs/supervisiones/doserres_04_09_12_ing.pdf. See also, IACtHR *Supervision of Compliance Order with Regards to 11 Cases Against Guatemala on the Obligation to Investigate, Prosecute and Eventually Sanction those Responsible for Human Rights Violations*, August 21, 2014, available in Spanish at http://www.corteidh.or.cr/docs/supervisiones/11_Casos_21_08_14.pdf.

⁴¹⁹ According to the lawyers who litigated the case, *Las Dos Erres* "has always been (...) a case of a massacre" rather than VAW, and it was a challenge to ensure that the Commission and Court did not overlook the VAW component of the case. IHRC interview with Gisela de Leon, CEJIL attorney, Santa Clara University (March 20, 2014) (on file with authors).

⁴²⁰ IACtHR, "*Las Dos Erres*" Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 136-37.

⁴²¹ IACtHR, *Miguel Castro-Castro Prison v. Peru. Merits, Reparations and Costs*, Judgment of November 25, 2006, Series C No. 160.

⁴²² IACtHR, "*Las Dos Erres*" Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 137.

⁴²³ IACtHR, "*Las Dos Erres*" Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 140-41, 153, 310.

⁴²⁴ Guatemala violated the obligation to respect rights and the obligation to adopt domestic legal effects recognized in Articles 1(1) and 2 of the American Convention, the rights of the family and right to a name under Articles 17 and 18 of the Convention, and the right to humane treatment recognized in Article 5(1). IACtHR, "*Las*

the American Convention⁴²⁵ in relation with article 7(b) of CBP, to the detriment of the 155 identified victims, because the lack of a complete investigation of the massacre has prevented the investigation, prosecution, and eventual punishment of those allegedly responsible.⁴²⁶ In particular, the Court found that “the State had official knowledge of [these] acts of torture against the population and children of the community, as well as [forced] abortions and other types of sexual violence against girls and women” and did not conduct an adequate investigation into these acts.⁴²⁷ Although some investigations had taken place, the Court found that because they did not include an investigation into the rape, torture, and other acts of VAW committed against the women and children of the community, these investigations did not satisfy Guatemala’s obligations under ACHR and BDP.⁴²⁸ The Court specifically highlighted the fact that the investigations were not carried out with a gender perspective.⁴²⁹

As in the *Castro Castro* judgment, the Court analyzed the violations against the backdrop of the internal armed conflict, noting that “during the armed conflict women were particularly chosen as victims of sexual violence.”⁴³⁰ At the time of the judgment, the serious acts of gender-based violence committed during the massacre had never been thoroughly investigated and prosecuted, and consequently, those responsible were neither arrested nor punished, thus allowing impunity for VAW.⁴³¹ The Court found that “lack of investigation of grave facts against humane treatment such as torture and sexual violence in armed conflicts and/or systematic patterns, constitutes a breach of the State’s obligations in relation to grave human rights violations, which infringe non-revocable laws (*jus cogens*) and generate obligations for the States such as investigating and punishing those practices, in conformity with the American Convention and in this case in light of the [Inter-American Convention on Torture] and the BDP Convention.”⁴³²

Dos Erres” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 310.

⁴²⁵ OAS, *American Convention on Human Rights*, 22 November 1969, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

⁴²⁶ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, paras. 153, 310.

⁴²⁷ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 138.

⁴²⁸ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 140.

⁴²⁹ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 141.

⁴³⁰ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 139.

⁴³¹ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, paras. 78-81.

⁴³² IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 140.

e) Reparations

The Court ordered several reparations aimed at achieving not only accountability for the perpetrators but repairing the complex damages experienced by the victims, including “in addition to pecuniary measures, other measures such as satisfaction, restitution, rehabilitation, and guarantees of non-repetition” needed “due to the gravity of the infringements and collective nature of the damage caused.”⁴³³ Accordingly, in addition to monetary compensation for the victims and their families,⁴³⁴ the Court ordered the State of Guatemala to (a) investigate the facts and identify, prosecute, and punish those responsible and (b) implement measures of satisfaction, rehabilitation and guarantees of non-repetition.⁴³⁵

(1) Obligation to investigate the facts and identify, prosecute, and punish those responsible

The Court ordered Guatemala to “investigate, without delay, in a serious and effective manner, the facts that originated that violations declared in this Judgment, in order to prosecute and eventually punish those responsible.”⁴³⁶ This obligation encompasses the duty to “effectively investigate all facts of the massacre, taking into account the systematic pattern of human rights violations existing at the time . . . [and], particularly, the alleged acts of torture, in light of the differentiated impacts of the alleged violence against girls and women.”⁴³⁷ The Court also established some criteria to be followed by the State when investigating the facts of the massacre, and directed it to adopt a gender-based perspective specifically regarding acts of violence against women.⁴³⁸ An example of this is the obligation for the State to provide the victim of a sexual violation with a safe environment when giving his/her declaration to State officials.⁴³⁹

It is significant to note that in requiring the State to investigate the facts “in light of the differentiated impacts of the alleged violence against girls and women[,]”⁴⁴⁰ the Court relied

⁴³³ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 226.

⁴³⁴ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 275-95.

⁴³⁵ The Court ordered additional reparations, such as the return of the victims’ remains to their families, but this section focuses only on the reparations that are relevant to the VAW aspect of the case.

⁴³⁶ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 233(b).

⁴³⁷ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 233(b).

⁴³⁸ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 233(b).

⁴³⁹ IHRC interview with Gisela de Leon, CEJIL attorney, Santa Clara University (March 20, 2014) (on file with authors).

⁴⁴⁰ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 233(b).

upon General Recommendation No. 19, on “Violence against Women,” of the United Nations Committee on the Elimination of Discrimination Against Women.⁴⁴¹ Recognizing the heightened risks women face in armed conflicts, the General Comment affirms that States must adopt protective and punitive measures against VAW during situations of armed conflict.⁴⁴² The Court emphasized the General Comment’s recommendation that States “ensure that the laws against attacks respect the integrity and dignity of all women, and provide protection to the victims; as well as to perform an investigation of the causes and effects of violence and the effectiveness of the response measures; and that they enshrine efficient procedures for reparations, including compensation.”⁴⁴³

(2) Measures of satisfaction, rehabilitation and guarantees of non-repetition

The Court also ordered reparations intended to serve as measures of satisfaction, including publication of the judgment,⁴⁴⁴ carrying out an act of public recognition of international responsibility, diffusion of a documentary film on the facts of the massacre of the Las Dos Erres Community,⁴⁴⁵ and the construction of a monument in honor of the victims.⁴⁴⁶

With respect to reparations aimed at rehabilitation, the Court ordered Guatemala to provide specialized medical and psychological attention to the victims.⁴⁴⁷ Measures designed to provide guarantees of non-repetition included ordering Guatemala to create a webpage where victims could search for children who were abducted and illegally adopted during the armed conflict.⁴⁴⁸

Finally, the Court instructed Guatemala to implement human rights trainings for its military personnel.⁴⁴⁹ This reparation functions both as a component of Guatemala’s obligation to

⁴⁴¹ United Nations Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 on Violence Against Women (11th session, 1992), *available at* <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

⁴⁴² United Nations Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 on Violence Against Women of the (11th session, 1992), para. 16.

⁴⁴³ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 66.

⁴⁴⁴ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 256.

⁴⁴⁵ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 257-264.

⁴⁴⁶ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 265.

⁴⁴⁷ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 266-70.

⁴⁴⁸ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, paras. 271-74.

⁴⁴⁹ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009, Series C No. 211, para. 250.

investigate, prosecute, and punish⁴⁵⁰ as well a guarantee of non-repetition, as the Court ordered the State “to adopt a permanent policy to train the personnel of the armed forces (as well as judges and prosecutors) in human rights and international humanitarian law, so as to prevent the occurrence of similar facts in the future[.]”⁴⁵¹ In this regard, the Court observed that “the effectiveness and impact of the implementation of education programs in human rights at the heart of the security forces is crucial to generate guarantees of non-repetition of facts such as those of the instant case. These programs must reflect results of actions and prevention that confirm their efficiency, and their evaluation must be performed with the adequate indicators.”⁴⁵²

f) Compliance

On September 4, 2012, the Inter-American Court of Human Rights issued its second order of supervision of compliance with the judgment (3 years after the judgment and 10 years after the massacre).⁴⁵³

The Court found partial compliance with three reparations. First, as to the investigation of the facts in light of the differentiated impacts the violence had on women and girls and identification, prosecution, and punishment of those responsible, the Court found that Guatemala had conducted some criminal proceedings against individual *kaibiles* but that impunity remained a serious problem.⁴⁵⁴ The Court emphasized Guatemala’s failure to prevent obstruction of the judicial process, provide sufficient resources to the judicial system to comply with this obligation, and to prosecute former president Efraín Ríos Montt for his role in the massacre.⁴⁵⁵ Specifically, the Court observed that “the State must continue adopting the pertinent measures to complete the investigation in order to investigate, prosecute and, if applicable, punish all the

⁴⁵⁰ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, paras. 250-54.

⁴⁵¹ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 250.

⁴⁵² IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 252.

⁴⁵³ IACtHR, “*Las Dos Erres*” Massacre vs. Guatemala, Order Monitoring Compliance with Judgment, September 4, 2012, available at http://www.corteidh.or.cr/docs/supervisiones/doserres_04_09_12_ing.pdf.

⁴⁵⁴ IACtHR, “*Las Dos Erres*” Massacre vs. Guatemala, Order Monitoring Compliance with Judgment, September 4, 2012, Considerations paras. 7-11. Note that after the Court issued this order, Guatemala has been conducting – with multiple procedural delays and other problems – criminal proceedings against former president Efraín Ríos Montt for genocide and crimes against humanity related to the Las Dos Erres massacre, among others. For more information about these proceedings, see Open Society Institute, International Justice Monitor, “Efraín Ríos Montt and Mauricio Rodríguez Sánchez before the National Courts of Guatemala,” available at <http://www.ijmonitor.org/category/efrain-rios-montt-and-mauricio-rodriguez-sanchez/>; Open Society Justice Initiative, *Judging a Dictator: The Trial of Guatemala’s Ríos Montt* (November 2013), available at <http://www.opensocietyfoundations.org/sites/default/files/judging-dictator-trial-guatemala-rios-montt-11072013.pdf>.

⁴⁵⁵ IACtHR, “*Las Dos Erres*” Massacre vs. Guatemala, Order Monitoring Compliance with Judgment, September 4, 2012, Considerations paras. 7-11.

alleged responsible for the facts that gave rise to the violations declared in the Judgment.”⁴⁵⁶ Even though investigations resulted in the conviction of certain perpetrators, Guatemala had not yet done enough to guarantee access to justice.⁴⁵⁷ It also appeared that Guatemala may not have implemented the Court’s specific criteria for gender-sensitive investigations, as the Court did not report any information from Guatemala as to this issue.⁴⁵⁸ As one of the attorneys for the victims observed, reparations aimed at providing investigations and access to justice are the most difficult to get the State to comply with.⁴⁵⁹

Next, the Court indicated that while Guatemala had held two events to publicly acknowledge its international responsibility, the State still needed to screen a documentary about the massacre in regions that were affected by the internal armed conflict and to distribute the film to universities and libraries.⁴⁶⁰ Third, with respect to payment of monetary compensation, the Court found that “of a total of 155 victims in respect of whom it ordered the payment of compensations, to date, the State ha[d] complied with the payment in favor of 134 of them.”⁴⁶¹ As to the victims who had not yet received compensation, the Court observed that in view of the procedural difficulties they had faced in obtaining the promised compensation, “the State as well as the representatives must coordinate the necessary actions to locate the persons who have still not received the payment and, in the case of the deceased victims, they must render assistance in order for their relatives to take the actions or carry out the judicial proceedings that are pertinent to be able to receive the corresponding compensations.”⁴⁶²

The Court also found that the State had failed to comply with the reparations ordering Guatemala to implement human rights training for military personnel, provide specialized medical and psychological treatment for the victims, and erect a monument in honor of the victims.⁴⁶³ Accordingly, the Court “request[ed] the State to adopt, forthwith, all measures that are necessary

⁴⁵⁶ IACtHR, “*Las Dos Erres*” Massacre v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 211, para. 11.

⁴⁵⁷ IACtHR, “*Las Dos Erres*” Massacre vs. Guatemala, Order Monitoring Compliance with Judgment, September 4, 2012, Considerations paras. 7-11.

⁴⁵⁸ See IACtHR, “*Las Dos Erres*” Massacre vs. Guatemala, Order Monitoring Compliance with Judgment, September 4, 2012, Considerations paras. 7-11.

⁴⁵⁹ IHRC interview with Gisela de Leon, CEJIL attorney, Santa Clara University (March 20, 2014) (on file with authors).

⁴⁶⁰ IACtHR, “*Las Dos Erres*” Massacre vs. Guatemala, Order Monitoring Compliance with Judgment, September 4, 2012, Considerations paras. 12-17.

⁴⁶¹ IACtHR, “*Las Dos Erres*” Massacre vs. Guatemala, Order Monitoring Compliance with Judgment, September 4, 2012, Considerations para. 23.

⁴⁶² IACtHR, “*Las Dos Erres*” Massacre vs. Guatemala, Order Monitoring Compliance with Judgment, September 4, 2012, Considerations para. 24.

⁴⁶³ IACtHR, “*Las Dos Erres*” Massacre vs. Guatemala, Order Monitoring Compliance with Judgment, September 4, 2012, Considerations paras. 26-27.

to promptly and effectively comply with the measures of reparation ordered in the judgment[.]”⁴⁶⁴

On May 16, 2014, the Court held a general hearing on compliance of eleven judgments against Guatemala, including *Las Dos Erres*.⁴⁶⁵ In its August 21, 2014 joint order on compliance with regards to these judgments, the Court emphasized Guatemala’s obligation to investigate the human rights violations in the *Las Dos Erres* case.⁴⁶⁶ Nevertheless, the Court missed an opportunity to reiterate the particular importance of conducting investigations on cases of VAW with a gender perspective.

Beyond the measures reported to the Court, Guatemala also undertook some important legal reforms to address VAW once the *Las Dos Erres* case was before the IAHRS. On May 7, 2008, Guatemala adopted the “Law against Femicide and Other Forms of Violence Against Women.”⁴⁶⁷ The law “officially recogniz[es] femicide as a punishable crime. It also codifies an expansive definition of violence against women.”⁴⁶⁸ The law defines femicide as the “violent murder of a woman motivated by her gender[.]”⁴⁶⁹ and also provides for structural reforms aimed at confronting VAW in Guatemala.⁴⁷⁰ Some of these reforms move Guatemala closer to fulfilling

⁴⁶⁴ IACtHR, “*Las Dos Erres*” *Massacre vs. Guatemala*, Order Monitoring Compliance with Judgment, September 4, 2012, Considerations para. 27.

⁴⁶⁵ IACtHR *Supervision of Compliance Order with Regards to 11 Cases Against Guatemala on the Obligation to Investigate, Prosecute and Eventually Sanction those Responsible for Human Rights Violations*, August 21, 2014, para. 1, available in Spanish at http://www.corteidh.or.cr/docs/supervisiones/11_Casos_21_08_14.pdf

⁴⁶⁶ IACtHR *Supervision of Compliance Order with Regards to 11 Cases Against Guatemala on the Obligation to Investigate, Prosecute and Eventually Sanction those Responsible for Human Rights Violations*, August 21, 2014, Operative Paras. 1 and 2.

⁴⁶⁷ *Ley contra el femicidio y otras formas de violencia contra la mujer* [Law Against Femicide and Other Forms of Violence Against Women], Decreto del Congreso [Congressional Decree], No. 22-2008 (2008) (Guat.), available at <http://www.convergemujeeres.org/documentos/Campo%20algodonero/Instrumentos%20nacionales/LEY%20CONT%20RA%20EL%20FEMICIDIO%20Y.pdf>. For more information about the law, see Guatemala Human Rights Commission/USA, *Guatemala’s Femicide Law: Progress Against Impunity?* (2009), available at http://www.ghrc-usa.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf; Karen Musalo and Blaine Bookey, “Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala,” *Hastings Poverty & Race Law Journal*, Vol. 10, pp. 265-292 (2013), available at http://cgrs.uchastings.edu/sites/default/files/Musalo_Bookey_CrimesWithoutPunishment_2013.pdf.

⁴⁶⁸ Guatemala Human Rights Commission/USA, *Guatemala’s Femicide Law: Progress Against Impunity?* (2009), p. 1, available at http://www.ghrc-usa.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf.

⁴⁶⁹ *Ley contra el femicidio y otras formas de violencia contra la mujer* [Law Against Femicide and Other Forms of Violence Against Women], Decreto del Congreso [Congressional Decree], No. 22-2008 (2008) (Guat.). For an excerpt of the law, see Guatemala Human Rights Commission/USA, *Guatemala’s Femicide Law: Progress Against Impunity?* (2009), p. 9 (excerpt of relevant provisions); MESECVI, *Second Hemispheric Report on the Implementation of the Belém do Pará Convention* (April 2012), p. 30 footnote 36, available at <https://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeHemisferico-EN.pdf>.

⁴⁷⁰ For a list of these reforms, see Guatemala Human Rights Commission/USA, *Guatemala’s Femicide Law: Progress Against Impunity?* (2009), p. 9; *Femicides in Latin American and the Caribbean*, Presentation by Patricia Olamendi, Member of the UN Working Group on the Issue of Discrimination against Women in Law and Practice,

its obligation to investigate gender-based crimes; for example, “Article 14 [establishes] [t]he Crimes Against Life and Physical Integrity of Women Unit, a specialized investigative office for cases involving violence against women.”⁴⁷¹ While, as of 2012, no Guatemalan legislation specifically punishes sexual violence in armed conflicts or recognizes sexual violence as torture, war crimes or crimes against humanity,⁴⁷² Article 174 of the Guatemalan Penal Code, “as amended by Law against Sexual Violence, Exploitation and Trafficking in Persons, Decree 9-2009,”⁴⁷³ provides for an aggravating circumstance when the perpetrator is a public official or public servant, in cases of rape or sexual assault.⁴⁷⁴ It is likely that Guatemala made these and subsequent legislative changes at least partly in response to the Court’s emphasis on the gender dimension of violations committed during the armed conflict, particularly the systematic use of rape by state agents as a method of warfare against the guerillas.

g) Conclusion

In the *Las Dos Erres* judgment, the Court built upon the advances it made with the *Castro Castro* judgment. As it did in that case, the Court denounced VAW in the context of an internal armed conflict, emphasizing the violations stemming from Guatemalan state actors’ use of sexual violence against women as a method of war. However, in this case, the Court extended its awareness of the gender-differentiated impacts of internal armed conflict beyond the legal analysis and, as it did in the *Cottonfield* judgment, included reparations requiring Guatemala to undertake a gender-based analysis of the facts in its investigation.

As a result, some experts suggest that “[t]he Inter-American Court’s ruling has clearly broadened the perspective of Guatemalan courts, drawing attention to violence against women and encouraging the State to conduct an investigation that has led to uncovering the truth and resulted in convictions for some of those responsible. However, the responsibility of others who were also involved has not yet been established, particularly among the military high command responsible for the creation and implementation of the military strategy used during the conflict.”⁴⁷⁵ Impunity remains a serious problem in Guatemala, and despite its anti-femicide law,

Side Event to 57th session of the U.N. Commission on the Status of Women (8 March 2013), available at <http://www.ohchr.org/Documents/Issues/Women/CSW/CSWFemicideSideEvent.doc>.

⁴⁷¹ Guatemala Human Rights Commission/USA, *Guatemala’s Femicide Law: Progress Against Impunity?* (2009), p. 9.

⁴⁷² MESECVI, Second Hemispheric Report on the Implementation of the Belém do Pará Convention (April 2012), p. 121, available at <https://www.oas.org/en/mesecevi/docs/MESECVI-SegundoInformeHemisferico-EN.pdf>.

⁴⁷³ MESECVI, Second Hemispheric Report on the Implementation of the Belém do Pará Convention (April 2012), p. 121.

⁴⁷⁴ Guatemalan Penal Code, Art. 174(7), available at <http://leydeguatemala.com/codigo-penal/violacion/3050/>; see also MESECVI, Second Hemispheric Report on the Implementation of the Belém do Pará Convention (April 2012), pp. 37, 121.

⁴⁷⁵ Women’s Link Worldwide, “Gender Justice Observatory: *Las Dos Erres Massacre v. Guatemala*,” available at http://www.womenslinkworldwide.org/wlw/new.php?modo=observatorio&id_decision=430&lang=en.

the country “has the third-highest rate of femicide in the world[.]”⁴⁷⁶ These facts emphasize the need for Guatemala to implement the Court’s reparations and the importance of the right to access to justice as an essential component of the fight against VAW. Despite the State’s lack of compliance, the *Las Dos Erres* judgment represents an important step forward for the Court’s treatment of VAW and set clear standards that the State should follow in both remedying past violations and preventing their reoccurrence.

4. *Rosendo Cantú v. Mexico, and Fernández Ortega v. Mexico (2010)*

a) Introduction and Importance of the Case

Rosendo Cantú v. Mexico, and *Fernández Ortega v. Mexico* involve indigenous women who were raped by Mexican military officials. Though the cases were litigated and decided separately, they are typically analyzed jointly because the facts, findings of law, and reparations ordered are very similar. These cases are particularly significant for the following reasons: (1) the finding that sexual assault by a state official can constitute torture; (2) the Court’s attention to the special considerations due to intersectional factors that aggravate violence against women committed against a woman who is indigenous, living in poverty, and in the *Rosendo Cantú* case, a child; and (3) the Court’s efforts to push Mexico to remove human rights violations from the jurisdiction of its military courts to that of its civilian courts. Additionally, the Court found Mexico responsible not only for violations of the American Convention on Human Rights but also for violations of Article 7(b) of the Convention of Belém do Pará, including the obligation of due diligence in the investigation and prosecution of VAW. While Mexico has made some progress in implementing the reparations ordered in these cases, much remains to be done.

b) Facts

These cases both involve the rape of indigenous women by armed military personnel, followed by the State’s failure to provide adequate health care and to investigate. Both cases also raise the problem of Mexico’s policy of allowing human rights violations committed by military personnel to be investigated and prosecuted under military rather than civilian jurisdiction.

(1) *Rosendo Cantú v. Mexico (August 31, 2010)*

Mrs. Cantú is a member of an indigenous community in the Mexican state of Guerrero.⁴⁷⁷ At the time of the crime, she was 17 years old, married, had a young daughter, and did not speak

⁴⁷⁶ Karen Musalo and Blaine Bookey, *Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala*, *Hastings Poverty & Race Law Journal*, Vol. 10, (2013) p. 270, available at http://cgrs.uchastings.edu/sites/default/files/Musalo_Bookey_CrimesWithoutPunishment_2013.pdf (citing to *Geneva Declaration on Armed Violence and Development, Global Burden of Armed Violence 2011: When the Victim is a Woman*, p. 120 (2011), available at <http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence>).

⁴⁷⁷ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 72.

Spanish fluently.⁴⁷⁸ At that time, the Mexican military maintained a heavy presence in Guerrero, where the indigenous communities of the State were particularly vulnerable to military abuses, and indigenous women were particularly vulnerable.⁴⁷⁹

On February 16, 2002, when Mrs. Cantú was washing laundry at a stream near her home, eight Mexican soldiers surrounded her and questioned her about a list of men while threatening her with a weapon.⁴⁸⁰ When she indicated that she did not know the people they were asking her about, one soldier hit her in the stomach with the weapon, which made her fall to the floor and briefly lose consciousness.⁴⁸¹ The soldiers pulled her hair and threatened to kill her and everyone in her village if she did not provide the information.⁴⁸² Two soldiers subsequently pushed her to the floor and raped her.⁴⁸³ After she returned home and informed her family, Mrs. Cantú's husband immediately filed a complaint with the authorities of the community.⁴⁸⁴

The rape of Mrs. Cantú took place in a context where such violence against indigenous women by military officials commonly took place with impunity; as the Court observed in its judgment, “between 1997 and 2004, complaints were filed in six cases of rape of indigenous women attributed to members of the Army in the state of Guerrero, which were all heard in the military justice system, and there is no evidence that those responsible have been punished in any of these cases.”⁴⁸⁵

Mrs. Cantú sought medical care for abdominal injuries 2 days after the incident and again four years later from a hospital in a town eight hours walking distance from her community.⁴⁸⁶ About 10 days after she was raped, Mrs. Cantú filed a complaint for human rights violations against

⁴⁷⁸ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, paras. 72, 93.

⁴⁷⁹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, paras. 70-72.

⁴⁸⁰ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 73.

⁴⁸¹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 73.

⁴⁸² IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 73.

⁴⁸³ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, paras. 73,106.

⁴⁸⁴ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 74.

⁴⁸⁵ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 71.

⁴⁸⁶ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 75.

“members of the Mexican army” before the National Human Rights Commission.⁴⁸⁷ She also petitioned the Governor of Guerrero to intervene on her behalf and take disciplinary action against her community’s health clinic and filed a complaint for the crime of rape with the local Public Prosecutor’s Office.⁴⁸⁸

Mrs. Cantú’s criminal complaint suffered various delays and procedural obstructions, and the State transferred the investigation between civilian and military jurisdiction multiple times over approximately seven years.⁴⁸⁹ Between June 7, 2002 and April 29, 2003, Mrs. Cantú attempted several times to challenge military jurisdiction without success.⁴⁹⁰ The Court found “that Mrs. Rosendo Cantú was unable to contest the military jurisdiction’s competence to hear matters that, by their nature, should correspond to the authorities of the ordinary [non-military] jurisdiction.”⁴⁹¹

(2) **Fernández Ortega v. Mexico (August 30, 2010)**

Mrs. Inés Fernández Ortega is also a member of an isolated indigenous community in the Mexican state of Guerrero, where indigenous women were particularly vulnerable to military abuses.⁴⁹² At the time of the crime, she was 25 years old, married, and had four children.⁴⁹³

On March 22, 2002, a group of eleven armed Mexican soldiers came to Mrs. Ortega’s home; three of them entered the home and interrogated her at gunpoint.⁴⁹⁴ She did not answer their questions “because she did not understand Spanish well and because she was afraid.”⁴⁹⁵ One of the soldiers then ordered her to lie on the floor and raped her while the other two observed.⁴⁹⁶

⁴⁸⁷ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 76.

⁴⁸⁸ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, paras. 76, 78.

⁴⁸⁹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, paras. 142-155.

⁴⁹⁰ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 145.

⁴⁹¹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 166.

⁴⁹² IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, paras. 78-80.

⁴⁹³ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 80.

⁴⁹⁴ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, paras. 81-82.

⁴⁹⁵ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 82.

⁴⁹⁶ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, paras. 82, 108.

The next day, Mrs. Ortega's husband submitted a complaint to the Commission for the Defense of Human Rights of Guerrero, with the assistance of the *Organización del Pueblo Indígena Me'paa en Ayutla de los Libres* [Organization of Indigenous Me'Paa People in Ayutla de los Libres].⁴⁹⁷ On March 24, 2002, Mrs. Ortega submitted a complaint with the Public Prosecutor of Allende; this office attempted to turn away the complaint when she indicated that soldiers had committed the rape.⁴⁹⁸

The Public Prosecutor's Office referred Mrs. Ortega to a nearby hospital for a medical gynecological examination; because no female doctor was available, Mrs. Ortega had to wait until the next day to be examined.⁴⁹⁹ The doctor found no "signs of violence" and ordered laboratory tests, which were not performed because the hospital did not have the "required chemical reagents."⁵⁰⁰ Subsequent laboratory analysis performed on July 5, 2002 showed results consistent with Mrs. Ortega's claims, but authorities subsequently failed to perform additional testing, stating that the samples had been "used up."⁵⁰¹

Between 2002 and 2010, the investigation of Mrs. Ortega's complaint was delayed and complicated by transfers between civilian and military jurisdiction, and federal and state jurisdiction in a manner similar to the complaint in the *Rosendo Cantú* case.⁵⁰²

c) Procedural History before the Inter-American Human Rights System:

(1) Provisional Measures

In both cases, the Court issued provisional measures to protect the life and integrity of the alleged victims while the cases were pending before the Court.⁵⁰³ At the time that the Court issued its judgments, these provisional measures were still in effect.⁵⁰⁴

⁴⁹⁷ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 84.

⁴⁹⁸ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 85.

⁴⁹⁹ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, paras. 85-86.

⁵⁰⁰ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, paras. 86-87.

⁵⁰¹ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, paras. 88-89, 112.

⁵⁰² IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 161.

⁵⁰³ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 15; IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 15.

(2) Rosendo Cantú v. Mexico

On November 10, 2003, Valentina Rosendo Cantú submitted a petition to the Inter-American Commission on Human Rights, with the assistance of the *Organización Indígena de Pueblos Mixtecos y Tlapanecos* [the Indigenous Organization of the Mixtec and Tlapanec People], the *Centro de Derechos Humanos de la Montaña 'Tlachinollan'* [Tlachinollan Human Rights Center of the Mountain], and the *Centro de Derechos Humanos Miguel Agustín Pro Juárez* [The Miguel Agustín Pro Juárez Human Rights Center].⁵⁰⁵ The Commission found the petition admissible on October 21, 2006, approved its report on the merits on March 27, 2009, and submitted the case to the Court on July 31, 2009.⁵⁰⁶ The Inter-American Court of Human Rights held a public hearing on May 27, 2010 and issued its judgment on August 31, 2010.⁵⁰⁷

The Commission “asked the Court to declare the State responsible for the violation of Articles 5 (Right to Personal Integrity), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), 11 (Right to Privacy [Honor and Dignity]), and 19 (Rights of the Child) of the American Convention, in relation to the general obligation to respect and ensure human rights established in Article 1(1) thereof, to the detriment of Mrs. Rosendo Cantú.”⁵⁰⁸ It also asked the Court to declare the State responsible for the violation of Article 5 (Right to Personal Integrity) of the Convention to the detriment of her daughter.⁵⁰⁹ Finally, it asked the Court to declare Mexico responsible for the violation of Article 7 of Belém do Pará and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, all to the detriment of Mrs. Rosendo Cantú.⁵¹⁰

Mrs. Cantú’s representatives agreed with the Commission’s recommendations, but additionally asked the Court to declare Mexico responsible for the violation of Articles 5 (Right to Humane Treatment [Personal Integrity]), 11 (Right to Privacy [Honor and Dignity]), 8 (Judicial Guarantees), and 25 (Judicial Protection) of the American Convention, to the detriment of the next of kin of Mrs. Rosendo Cantú; Article 24 (Right to Equal Protection) in relation to the other rights argued, and Article 2 of the Convention (Domestic Legal Effects), in relation with Articles

⁵⁰⁴ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 15; IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 15.

⁵⁰⁵ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 1.

⁵⁰⁶ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 1.

⁵⁰⁷ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 8.

⁵⁰⁸ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 3.

⁵⁰⁹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 3.

⁵¹⁰ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 3.

8 and 25 of the same, 1, 6, and 8 of the Convention against Torture, and 7 of the Convention of Belém do Pará, to the detriment of Mrs. Rosendo Cantú.⁵¹¹

(3) Fernández Ortega v. Mexico

Inés Fernández Ortega, with the assistance of the *Organización Indígena de Pueblos Tlapanecos* [the Indigenous Organization of the Tlapanec People] and the *Centro de Derechos Humanos de la Montaña 'Tlachinollan'* [Tlachinollan Human Rights Center of the Mountain] submitted a petition on June 14, 2004 to the Inter-American Commission on Human Rights (IACHR).⁵¹² The Commission found the petition admissible on October 21, 2006, approved its report on the merits on October 30, 2008, and submitted the case to the Court in May 2009.⁵¹³ The Inter-American Court of Human Rights held a public hearing on April 15, 2010 and issued its judgment on August 30, 2010.⁵¹⁴

The Commission asked the Court to declare the State responsible for the violation of Articles 5 (Right to Humane Treatment [Personal Integrity]), 8 (Right to a Fair Trial [Judicial Guarantees]) and 25 (Right to Judicial Protection) of the American Convention, in relation to the general obligation to respect and ensure human rights established in Article 1(1) thereof, to the detriment of Mrs. Fernández Ortega and her husband, children, mother, and brothers.⁵¹⁵ It also asked the Court to declare Mexico responsible for the violation of Article 11 (Right to Privacy [Honor and Dignity]) of the American Convention, in relation to the general obligation to respect and ensure human rights established in Article 1(1) thereof, and of Article 7 of the Convention of Belém do Pará, to the detriment of Mrs. Fernández Ortega.⁵¹⁶ Finally, the Commission asked the Court to declare Mexico responsible for violations of Articles 1, 6, and 8 of the Inter-American Convention Against Torture.⁵¹⁷

Mrs. Ortega's representatives agreed with the Commission's recommendations and additionally asked the Court to declare Mexico responsible for a violation of the obligation to adopt domestic legislative measures (Article 2 of the Convention), as well as the alleged violation of the rights to

⁵¹¹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 4.

⁵¹² IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 1.

⁵¹³ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 1.

⁵¹⁴ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 8.

⁵¹⁵ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 3.

⁵¹⁶ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 3.

⁵¹⁷ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 3.

freedom of association and to equal protection of the law (Articles 16 and 24 of the Convention, respectively).⁵¹⁸

d) Decisions on the Merits

(1) Rosendo Cantú v. Mexico

The Court held Mexico responsible for the rape Mrs. Cantú suffered and the continual challenges she faced accessing justice following the violence. The Court primarily relied on the American Convention on Human Rights, but also found violations of the Inter-American Convention to Prevent and Punish Torture and the Convention of Belém do Pará.

The Court held that Mexico was “responsible for the violation of the rights to personal integrity, dignity, and private life, enshrined, respectively, in Articles 5(1) and 5(2), 11(1), and 11(2) of the American Convention on Human Rights . . . and Articles 1, 2, and 6 of the Inter-American Convention to Prevent and Punish Torture, and did not meet the obligations which arise from Article 7(a) of the [Convention of Belém do Pará], to the detriment of Mrs. Rosendo Cantú.”⁵¹⁹ With respect to Mrs. Cantú’s daughter, the Court held that Mexico was “responsible for the violation of the right to personal integrity, enshrined in Article 5(1) of the American Convention on Human Rights.”⁵²⁰

It further held that Mexico was “responsible for the violation of the right to judicial guarantees and judicial protection, established in Article 8(1) and 25(1) of the American Convention on Human Rights, to the detriment of Mrs. Rosendo Cantú: a) in relation with Article 1(1) and 2 thereof, . . . and b) in relation to Article 1(1) of the American Convention, and the State did not comply with the obligation established in Article 7(b)” of the Convention of Belém do Pará.⁵²¹ The Court also found that “Mexico did not comply with the obligation to guarantee, without discrimination, the right to access to justice . . . to the detriment of Mrs. Rosendo Cantú.”⁵²²

⁵¹⁸ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 4.

⁵¹⁹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 195(3).

⁵²⁰ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 195(4).

⁵²¹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 195(6).

⁵²² IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 195(6).

Finally, the Court held that Mexico was “responsible for the violation of the rights of the child, enshrined in Article 19 of the American Convention on Human Rights, in relation with Article 1(1) thereof, to the detriment of Mrs. Rosendo Cantú[.]”⁵²³

(a) Mexico Made Partial Acknowledgment of International Responsibility

The Mexican State acknowledged before the Court the following:

First, that the absence of specialized medical care for Mrs. [...] Rosendo Cantú when she filed criminal charges, constitutes a flagrant violation of Article 8(1) of the American Convention. Second, that the lack of specialized attention to Mrs. [...] Rosendo Cantú, given that she was a minor at the time the criminal charges were filed, constitutes non-compliance of the Mexican State to protect the rights of the child enshrined in Article 19 of the American Convention on Human Rights. Third, that there have been delays and absence of due diligence in the investigations, and therefore, there have been different violations of Articles 8(1) and 25 of the American Convention on Human Rights. Fourth, that given the delay in the investigations there exists a violation of Article 5(1) of the same legal instrument with regard to the psychological integrity of Mrs. [...] Rosendo Cantú. These facts and their impact on the compliance of the obligations derived from the American Convention on Human Rights are the only responsibilities acknowledged by the Mexican State.⁵²⁴

(b) The Court Evaluated the Case in the Specific Context of Violence Against Women

The Court specifically reviewed this case as an incident of violence against women. This case is significant because the Court considered what makes violence against women different than other rights' violations. The Court stated, “as indicated by the Convention of Belém do Pará, [...] violence against women constitutes not only a violation of human rights, but is ‘an offense against human dignity and a manifestation of the historically unequal power relations between women and men,’ that ‘pervades every sector of society, regardless of class, race, or ethnic group, income, culture, level of education, age or religion, and strikes at its very foundation.”⁵²⁵

Specifically, the Court stated that, “rape constitutes a paradigmatic form of violence against women, and its consequences go far beyond affecting the victim.”⁵²⁶ The Court further defined the scope of sexual violence beyond physical contact stating that “sexual violence is committed by means of acts of a sexual nature, committed on a person under circumstances against their

⁵²³ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 195(8).

⁵²⁴ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 16.

⁵²⁵ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 108.

⁵²⁶ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 109.

will, and that in addition to involving physical invasion of the human body, they may include acts which do not involve penetration or even any physical contact.”⁵²⁷

(c) Right to Personal Integrity

Despite Mexico's acknowledgement of international responsibility, the Court nevertheless found a violation of Mrs. Cantú's personal integrity beyond what Mexico acknowledged.⁵²⁸ The violations of her personal integrity included the treatment she received when she filed the complaint before the authorities, the obstacles she faced in the pursuit of justice, and the feelings of fear owing to the military presence.⁵²⁹

The Court concluded that the State was responsible for failing to comply with the obligation “to refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation” to the detriment of Mrs. Rosendo Cantú.⁵³⁰ Furthermore, the Court concluded “the rape in this case entailed a violation of Mrs. Rosendo Cantú's personal integrity, constituting an act of torture.”⁵³¹

The Court also concluded that the rape and impunity Mrs. Cantú faced caused emotional trauma to her daughter in violation her daughter's rights to personal integrity.⁵³² Specifically, Mrs. Cantú's daughter suffered when she was removed from her community, her indigenous culture and faced the breakup of her family.⁵³³

(d) Right to Judicial Guarantees

The men who raped Mrs. Cantú were tried under the military jurisdiction. The Court found that this lead to a violation of the right to judicial guarantees for the victim and found that accusations of rape should be adjudicated before ordinary or civilian courts, and not before a military tribunal. The Court found that “the rape of a person by military personnel bears no relation, in

⁵²⁷ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 109.

⁵²⁸ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 127.

⁵²⁹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 128.

⁵³⁰ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 121.

⁵³¹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 118.

⁵³² IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 139.

⁵³³ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 138.

any case, to military discipline or mission.”⁵³⁴ In addition, the Court held that the formal existence of remedies is not sufficient, rather they must be effective.⁵³⁵

The Court concluded that “the State violated the rights to a fair trial and judicial protection . . . to the detriment of Mrs. Rosendo Cantú.”⁵³⁶ Furthermore, the Court found that “the State failed to comply with its obligations under the requirement to provide effective measures to exercise the right to a fair trial and judicial protection,⁵³⁷ by extending the jurisdiction of the military justice system to crimes that have no specific connection to military discipline or to juridical rights inherent to the military justice system.”⁵³⁸

(e) Right to a Fair Trial and Judicial Protection

The Court held that the State violated Mrs. Cantú's rights to a fair trial and to judicial protection as recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, and did not comply with the obligations to apply due diligence to prevent, punish, and eradicate violence against women, pursuant to Article 7(b) of the Convention of Belém do Pará.⁵³⁹ According to the Court, “when an act of violence against a woman occurs, it is particularly important that the authorities in charge of the investigation carry it out in a determined and effective manner, taking into account society’s obligation to reject violence against women and the State’s obligation to eliminate it and to ensure that victims trust the State institutions there for their protection.”⁵⁴⁰

The Court interpreted Mexico’s obligations under the American Convention by looking at the Convention of Belém do Pará, which requires States parties to apply due diligence to prevent, punish, and eradicate violence against women.⁵⁴¹ For example, in cases of rape, “insofar as possible, the investigation must try to avoid re-victimization or the re-experiencing of the profoundly traumatic experience each time the victim recalls or testifies about what

⁵³⁴ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 161.

⁵³⁵ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 167.

⁵³⁶ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 161.

⁵³⁷ Article 2 of the American Convention, in connection with Articles 8 and 25 thereof.

⁵³⁸ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 163.

⁵³⁹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 182.

⁵⁴⁰ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 177.

⁵⁴¹ OAS, Convention of Belém do Pará, Article 7(b); IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 177.

happened.”⁵⁴² The Court concluded that “the State authorities did not act with due diligence in the investigation of the rape of Mrs. Rosendo Cantú, which, in addition, exceeded a reasonable period of time.”⁵⁴³

(f) Rights of the Child

The decision also illustrates the additional vulnerability that young women victims of violence face. In addition to being indigenous and a woman, at the time of the rape, Mrs. Rosendo Cantú was a seventeen-year-old girl.⁵⁴⁴ The Court relied on the American Convention to find that the State violated Mrs. Rosendo Cantú’s “right to special protection given [her] status as a girl child”⁵⁴⁵ who was also indigenous, “given that indigenous children whose communities are affected by poverty find themselves in a particular situation of vulnerability.”⁵⁴⁶ The Court further specified the procedures and guarantees States must put in place to address situations where girls have been victims of violence.”⁵⁴⁷

(g) Added Vulnerability because of Mrs. Cantú’s Status as an Indigenous Woman

The Court highlighted how women are often especially vulnerable to violence on account of their multiple marginalized statuses. The Court placed special importance on the vulnerable situation of Mrs. Cantú given the fact that in addition to being a woman, she was also a member of an indigenous community, which led to additional difficulties in her search for justice. For example, Mrs. Cantú was not provided “a translator by the State when she required medical care, or when she filed her initial complaint; nor did she receive information, in her own language, about the subsequent steps taken regarding her complaint.”⁵⁴⁸ According to the Court, this constituted “an unjustified impairment of her right to obtain justice.”⁵⁴⁹

⁵⁴² IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 180.

⁵⁴³ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 182.

⁵⁴⁴ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 198.

⁵⁴⁵ Article 19 of the American Convention, in relation with Article 1(1) thereof; IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 202.

⁵⁴⁶ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 201.

⁵⁴⁷ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 201.

⁵⁴⁸ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 185.

⁵⁴⁹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 185.

(2) Fernández Ortega v. Mexico

In this case the Court found Mexico responsible for the violation of the rights to personal integrity, dignity, and private life (Articles 5(1), 5(2), 11(1), and 11(2) ACHR), in relation to Articles 1, 2, and 6 of the Inter-American Convention to Prevent and Punish Torture, as well as for the noncompliance of the obligation to refrain from engaging in acts of violence against women, pursuant to Article 7(a) of the Convention of Belém do Pará, to the detriment of Mrs. Fernández Ortega.⁵⁵⁰ In addition, the Court found Mexico responsible for the violation of the right to personal integrity (Article 5(1) ACHR) of her husband and children.⁵⁵¹ The Court also found the State responsible for violating Mrs. Fernández Ortega, her husband, and her children's right to not be the object of arbitrary or abusive interference with private life (Article 11(2) ACHR);⁵⁵² for violating Mrs. Fernández Ortega's right to judicial guarantees and judicial protection (Articles 8(1) and 25(1) ACHR, in relation to Articles 1(1) and 2 thereof), and for not complying with the obligation to apply due diligence to prevent, investigate and impose penalties for violence against women (Article 7(b) CBP). Finally, the Court found that Mexico did not comply with the obligation to guarantee, without discrimination, access to justice (Articles 8(1) and 25(1) ACHR) to the detriment of Mrs. Fernández Ortega.

(a) Mexico Partially Acknowledged International Responsibility

As in *Rosendo Cantú v. Mexico*, Mexico also acknowledged international responsibility in this case. The Court “classified the acknowledgement as a partial admission of the facts and a partial acquiescence to the legal claims.”⁵⁵³ Nevertheless, the Court observed that the dispute between the parties remained “with regard to the facts and claims relating to the alleged violations of the rights to personal integrity, judicial guarantees, honor and dignity, freedom of association, equality before the law, and judicial protection.”⁵⁵⁴ The Mexican State acknowledged the following before the Court:

First, that the absence of specialized medical care for Mrs. Fernández Ortega, which should have included the psychological and not merely the physical aspect, and which should have been provided immediately, constitutes a flagrant violation of Article 8(1) of the American Convention. Second, that the destruction of the scientific evidence taken from the victim also constituted a flagrant violation Article 8(1) of the American

⁵⁵⁰ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 308(3).

⁵⁵¹ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 308(4).

⁵⁵² IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 308(6).

⁵⁵³ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 24.

⁵⁵⁴ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 26.

Convention. Third, that despite the efforts made by the authorities, there have been delays and absence of due diligence in the investigations; therefore, there have been different violations of Articles 8(1) and 25 of the American Convention and, consequently, also of Article 5(1) thereof, with regard to the mental integrity of Mrs. Fernández Ortega.⁵⁵⁵

(b) Right to Humane Treatment and Personal Integrity

The Court reiterated its discussion of the right to humane treatment and personal integrity found in the *Rosendo Cantú* decision and highlighted how rape can constitute torture taking into consideration “the intention, the severity of the suffering, and the purpose of the act.”⁵⁵⁶ The Court considered “that, in general terms, rape, as in the case of torture, has other objectives, including intimidating, degrading, humiliating, punishing, or controlling the person who undergoes it.”⁵⁵⁷ The Court concluded that the rape in the present case constituted an act of torture and therefore a violation of Mrs. Fernández Ortega’s right to personal integrity.⁵⁵⁸

(c) Right to Privacy

The Court determined that the concept of privacy includes a person’s sexual life,⁵⁵⁹ and found that “the rape of Mrs. Fernández Ortega violated essential aspects and values of her private life, represented an intrusion in her sexual life, and annulled her right to decide freely with whom to have intimate relations, causing her to lose total control over these most personal and intimate decisions, and over her basic bodily functions.”⁵⁶⁰ The Court also reiterated that “the protection of private life, family life, and residence, implies the recognition that a personal space exists that must be free and immune from abusive or arbitrary invasions or aggressions by third parties or the public authorities.”⁵⁶¹ In this case, the Court found that Mrs. Ortega’s rape constituted a violation of the right to privacy and that Mexico failed to provide protection of Mrs. Ortega’s honor and dignity.⁵⁶² The Court also determined that, “military soldiers entering Mrs. Fernández

⁵⁵⁵ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 30, 2010, Series C No. 215, para. 16.

⁵⁵⁶ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 30, 2010, Series C No. 215, para. 128.

⁵⁵⁷ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 30, 2010, Series C No. 215, para. 127.

⁵⁵⁸ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 30, 2010, Series C No. 215, para. 128.

⁵⁵⁹ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 30, 2010, Series C No. 215, para. 129.

⁵⁶⁰ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 30, 2010, Series C No. 215, para. 129.

⁵⁶¹ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 30, 2010, Series C No. 215, para. 157.

⁵⁶² IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 30, 2010, Series C No. 215, para. 129.

Ortega's residence without documented legal authorization to do so, and without the consent from its occupants, constituted an arbitrary and abusive interference at her family residence."⁵⁶³

(d) Right to Personal Integrity

The Court accepted Mexico's acknowledgement of international responsibility for violating Mrs. Ortega's right to personal integrity. Taking into account the recognition of State responsibility, the Court declared, "that Mexico violated the right to personal integrity of Mrs. Fernández Ortega."⁵⁶⁴ The Court also recognized a violation of Mrs. Fernández Ortega's right to personal integrity in connection with the treatment she received by state authorities following the rape, as well as in connection to her "feelings of deep fear caused by military presence and the powerlessness related to the lack of justice in her case".⁵⁶⁵

(e) Right to Personal Integrity of Mrs. Fernández Ortega's Family

The Court recognized that violence against women has consequences that extend beyond the victim of the violence and that the State must provide protections to the victim's family.⁵⁶⁶ The Court held that Mrs. Fernández Ortega's family's right to psychological and moral integrity were violated because of the additional pain they suffered as a result of the particular circumstances of the violations perpetrated against their mother or wife⁵⁶⁷ and by the subsequent actions or omissions of State officials.⁵⁶⁸ The Court concluded "that the rape of Mrs. Fernández Ortega as well as the facts related to the pursuit of justice and impunity in the present case, involved a violation of the right to personal integrity" of Mrs. Ortega's husband and children.⁵⁶⁹ The Court found no violation of the right to personal integrity of Mrs. Fernández Ortega's brother, sister and mother.⁵⁷⁰

⁵⁶³ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 158.

⁵⁶⁴ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 138.

⁵⁶⁵ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 137.

⁵⁶⁶ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 143.

⁵⁶⁷ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 143.

⁵⁶⁸ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, paras. 143-146.

⁵⁶⁹ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 149.

⁵⁷⁰ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 154.

(f) Right to Judicial Guarantees (and due diligence in investigations of rape)

As in *Rosendo Cantú v. Mexico*, Mexico prosecuted in its military jurisdiction the soldiers who raped Mrs. Fernández Ortega. The Court reaffirmed that military jurisdiction was not appropriate in such cases since “the rape of someone by military personnel bears [no] relationship to the military discipline or mission.”⁵⁷¹ Consequently, the Court found that the State failed to comply with the obligation to provide the right to a fair trial and judicial protection to Ms. Fernández Ortega in a court of ordinary jurisdiction.⁵⁷²

The Court also reaffirmed that due diligence in investigations of violence against women is critical to providing access to justice. The Court concluded that the State authorities did not act with due diligence in the investigation of the rape and found that the State violated the rights to judicial guarantees and to judicial protection, to the detriment of Mrs. Fernández Ortega.⁵⁷³ The Court also highlighted several steps States should follow in carrying out a criminal investigation for rape with due diligence.⁵⁷⁴

Finally, the Court stated that pursuant to the principle of non discrimination, “in order to guarantee access to justice to members of indigenous communities, it is indispensable that States offer effective protection that considers the particularities, social and economic characteristics, as well as their situation of special vulnerability, customary law, values, customs, and traditions.”⁵⁷⁵ Here, the Court found that the State discriminated against Mrs. Fernández Ortega by, *inter alia*, not providing a translator to help her present her claims and understand the process, which constitutes a violation of her right to access justice without discrimination.⁵⁷⁶

e) Reparations

In *Rosendo Cantú et al. v. Mexico* the Court ordered the State to, *inter alia*, investigate the violations, prosecute those responsible, and ensure participation of the victim in all the proceedings;⁵⁷⁷ reform and limit military jurisdiction to exclude rape prosecutions;⁵⁷⁸ publicly

⁵⁷¹ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 177.

⁵⁷² IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 179.

⁵⁷³ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 198.

⁵⁷⁴ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 194.

⁵⁷⁵ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 200.

⁵⁷⁶ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 201.

⁵⁷⁷ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, paras. 211-214.

acknowledge the State's responsibility in this case;⁵⁷⁹ publish the judgment;⁵⁸⁰ modify its rape investigation protocol, in light of the Istanbul Protocol;⁵⁸¹ provide training on how to diligently investigate crimes of violence against women with an ethnic and gender perspective,⁵⁸² and provide human rights education for the armed forces;⁵⁸³ provide the victims with appropriate medical and psychological treatment;⁵⁸⁴ provide scholarships for Mrs. Rosendo Cantú and her daughter;⁵⁸⁵ continue to offer services for women victims of sexual violence through a health center that must be improved through the provision of material resources and personnel;⁵⁸⁶ continue the awareness and sensitization campaign of the population regarding the prohibition and effects of violence and discrimination against indigenous women,⁵⁸⁷ and provide monetary compensation to Mrs. Rosendo Cantú and her daughter.⁵⁸⁸

Similarly, in *Fernández Ortega v. Mexico* the Court ordered the State to, *inter alia*, investigate the violations, prosecute those responsible, and ensure participation of the victim in all the proceedings;⁵⁸⁹ reform and limit military jurisdiction to exclude rape prosecution;⁵⁹⁰ perform a public act of acknowledgment of responsibility and publish the judgment;⁵⁹¹ provide the medical

⁵⁷⁸ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 220.

⁵⁷⁹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 226.

⁵⁸⁰ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 229.

⁵⁸¹ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 241.

⁵⁸² IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 246.

⁵⁸³ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 249.

⁵⁸⁴ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 252.

⁵⁸⁵ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 257.

⁵⁸⁶ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 260, 263.

⁵⁸⁷ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 267.

⁵⁸⁸ IACtHR, *Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, para. 274.

⁵⁸⁹ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 308 (11 and 12).

⁵⁹⁰ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 308 (13).

⁵⁹¹ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 308 (16).

and psychological treatment required by the victims;⁵⁹² provide training on how to diligently investigate cases of VAW and include an ethnic and gender perspective in the investigation;⁵⁹³ grant scholarships to Mrs. Ortega's children and establish a community center (Women's Center) where educational activities regarding human rights and the rights of women can be carried out;⁵⁹⁴ assure that adequate attention services for women victims of sexual violence are offered by State institutions via the provision of medical resources and personnel with proper training,⁵⁹⁵ and pay monetary compensation to Mrs. Fernández Ortega, her husband, and children.⁵⁹⁶

f) Compliance

Given the similarity of these two cases the Court issued a combined compliance order for *Fernández Ortega* and *Rosendo Cantú* on November 21, 2014. The Court determined that Mexico had fully complied with the following five measures of reparations ordered: a) public acknowledgment of international responsibility; b) medical and psychological treatment; c) scholarship in Mexican public institutions; d) payment of compensation for pecuniary and non-pecuniary damages, and e) the reimbursement of costs and expenses.⁵⁹⁷

In the 2014 compliance order, the Court did not provide a ruling on other measures of reparations pending compliance in the two cases, including measures to remove the crime of rape from military jurisdiction.⁵⁹⁸ Independent research by the Clinic found that, in addition to the five measures of reparation the Court recognized in its 2014 compliance order, Mexico has also taken additional steps to comply with these judgments.⁵⁹⁹ For example, on January 9, 2014,

⁵⁹² IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 308 (17).

⁵⁹³ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 308 (18).

⁵⁹⁴ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 308 (21) - (22).

⁵⁹⁵ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 308 (24).

⁵⁹⁶ IACtHR, *Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 30, 2010, Series C No. 215, para. 308 (25).

⁵⁹⁷ IACtHR, *Fernández Ortega et al. and Rosendo Cantú et al. v. Mexico*. Supervision of Compliance Order of November 21, 2014, para. 3.

⁵⁹⁸ Inter-American Court of Human Rights, *Fernández Ortega et al. and Rosendo Cantú et al. v. Mexico*. Supervision of Compliance Order of November 21, 2014, para. 3.

⁵⁹⁹ Because it was released after the Clinic concluded its research, this report does not include information on a recent ruling of the Mexican Supreme Court regarding implementation of the Inter-American Court's judgments in these cases, which has been heavily criticized by human rights advocates for disregarding the criteria set by the Inter-American Court and for failing to incorporate a gender-sensitive perspective in its analysis. For more information, see Centro de Derechos Humanos de la Montaña Tlachinollan, "Concluye SCJN sin un análisis profundo en materia de género y etnicidad la revisión de las sentencias de la CoIDH en los casos de Inés y Valentina," (May 11, 2015), available in Spanish at <http://www.tlachinollan.org/comunicado-concluye-scjn-sin-un-analisis-profundo-en-materia-de-genero-y-etnicidad-la-revision-de-las-sentencias-de-la-coidh-en-los-casos-de-ines-y-valentina>.

Mexico initiated criminal proceedings (in non-military court) against two suspects.⁶⁰⁰ In April 2014, the Mexican legislature approved a reform of military jurisdiction.⁶⁰¹ In May 2014, Mexican Congress approved reforms to the Code of Military Justice restricting the scope of military jurisdiction.⁶⁰² According to the Inter-American Commission, “[u]nder these reforms, cases involving human rights violations committed by members of the military against civilians will be tried exclusively by the civilian justice system and not by military courts.”⁶⁰³ The Commission welcomed this reform as “an important step in the protection of fundamental rights in Mexico and in the fulfillment of the State of Mexico’s international human rights obligations, primarily regarding guarantees of the right to truth, justice, and reparation for victims and their family members.”⁶⁰⁴

On April 17, 2015, the Court recognized these advances in a separate compliance order on the reparation ordering Mexico to take measures to remove human rights violations from military jurisdiction, with respect to these two cases as well as *Radilla Pacheco v. Mexico*.⁶⁰⁵ The Court found that although Mexico’s reform of military jurisdiction partially complied with this reparation, it did not fully conform to Mexico’s human rights obligations because it did not clearly remove investigations of human rights violations committed by military personnel against civilians from military jurisdiction, nor did it address human rights violations committed by military personnel against other military personnel.⁶⁰⁶ With respect to the remaining reparations, the Court will issue further compliance orders at another time.

g) Conclusion

These two Inter-American Court judgments against Mexico are important because they develop jurisprudence on VAW that focuses on several issues, including that of rape by military officials; rape as torture; rape as a crime not to be prosecuted before military courts; the right of access to justice without discrimination; the right to privacy as an independent substantive violation in a

[y-valentina/](#); Sputnik, “México rechaza criterios interamericanos en casos de tortura sexual de indígenas,” (May 12, 2015), available in Spanish at <http://mundo.sputniknews.com/americalatina/20150512/1037303395.html>.

⁶⁰⁰ WOLA, *Historic Achievement in Emblematic Human Rights Case in Mexico*, Press Release of January 11, 2014, available at http://www.wola.org/news/historic_achievement_in_emblematic_human_rights_case_in_mexico.

⁶⁰¹ CEJIL, *CEJIL Celebrates Historic Reform of Mexico’s Military Justice Code*, Press release of May 2, 2014, available at <http://cejil.org/en/comunicados/cejil-celebrates-historic-reform-mexico%E2%80%99s-military-justice-code>; IHRC Interview with Vanessa Coria (April 24, 2014) (notes on file with authors).

⁶⁰² IACHR, *IACHR Welcomes Military Justice Reforms in Mexico*, Press Release of May 9, 2014, available at http://www.oas.org/en/iachr/media_center/PReleases/2014/053.asp.

⁶⁰³ IACHR, *IACHR Welcomes Military Justice Reforms in Mexico*, Press Release of May 9, 2014.

⁶⁰⁴ IACHR, *IACHR Welcomes Military Justice Reforms in Mexico*, Press Release of May 9, 2014.

⁶⁰⁵ Inter-American Court of Human Rights, *Radilla Pacheco, Fernández Ortega et al., and Rosendo Cantú et al. v. Mexico*, Supervision of Compliance Order of April 17, 2015, available in Spanish at http://www.corteidh.or.cr/docs/supervisiones/radilla_17_04_15.pdf.

⁶⁰⁶ Inter-American Court of Human Rights, *Radilla Pacheco, Fernández Ortega et al., and Rosendo Cantú et al. v. Mexico*, Supervision of Compliance Order of April 17, 2015, Considerations para. 20.

case of rape; and the particular vulnerability of indigenous women and girls who are victims of sexual violence. Furthermore these cases highlight the complementary nature between Article 7 of the Convention of Belém do Pará and the American Convention on Human Rights, particularly with regard to the obligation to investigate and prosecute crimes of VAW with due diligence.

V. Lessons learned about the normative framework to address VAW in the Americas and its implementation.

The landmark cases discussed above highlight several concerns about the normative framework that exists in the Inter-American Human Rights System to address VAW, but they also provide good examples of how the Inter-American Commission and the Inter-American Court are interpreting these norms creatively and how States are implementing these norms to prevent, punish, and eradicate VAW. The following sections will first address some of the concerns raised by this normative framework and then highlight some positive aspects of its implementation in the Americas.

A. Concerns about the normative framework

The Inter-American System addresses VAW specifically through the Belém do Pará Convention on the Prevention, Punishment and Eradication of All Forms of Violence against Women, and more generally through other regional instruments like the American Convention on Human Rights. The first concern about this normative framework is not really a critique of the actual norms, but a concern about the failure to universally ratify them by all Member States of the Organization of American States, and most notably by the United States. Two large and influential countries in the region, Canada and the U.S., have still not ratified the Belém do Pará Convention.⁶⁰⁷ The American Convention has not been ratified by 12 out of a total of 35 OAS Member States, including the United States as well.⁶⁰⁸ This lack of universal ratification of the normative framework on VAW leaves millions of women without the protection of such international norms and of their enforcement mechanisms. Consequently, when the Inter-American Commission has addressed VAW in the United States through its case system, for example, the Commission has had to rely on broad human rights standards derived from the

⁶⁰⁷ For information on signatories and ratifications of the Belém do Pará Convention, *see* <http://www.oas.org/juridico/english/sigs/a-61.html>.

⁶⁰⁸ For information on signatories and ratifications of the American Convention on Human Rights, *see* http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm.

American Declaration on the Rights and Duties of Man. As the name suggests, this general instrument is not an ideal source of law to address VAW.

Even in cases in which the Commission and the Court were able to address violations of the Belém do Pará Convention with regards to States Parties to that treaty, both organs had to rely on other regional instruments to address several of the main violations alleged in each case. The Belém do Pará Convention was more often used as a secondary source of obligations that can be used to interpret primary norms found in other treaties like the American Convention on Human Rights, than a primary source for litigation purposes. In fact, while the Belém do Pará Convention recognizes several rights women have and several duties States Parties have to prevent, punish and eradicate VAW, this treaty severely restricts its use in litigation before the Commission to a short list of duties found in Article 7. The Court had to stretch the language of the treaty to find it was competent to hear claims of violations of Article 7 of Belém do Pará, since the treaty itself makes no explicit mention of the Court as a possible forum. Such normative limitations in some ways force the Commission and the Court to look to other normative and jurisprudential sources of law to be able to fully address all the human rights violations associated with a case of VAW.

The cases discussed above also highlight how ratification of such international norms does not always lead to their effective domestic implementation. For example, these cases underscore the impunity that exists in VAW cases because of the failure of domestic justice administration systems to apply BDP in those states that have ratified it. Under Article 7(f) and 7(g) of BDP, Mexico, Brazil, Peru, and Guatemala all have an obligation to guarantee that women victims of violence have effective access to justice. Nevertheless, the cases above show that particularly vulnerable groups like indigenous and afro-descendant women in these states lack effective access to justice to seek remedies as victims of VAW. States like Peru and Guatemala continue to struggle with impunity for VAW as a result of this failure. Additionally, Article 8 of BDP require States Parties to provide specialized services and implement national plans to prevent, sanction, and eradicate VAW, but these cases show how states are struggling to implement existing laws and provide sufficient funds for such efforts. Although many states have adopted legislation to implement their obligations under the Belém do Pará Convention, enforcement remains a serious problem, showing that law is not enough. The fact that Guatemala is the only state with an anti-femicide law yet has the third highest rate of femicides in the world clearly illustrates this point. These realities demonstrate how difficult it is to change socio-cultural norms underlying VAW.

B. Success stories on the implementation of VAW norms in the Americas

Despite their shortcomings, norms and jurisprudence from the Inter-American System have resulted in domestic legislation and public policy reforms that provide greater protection for

women. OAS Member States have developed and harmonized domestic laws and practices with international standards under norms like the Belém do Pará Convention and the American Convention on Human Rights, often as a result of decisions from the Commission and Court. In this sense, Belém do Pará has had a positive influence in how VAW is defined and addressed in the region.

The cases highlighted above demonstrate that states like Mexico and Brazil are developing not only domestic norms but also educational campaigns on VAW that rely on the normative and jurisprudential framework of the Inter-American System, particularly the Belém do Pará Convention. These states are also developing national plans of action and protocols to address and investigate cases of VAW, which include trainings of the justice sectors to improve access to justice without discrimination, and avoid impunity.

VI. How the Experience of the Inter-American Human Rights System Informs the Need for a Global VAW Treaty

The experience of the Inter-American Human Rights System suggests that an international treaty on violence against women at the U.N. level is necessary to help fill a normative gap in international law, to frame violence against women as a human rights violation, and to complement preexisting efforts to combat violence against women. The experience of the Inter-American system with the Convention of Belém do Pará demonstrates the benefits of a specialized treaty on VAW and illustrates how an international treaty would help fulfill these goals.

First, a new international treaty would help fill a normative gap that exists in international law. At the U.N. level, VAW is not addressed as a specific human rights violation under current international treaties such as the Convention on the Elimination of all forms of Discrimination Against Women or the International Covenant on Civil and Political Rights. In the absence of specific protections, treaty bodies must address VAW as general human rights violations, such as violations of the right to personal integrity or access to justice, or worse, they fail to treat instances of VAW as human rights violations altogether.

However, as the jurisprudence of the Inter-American Commission and Court has made clear, general human rights treaties do not address with sufficient specificity the particular complexities and nuances that arise in cases of violence against women. They simply fall short from a normative perspective, forcing the Commission and the Court to be creative in their interpretation of such norms to be able to fully address the issues that come up in VAW cases. Prior to the Court's decisions in *Castro Castro* and *Cottonfield*, where the Court began to apply

the Belém do Pará Convention, the Court missed opportunities to find state responsibility for acts of VAW. The Convention of Belém do Pará has helped the Inter-American System to address violence against women directly and to inform the application of general human rights norms such as the right to personal integrity to the specific context of VAW. This history demonstrates the value of having a specialized treaty on VAW. An international treaty would facilitate similar normative development on a global scale as well.

Second, the experience of the IAHRS highlights the importance of incorporating VAW into an international human rights framework that focuses on state responsibility. An international treaty that definitively frames VAW as a human rights violation is particularly important to avoid the general perception that VAW is a private matter that states cannot or need not address. The Convention of Belém do Pará and decisions of the Commission and Court have pushed states to adopt laws and to take other steps to combat violence against women, including in situations where private parties commit the violence in question. Furthermore, the Commission and Court have drawn on their jurisprudence under the American Declaration and Convention in interpreting the Convention of Belém do Pará, and vice versa. This interplay between the specialized and the general treaties has helped to define the scope of the rights described in each, and helped firmly to establish VAW as a human rights violation.

Finally, an international treaty would complement rather than undermine existing regional initiatives to end violence against women. UN Special Rapporteur on VAW, Rashida Manjoo, supports the idea that the regional treaties were drafted for a specific regional context and as such, it would be inappropriate to presume that these standards apply globally; instead, the international human rights system needs its own international VAW treaty drafted specifically for that purpose. Furthermore, international human rights law holds a state to the highest standard to which it has acceded. Therefore, an international treaty would not preempt regional instruments or preexisting efforts to address violence against women; rather, it would fill gaps in the preexisting framework and would set new standards only to the extent that they are higher than the current standards. Just as the Convention of Belém do Pará has been a valuable source of guidance for the jurisprudence of the Inter-American Commission and Court under the American Declaration and Convention, an international treaty would complement regional instruments on VAW.

VII. Looking forward: specific recommendations for a new VAW treaty in light of the experience in the Inter-American Human Rights System

On the basis of the observations mentioned in the previous sections, the Clinic has come up with the following list of specific recommendations the Carr Center's Initiative may want to take into account as it moves forward in drafting and promoting a new international treaty on VAW:

1. An international treaty should require states to establish or empower a domestic body to implement and ensure compliance with the treaty. When no single domestic body is responsible for implementing a treaty, this situation sometimes leads to incomplete or ineffective implementation. This can be seen in the *Jessica Lenahan* case, in which the Department of Justice usually represents the United States in hearings before the Commission, but can often only report to the Commission that it lacks authority to implement many of the Commission's recommendations, including paying monetary reparations to victims of human rights violations. The United States has expressed its willingness to establish some sort of federal advisory committee that would work with federal and local government entities to implement decisions from international human rights bodies. The creation of such a body should be mandated under a new VAW treaty.

By requiring States Parties to establish or empower a domestic body to ensure compliance, the treaty would promote its effective implementation. These bodies would be responsible for carrying out recommendations and reporting to the treaty's compliance mechanism. The treaty could even go so far as to require States to empower these bodies to hear complaints of violations of the treaty. This would further lighten the load of the treaty's mechanism, making it more efficient while also allowing complaints to be resolved closer to home.

A related recommendation would be to incorporate in the text of a new VAW treaty a clear federalism clause that provides guidance on how federal states should comply with their treaty obligations. In federal states, the ultimate implementation of a treaty is often carried out at the local level. This can lead to problems, as is seen in the *Jessica Lenahan* case, when local governments refuse to implement the treaty and the federal government claims that it lacks the authority to step in and implement the treaty.

A federalism clause would make clear that a state remains responsible for violations of a treaty, even if the ultimate implementation of the treaty is delegated to local governments under the state's domestic laws. Although the principle embodied in federalism clauses is a general rule of

international law and thus not strictly necessary, it is best to make this principle explicit in order to clearly set forth a State Party's responsibilities.

2. An international treaty should explicitly state which rights contained within it are justiciable and which bodies have competence to hear such violations.⁶⁰⁹ The Convention of Belém do Pará allows the Inter-American Commission to hear complaints solely of violations of Article 7, but is silent regarding its other articles and the competence of the Inter-American Court. These ambiguities had to be litigated before the Commission and Court in order to resolve them. An international treaty should avoid this problem by explicitly stating which rights are justiciable. Making clear which rights are justiciable will also inform individuals of their rights and of the remedies that are available when those rights are violated. Making the treaty explicit about such issues will also help avoid unnecessary litigation.

3. One of the key rights that should be justiciable under any international treaty on violence against women is the right to access to justice. When victims of violence are denied access to justice, the violations of their rights are compounded by depriving them of remedies for the acts of violence they suffered. Furthermore, when perpetrators of violence go unpunished this creates a culture of impunity, which leads to further acts of violence. An international treaty should address this problem by providing a justiciable right to access to justice. This right should take into account the particularities, social and economic characteristics of victims, as well as their situation of special vulnerability, customary law, values, customs, and traditions. By recognizing such a right, a new VAW treaty will make clear that not only are acts of violence against women violations of their rights, but that states' failures to adequately investigate and prosecute the perpetrators of those acts are also violations that can lead to the state's international responsibility.

Furthermore, in light of the jurisprudence concerning the Mexico cases discussed above, a new VAW treaty should explicitly recognize that cases of rape and sexual violence should be adjudicated before ordinary or civilian courts, and not before a military tribunal. An explicit prohibition on the use of military courts to adjudicate cases involving rape and sexual violence will provide clear guidelines to States Parties and would require them to modify their domestic legislation accordingly. Preventing the use of military courts for such crimes of non-military nature would assist in guaranteeing women victims of violence their right to access justice.

4. The monitoring and compliance mechanism that will oversee the implementation and enforcement of an international VAW treaty should have adequate and sufficient resources to evaluate complaints and the follow-up to its recommendations in a timely manner. This has been

⁶⁰⁹ If a right is justiciable, then an individual has the ability to file a complaint against the State for a violation of her rights. If a right is nonjusticiable, then States have an obligation to respect, protect, and guarantee the right, but cannot be held internationally liable to individuals for specific alleged violations.

a problem in the Inter-American System, in which cases before the Commission and Court often take several years to resolve because of lack of resources and personnel. Ensuring that the treaty's mechanism is efficient will go beyond the mere text of the treaty itself. It could involve drawing on the support of other international organizations in related fields, as well as ensuring that it receives adequate funding.

5. An international treaty should require States Parties to consult with victims and civil society groups in implementing the judgments or recommendations of the treaty mechanism, and States should implement them in coordination with these groups. As is illustrated by the *María da Penha* case, implementing a treaty or recommendations of a treaty body often requires strong advocacy by civil society, and the specific means employed to fulfill these recommendations are often suggested by civil society. Requiring consultation with civil society will ensure that the implementation of the treaty is responsive to the needs of victims and of society in different States. It will also help to lighten the load of the treaty's mechanism by allowing civil society to propose recommendations and monitor their implementation. Requiring consultation with civil society groups will allow for more opportunities to develop innovative solutions to the problems they face.

6. An international treaty should empower its monitoring and compliance mechanism to make specific recommendations to States regarding implementation of the treaty, such as requiring the provision of special services. This recommendation is inspired by Brazil's response to the Commission's recommendations in *María da Penha*, which included establishing services such as specialized domestic violence courts, a call center, and women's police stations. The Inter-American Commission and Court have also often been creative in making recommendations and ordering reparations that go beyond monetary compensation. An explicit authorization about such creative reparation measures would help give the supervisory organ greater legitimacy in recommending them.

Enabling the treaty's mechanism to make specific recommendations will also help to ensure that the treaty is implemented effectively. The mechanism should be able to do more than simply order monetary compensation. Specific measures such as legal reform, conducting investigations, and acknowledging responsibility are often more important to both victims and society. If the treaty establishes a new, independent monitoring mechanism it will also be important to clearly state what types of recommendations it can make in order to avoid uncertainty regarding the scope of its powers.

7. An international treaty on VAW must explicitly recognize the different forms of obligations for a State to respect, protect, and guarantee freedom from violence to women. A new VAW treaty should be very specific about States Parties' obligations to respect, protect, and guarantee freedom from VAW, including due diligence obligations, and particularly with regards to the actions of private actors. Furthermore, the treaty should emphasize that these rights are

independently justiciable. That is, it should provide that a State can be held internationally responsible not only for its failure to respect freedom from VAW (a negative obligation), but also for its failure to prevent VAW committed by private individuals and for its failure to exercise due diligence in investigating and prosecuting such acts (a positive obligation). In the cases analyzed here, the Court had to look beyond the text of the Convention of Belém do Pará to define due diligence, although the treaty includes this obligation. A new treaty should include this due diligence principle with a more detailed definition, looking to the experience of the Inter-American System for guidance.

8. An international treaty should consider including and defining femicide or feminicide, as a particularly grave form of violence against women. The Convention of Belém do Pará does not include this term, which has resulted in varying definitions. As was mentioned above, the Court did not distinguish between the terms *femicide* and *feminicide* in the *Cottonfield* case, but some experts differentiate these terms by stating that a feminicide involves the killing of women on the basis of their gender specifically in a context of impunity due to a State's failure to protect, prevent, investigate and punish VAW.⁶¹⁰ Further research should be done on the disparate definitions that currently exist depending on the cultural context, to ensure that a new VAW treaty incorporates and recognizes the debate about this terminology. In any case, this definition should highlight femicide/feminicide as a particularly grave human rights violation.

9. A new treaty should include provide for heightened obligations to prevent VAW in the context of armed conflict. As the Court demonstrated in its analysis of the *Castro Castro* and *Las Dos Erres* cases, women are particularly vulnerable to violence during situations of armed conflict. States should be aware of this increased vulnerability and accordingly incorporate the specific obligation to protect against conflict-related violations as part of its broader obligations to respect women's rights and to exercise due diligence in preventing, investigating, and punishing VAW.⁶¹¹ This provision should also obligate States to provide gender-sensitive human rights training to their military and police personnel, as the Court ordered Peru and Guatemala to do in those cases.

10. An international treaty should specifically address violations of the rights of the child. The Convention of Belém do Pará does not include specific protections for children, so when the

⁶¹⁰ Secretariat of the Campaign of the United Nations Secretary General "UNETE" to put an end to violence against women, *La Regulación del Delito de Femicidio/Feminicidio en América Latina y el Caribe* ("Norms on the Crime of Femicide/Feminicide in Latin America and the Caribbean"), pp. 15-16, http://www.un.org/es/women/endviolence/pdf/reg_del_femicidio.pdf.

⁶¹¹ Doing so would also bring the new treaty more closely into line with the commitments made by States in this regard at the 57th session of the United Nations Commission on the Status of Women. See United Nations Secretary-General's Campaign to End Violence against Women, "Orange Day, 25 August 2013, 'Sexual Violence against Women and Girls in Conflict,' (August 2013), available at <http://www.un.org/en/women/endviolence/orangedayaugust2013.shtml>.

Court addressed the rape of a 17-year-old girl it had to rely instead on the American Convention on Human Rights to find a violation of the rights of the child. A new treaty should include specific reference to the rights of the child and the special protections due to children so as to avoid having to rely on other sources of law in cases involving children.

11. The right to honor and dignity should not be subsumed within other rights. In some of the cases discussed above, the Court declined to find a violation of the right to dignity and honor, stating that the facts connected to this alleged violation were better analyzed under other rights. The victims had requested the Court to declare a violation of the right to personal dignity separate from the other substantive violations. In social contexts of indigenous communities like theirs it was particularly important to do so, as personal honor is especially significant. Therefore, a new treaty or commentary to the treaty should explain that the right to honor and dignity should not be subsumed within another right recognized in the treaty.

12. A new VAW treaty must be accompanied by a universal ratification campaign. One lesson learned from the Inter-American System is that the states will routinely ignore recommendations from international bodies like the Inter-American Commission on Human Rights unless the source of law that authorizes such recommendations stems from a binding treaty. For example, in the *Jessica Lenahan* case the Commission interpreted the United States' obligations under the American Declaration on the Rights and Duties of Man in light of other more specific legal standards, but ultimately found a violation of the ADRDM and not of the other treaties the U.S. has not ratified. The Commission's creative interpretation of the ADRDM in this case highlights the normative gap that exists with regards to VAW for those states that have not ratified more specific treaties like the Convention of Belém do Pará. Ultimately, a lesson that can be derived from this experience would be that the creation of a new binding international treaty on VAW must be coupled with a strong ratification campaign aimed at providing diplomatic, grassroots and other forms of pressure to ensure its universal ratification and implementation, and to give legitimacy to the pronouncements of its supervisory organs.

VIII. CONCLUSION

In this report, the International Human Rights Clinic at Santa Clara Law has attempted to provide the Carr Center's Initiative on VAW with a summary of the normative framework and compliance mechanisms that address VAW in the Inter-American Human Rights System; an analysis of landmark decisions from the Inter-American Commission and Court, including the level of state compliance with the reparations ordered; a summary of lessons learned from the Inter-American System's experience with VAW, and some recommendations to consider as the Center moves forward in support of a specialized international VAW treaty.

In sum, the experience of the Inter-American System in addressing VAW through the Belém do Pará convention and other regional treaties has been mostly positive, but the cases highlighted here also demonstrate the limitations and barriers that still exist in implementing these legal norms domestically and translating them into action. As the Carr Center continues to the next stage of its Initiative on VAW, we hope the insights gained from the Clinic's research will be useful in evaluating the need for a VAW treaty within the U.N. human rights system.