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**ACCESS TO JUSTICE FOR WOMEN VICTIMS OF
VIOLENCE IN THE AMERICAS**

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ACCESS TO JUSTICE FOR WOMEN VICTIMS OF VIOLENCE IN THE AMERICAS

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PREFACE

During the past two years, and thanks to the support of the government of Finland, the Rapporteurship on the Rights of Women of the Inter-American Commission on Human Rights (IACHR) implemented a series of activities to collect and analyze information, in order to obtain a complete overview of the main challenges that victims of violence against women face when they attempt to access adequate and effective judicial remedies. The IACHR wishes to highlight and recognize the contributions of Susana Villarán, as Commissioner (2002-2005) and Rapporteur on the Rights of Women (2004-2005), in the consultation process that preceded the preparation of this report.

The IACHR acknowledges the contribution of Professor Laura Saldivia to the section of legal framework of the report. Her contribution was prepared as part of the investigation project about "International Standards about Access to Justice" developed in the University of San Andrés in Argentina under the direction of Víctor Abramovich. This investigation has the support of the Ford Foundation.

EXECUTIVE SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter the "IACHR" or the "Commission") has repeatedly made the case that *de jure* and *de facto* access to adequate and effective judicial remedies is essential to eradicating the problem of violence against women, as is the States' compliance with their obligation to practice due diligence in prosecuting such acts. And yet the work of the IACHR and of its Rapporteurship on the Rights of Women (hereinafter the "Rapporteurship" or the "Women's Rapporteurship") reveals that all too often prompt and effective recourse to judicial remedies eludes women victims of violence, even after they report the crimes committed against them. As a consequence, the vast majority of these offenses are never punished and neither the victimized women nor their rights are protected.

2. It is for this reason that the IACHR has prepared this report on the situation of women victims of violence. It examines the major obstacles that women encounter when they seek effective judicial protection to redress acts of violence. In the report, the IACHR draws conclusions and makes recommendations about what States need to do to act with the due diligence necessary to offer an effective and prompt judicial recourse when these incidents occur. The report's analysis is based on findings drawn from the data compiled from a variety of sources, including the administration of justice systems, civil servants and government representatives, civil society, academia and women of differing races, ethnic backgrounds and socio-economic circumstances. The Rapporteurship has been preparing this report for the last two years, with financial support from the Government of Finland. The information compiled has been coupled with the work of the IACHR: its case decisions, the thematic hearings held at headquarters, its thematic reports, the country reports' chapters on women's rights, and *in loco* visits organized by the IACHR and the Rapporteurship.

3. The regional and international human rights protection systems have identified the right of women to live free from violence and discrimination as a priority challenge. The international instruments adopted to protect women's right to live free from violence reflect a consensus among States and their acknowledgement of the discriminatory treatment that women have traditionally received in their respective societies, which has exposed them to various forms of violence: sexual, psychological and physical violence, an abusive treatment of their bodies. Those instruments also reflect the commitment that the States have undertaken to adopt measures to ensure the prevention, investigation, punishment and redress of such acts of violence. The fact that the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter the "Convention of Belém do Pará") has been ratified by more States than any other instrument of the inter-American system and that most States of this hemisphere have also ratified the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter the "CEDAW") and its optional protocol, signals a regional consensus to the effect that gender-based violence is an open and widespread problem requiring State action to ensure its prevention, investigation, punishment and redress.

4. The inter-American human rights system is based on the premise that access to adequate and effective judicial remedies is the first line of defense in protecting basic rights. The binding instruments for the protection of human rights, such as the American Convention on Human Rights (hereinafter the "American Convention"), the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration") and the Convention of Belém do Pará uphold the right of women to access adequate judicial protection against acts of violence, with all proper guarantees. Within that framework, States have an obligation to act with due diligence to prevent, investigate, punish and redress these acts. The States' duty to provide effective judicial recourse is not served merely by their formal existence; that recourse must also be adequate and effective in remedying the human rights violations denounced.

5. During preparation of this report, the IACHR received information from the States, administration of justice officials, the civil society, international organizations and academia, about public efforts targeted at eradicating gender-based violence. In the past, the Commission has observed that the adoption of international human rights instruments like the Convention of Belém do Pará and the CEDAW has triggered, in both civil- and common-law countries, a series of public efforts in the spheres of justice, legislation and government programs, all calculated to eradicate violence against women.

6. The Commission finds, however, that despite the States' formal and legal recognition that violence against women is a priority challenge, the quality of the judicial response to the problem falls well short of its incidence and severity. While the Commission recognizes the States' efforts to adopt a juridical and political framework to address the problem of gender-based violence, there is a significant gap between the formal availability of certain remedies and their effective application. Most cases of violence against women are never formally investigated, prosecuted and punished by the administration of justice systems in the hemisphere. In some countries, the Commission has observed a pattern of systematic impunity, resulting from the fact that so few of these cases are ever investigated, much less taken to trial. The Commission is particularly troubled by the fact that female victims of violence are disinclined to turn to the justice system. Victims and their families are often mistreated when attempting to avail themselves of judicial remedies, and have no confidence in the ability of the justice system to right the wrongs committed. This combination of factors leaves the victims with a sense of insecurity, defenselessness and mistrust in the administration of justice. The impunity that attends these crimes merely perpetuates violence against women as an accepted practice in American societies, in contempt of women's human rights.

7. In the specific area of the administration of justice, the Commission finds that States lack a sweeping vision or a comprehensive institutionalized policy for preventing, prosecuting and punishing acts of violence against women and providing redress. The Commission has found that investigations into cases of violence against women are riddled with serious problems: unwarranted delays on the part of the investigative authorities in conducting the necessary procedures and proceedings; failings and irregularities

in the proceedings *per se* that may ultimately prevent the prosecution of cases and punishment of guilty parties. Compounding these two variables is the shortage of the economic and human resources needed to conduct effective investigations, prosecute the cases and punish those responsible. This problem is particularly acute in rural and marginalized areas.

8. Apart from the problems observed in the investigative phase, the IACHR is deeply troubled by the inefficacy of the justice systems in prosecuting and punishing the perpetrators of acts of violence committed against women. While the failure to process cases involving violence against women quickly and effectively is often attributable to structural, economic and personnel-related factors, the failure to investigate the facts reported and the inefficacy of the justice systems in prosecuting and punishing cases of violence against women is also attributable to discriminatory socio-cultural patterns that influence the behavior of officials at all levels of the judicial branch of government. The latter do not regard such incidents of violence as priorities, do not take female victims seriously, disregard evidence critical to identifying the guilty parties, attach exclusive emphasis to physical evidence and testimony, give scant credence to the women victims' claims, and are disrespectful of the victims and their next of kin when they try to cooperate in the investigation. With so many systemic failings, the number of trials and convictions is still very small by comparison to the many complaints filed and the prevalence of the problem.

9. In many cases, women end up becoming the victims of fatal assaults even after having sought preventive protection from the State; all too often protective measures may be ordered on a woman's behalf only to be improperly implemented or monitored. On the matter of prevention and protection, the Commission has found that State authorities -the police in particular- fail to fulfill their duty to protect women victims of violence against imminent threats. Enforcement and supervision of restraining orders and other court-ordered protective measures are seriously flawed, which can have particularly disastrous consequences in cases of intrafamily violence. The inaction on the part of the State authorities is partially attributable to an inherent tendency to be suspicious of the allegations made by women victims of violence and the perception that such matters are private and low priority.

10. The IACHR has also pinpointed a number of structural problems within the justice systems that are detrimental to the prosecution of cases involving violence against women and other human rights violations. Among these are the following: the institutions necessary for the administration of justice in rural, poor and marginalized areas are often lacking; all too frequently no court-appointed attorneys or public defenders are available for victims of violence who are without economic means; and the public prosecutors' offices and police investigating the crimes often do not have the resources they require or specialized units with the technical expertise needed to deal with gender-based violence. Rudimentary and uncoordinated data systems make it difficult to obtain the statistics on incidents and cases of violence against women. These statistics are essential to an examination of its causes and trends.

11. The IACHR has established that violence and discrimination against women are still condoned in American societies, as evidenced by the manner in which officials in the justice system and the police respond to and treat cases of violence against women. The States must, therefore, design and strengthen programs to educate officials and personnel in the justice system and the police about the problem of violence against women as a serious violation of human rights and about their obligation to treat women victims in a respectful and humane fashion when they turn to the police and the courts for protection. Although the number of training programs for justice and police personnel has increased, the impact of those programs has been uneven; many have not been institutionalized and do not feature the accountability mechanisms needed to effect permanent change.

12. A variety of considerations challenge the filing of complaints by victims. They include the secondary victimization that women victims experience when they attempt to report the violence perpetrated against them; the lack of judicial protections and guarantees to safeguard the dignity and safety of victims and witnesses during prosecution of cases; the economic cost of judicial proceedings, and the geographic location of the judicial bodies where such complaints have to be filed.

13. The Commission is troubled by the fact that victims and their next of kin often have no information about the steps they must take to seek court protection, about how to file and prosecute cases, and what they can do to assist with the investigation and prosecution of their cases. With increasing frequency relatives of women victims of violence endeavor to obtain information and cooperate in the investigation of their cases, only to be met with disrespectful and callous treatment. The Commission has observed that uniform national statistics on cases of violence against women are difficult to obtain; the effect is to render the problem of violence against women invisible, which makes it difficult if not impossible to shape public policies in the judicial area that match the severity and scale of the problem.

14. The Commission has also observed that certain groups of women have special needs when they are victims of violence seeking judicial protection. The Convention of Belém do Pará recognizes that some women are more vulnerable than others to the problems of violence and discrimination because little or no importance is attached to their rights. Violence, discrimination and access to justice are particularly problematic for indigenous and Afro-descendant women. In their case, racism figures prominently as one of the underlying causes of the contempt for their rights. The obstacles these women encounter in trying to avail themselves of adequate and effective remedies that will redress the violations they have suffered may be particularly critical, as these women are victims of multiple forms of discrimination: gender-based discrimination, discrimination based on ethnic origin or race, and discrimination based on socio-economic status. Therefore, programs need to be undertaken to compile information -statistics, research and studies- that accurately depict the special needs that these women have, with a view to guaranteeing their rights within the justice system and enabling them to exercise those rights.

15. The civil and criminal laws now in force on the subject of violence against women are beset by two different types of problems that impair effective punishment of these acts and redress. The first type of problem is one of language and content and is about defects, gaps, a lack of uniformity, and inherently discriminatory concepts that are detrimental to women and work to their disadvantage. Outdated laws remain in force, as do discriminatory provisions based on stereotypes of the role of women in society and values such as the victim's honor, decency and chastity. Some countries still have laws that grant a rapist relief from punishment if he agrees to marry his victim. On the whole, even today the law focuses basically on domestic and intrafamily violence, to the exclusion of other forms of violence perpetrated against women and the contexts in which such events occur outside of and apart from home and family.

16. In some American countries the problem of discriminatory laws is compounded by a host of other factors that do much to explain why the authorities do not properly enforce the law. The following are among the most critical: a lack of clear regulations and procedures; a lack of training programs that instruct public officials in the proper interpretation and application of the law when prosecuting cases of violence against women; overburdened law-enforcement agencies; and the general public's unfamiliarity with the law and how to interpret it. A real commitment is required of the States -backed up by sufficient financial and human resources- if the existing laws are to be correctly applied and enforced.

17. The Commission has received reports about existing government programs whose purpose is to provide support services to women victims of violence and to help protect their rights within the justice system. However, many well-intentioned government programs instituted to provide multidisciplinary services to women victims of violence have difficulty in their day-to-day operations. A lack of coordination and cooperation among programs figures prominently among such problems. Then, too, the interdisciplinary services that the victims require and that the programs try to offer are often inadequate. The resources needed to keep these programs running are frequently lacking. Their geographic coverage is somewhat limited which means that the programs tend not to reach women living in marginal, rural and poor areas. Some of these practical problems could be helped if the work of nongovernmental organizations that provide interdisciplinary services to women victims of violence were to be legitimized, protected and supported with funding and through public policy. They play a particularly vital role in providing information on how to file complaints of acts of violence against women and how to seek effective judicial protection.

18. Especially troubling to the Commission is the fact that most acts of violence against women go unpunished, thereby perpetuating the social acceptance of this problem. The Commission therefore reiterates that in order to be in full compliance with their due diligence obligation, States must do more to prosecute and punish acts of violence against women. From the information compiled by the Commission it is clear that the next step in the fight to protect the rights of women victims of violence and discrimination and to ensure their

access to justice, is to move from *de jure* recognition of their rights to *de facto* exercise of those rights.

19. The recommendations contained in this report are intended to help the States devise projects and measures that enable them to guarantee a proper judicial response to acts of violence against women, one that is immediate, timely, exhaustive, serious and impartial. The recommendations have three specific objectives: first, for States to devise a comprehensive and properly resourced policy to ensure that women victims of violence will have adequate access to justice and that acts of violence will be prevented, investigated, punished and adequately redressed; second, to urge the States to create the necessary conditions so that women are able to avail themselves of the justice system to remedy the acts of violence perpetrated against them and so that public officials will treat women victims respectfully when they turn to the various judicial bodies for protection; third, to encourage States to adopt public measures that serve to redefine the traditional concept of women's role in society, and that help undo the discriminatory socio-cultural patterns that stand in the way of women's full access to justice.

20. The Inter-American Commission remains steadfast in its commitment to cooperate with the American States in seeking solutions to the problems identified. Some measures taken to deal with this situation signal an understanding and acknowledgment of the seriousness of the existing problem and the commitment of State and non-State actors to effectively address the many barriers that women encounter when reporting acts of violence and discrimination, so that they may receive proper redress.

ACCESS TO JUSTICE FOR WOMEN VICTIMS OF VIOLENCE IN THE AMERICAS

I. INTRODUCTION

A. Obstacles women encounter when seeking redress for acts of violence: an analysis of the present situation

1. The IACHR observes that regional and international human rights protection systems have identified the right of women to live free from violence and discrimination as a priority challenge. The adoption of international human rights instruments that protect women's right to live free of violence reflects a consensus among the States and their acknowledgment of the discriminatory treatment that women have traditionally received in their societies. The fact that the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter the "Convention of Belém do Pará") has been ratified by more member States of the inter-American system than any other convention,¹ and that the majority of the American States have ratified the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter the "CEDAW") and its optional protocol, bespeaks a consensus within the region that violence against women is a widespread and open problem whose prevention, investigation, punishment and redress warrant State action.

2. The case law of the inter-American system holds that *de jure* and *de facto* access to judicial guarantees and protections is essential to eradicating the problem of violence against women and is a necessary precondition if States are to be in full compliance with the international obligation they have freely undertaken to practice due diligence in responding to this very serious human rights problem. However, the work done by the IACHR and the Rapporteurship on the Rights of Women (hereinafter the "Rapporteurship" or the "Women's Rapporteurship") reveals that victims of gender-based violence often do not have access to adequate and effective legal remedies by which to denounce the violence they have suffered. The vast majority of these incidents go unpunished, leaving women and their rights unprotected. The Commission observes that most cases involving violence against women are never punished, which serves to perpetuate the practice of this serious human rights violation.

3. This report has been prepared to examine the main obstacles that women encounter when they endeavor to avail themselves of judicial remedies, with proper guarantees. It draws conclusions and makes recommendations urging the States to be duly diligent about offering an effective judicial remedy to incidents involving violence against women. The analysis contained in this report includes information that a variety of sectors sent to the Commission, including the administration of justice systems, officials and representatives of government, civil society, the academic sector and women of various races, ethnic origins and socioeconomic condition, all as

¹ The Convention of Belém do Pará has thus far been ratified by 32 OAS member States.

part of a research project that the Rapporteurship undertook in the last two years with financial support from the Government of Finland.²

4. During preparation of this report, the IACHR circulated a questionnaire among the member States of the OAS and experts from civil society, international organizations and the academic sector. A total of 23 OAS member States answered the questionnaire, more responses than any Commission questionnaire has ever elicited. A variety of experts from the region who are active in the administration of justice, international organizations and civil society entities also answered the questionnaire. Five meetings of experts were organized: in Washington, D.C. (April 19-20, 2005), Peru (August 1-2, 2005), Costa Rica (August 11-12, 2005), Argentina (September 12-13, 2005) and Jamaica (September 29-30, 2005).³ These meetings were regional and subregional in scope and were attended by over 130 experts, representatives of the government, the administration of justice system, civil society, international organizations, and the academic sectors. The information compiled during the project's implementation has been coupled with the work of the inter-American system, which includes jurisprudence, thematic hearings held at headquarters,⁴ thematic reports, country report chapters on the subject of women, and *in loco* visits organized both by the IACHR and the Women's Rights Rapporteurship.

5. This report defines "access to justice" as *de jure* and *de facto* access to judicial bodies and remedies for protection in cases of acts of violence, in keeping with the international human rights standards. The IACHR has held that for access to justice to be adequate, the formal existence of judicial remedies will not suffice; instead, those remedies must be effective for

² See Annex A for a full description of the process through which the Women's Rapporteurship, with support from the Government of Finland, compiled data.

³ The meetings were organized in cooperation with the following entities: the *Instituto de Defensa Legal* [Legal Defense Institute] (Peru), the *Equipo Latinoamericano de Justicia y Género* [the Latin American Justice and Gender Team] and the *Centro de Estudios Legales y Sociales* [Legal and Social Studies Center] (Argentina), the Inter-American Institute for Human Rights (Costa Rica) and the United Nations Development Fund for Women (Jamaica).

⁴ See, for example, IACHR, Thematic Hearing, *Domestic Violence in Central America*, 125th Special Session, organized by the Center for Justice and International Law (CEJIL), and the member organizations of the *Red Feminista Centroamericana contra la Violencia Hacia Las Mujeres - Las Dignas, Las Mélidas, ORMUSA* and *CEMUJERES* of El Salvador, Costa Rica's *CEFEMINA*, the *Centro de Derechos de Mujeres de Honduras*, the *Red de Mujeres contra la Violencia Nicaragua*, the *Red de Mujeres contra la Violencia de Panamá*, the *Red de la No Violencia contra las Mujeres de Guatemala*, July 19, 2006; IACHR, Thematic Hearing, *Feminicide in Latin America*, 124th Regular Session, organized by the *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*, A.C. (CMDPDH), the Center for Justice and International Law (CEJIL), International Helsinki Federation for Human Rights (IHF), the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), *Kuñia Aty* (Paraguay), *DEMUS* (Peru), *Amnesty International* (Peru), *Católicas por el Derecho a Decidir* (Mexico), *Centro de Promoción de las Mujeres Gregoria Apaza* (Bolivia), *Red Nacional de Trabajadoras/es de la Información y Comunicación RED ADA* (Bolivia), *Centro para la Acción Legal en Derechos Humanos* (CALDH - Guatemala), *Sisma Mujeres* (Colombia), *Red de la No Violencia contra las Mujeres de Guatemala*, Washington Office on Latin America (WOLA), March 3, 2006; the IACHR, Thematic Hearing, *Hearing on the Situation of Women and the Administration of Justice in the Region*, 121st Regular Session, organized by the Center for Reproductive Rights (CRR) and the Center for Justice and International Law (CEJIL), October 21, 2004.

prosecuting and punishing the violations denounced and in providing redress. As this report will establish, an effective judicial response to acts of violence against women includes the obligation to make simple, rapid, adequate and impartial judicial recourses available, without discrimination, for the purpose of investigating and punishing these acts and providing redress, so that in the end these acts do not go unpunished.

6. The premise of this report is that at the national level, the judicial branch of government is the first line of defense for protecting women's individual rights and freedoms, which is why its effectiveness in responding to human rights violations is so vital. An adequate judicial response is essential if women victims of violence are to have a remedy against acts of violence and if those acts are not to go unpunished. In this report, the administration of justice is understood to include the judicial branch of government (in all its parts, the courts and administrative divisions), the police and forensic medicine services in urban and rural areas alike, whether their jurisdiction is national or local.

7. This report's examination of the obstacles that women encounter when attempting to access justice in the Americas takes into account the inherent structural problems that the Commission has identified in the administration of justice systems in the region. The IACHR has repeatedly expressed concern over the problem of impunity and how ineffective the administration of justice systems have been in its prevention.⁵ The Commission has also identified another set of structural problems besetting the justice systems in the Americas. These include the precarious state of the judicial branch of government, attacks on the independence of the judicial branch and its impartiality, the inadequate budget earmarked to the judicial branch, difficulties that low-income people must overcome in order to be able to avail themselves of the justice system, the instability and impermanence inherent in judicial appointments in some countries of the region, the removal of judges without regard for the basic due process protections, and the threats that judges, prosecutors and witnesses receive, a problem compounded by the inadequate protective measures provided by the State.⁶ The Commission has also pointed to the particular difficulty that the traditional targets of discrimination -women, indigenous peoples and Afro-descendants- have in accessing the administration of justice systems.⁷

⁵ IACHR, *Justice and Social Inclusion: the Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, December 29, 2003, Chapter I; IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59, rev., June 2, 2000, Chapter II. See also IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser.L/V/II. 110, Doc. 52, March 9, 2001, Chapter III.

⁶ IACHR, *Annual Report 2005*, OEA/Ser.L/V/II.124, Doc. 7, February 27, 2006, Chapter I; IACHR, *Annual Report of the Inter-American Commission on Human Rights 2003*, OEA/Ser.L/V/II.118, Doc. 70, rev. 2, December 29, 2003, Chapter I.

⁷ IACHR, *Annual Report 2005*, OEA/Ser.L/V/II.124, Doc. 7, February 27, 2006, Chapter I.

8. These structural problems are particularly onerous for women, given the discrimination they have historically suffered. The IACHR has established that the discriminatory socio-cultural patterns and behaviors that still persist are detrimental to women and prevent and obstruct the enforcement of existing laws and the effective punishment of acts of violence. This is the reality despite the fact that the American States have identified this challenge as one of their priorities. Legislative, political and institutional changes in American societies have outpaced the rate of change in a culture that tolerates violence and discrimination. The way in which officials in the administration of justice systems react to cases involving violence against women reflects the fact that these discriminatory socio-cultural patterns are still very much intact.

9. By the same token, it is worth noting that 19 countries of the hemisphere have introduced a number of reforms in their administration of justice systems. The gender issues discussed and analyzed in this report have evolved against this backdrop of change. Since the decade of the nineties, a considerable number of Spanish-speaking countries in the Americas have taken measures to convert their criminal justice systems from inquisitorial proceedings based on pre-written arguments, to accusatorial systems that rely on oral arguments. The Justice Studies Center of the Americas (hereinafter "CEJA"), which is tracking these changes closely, has listed some of the principal changes as follows:

Replacing inquisitorial systems with accusatorial systems, assigning criminal prosecution to the public prosecutor's office, introducing a system of public hearings and trials conducted by oral argument, creating new institutions or strengthening others, giving the parties involved a more important role in the process and in some cases creating alternative mechanisms for settling differences.⁸

10. The definition of "violence against women" used as a frame of reference in the present report is the one that appears in the Convention of Belém do Pará, as follows:

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.⁹

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

⁸ Justice Studies Center of the Americas (CEJA), *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género* [Evaluating Criminal Procedural Reform from a Gender Perspective], Farith Simon and Lidia Casas, November 2004, p. 3. [Secretariat's translation]

⁹ See Convention of Belém do Pará, Articles 1 and 2.

in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place (...)

11. The following are some of the most basic principles of this Convention regarding the concept of violence that will be used in the analysis contained in the present report:

- The Convention expressly recognizes the relationship between gender-based violence and discrimination, and indicates that violence of that kind is a reflection of the historically unequal power relations between women and men, and that the right of every woman to a life free of violence includes the right to be free from all forms of discrimination and to be valued and educated free of stereotyped patterns of behavior;¹⁰
- It establishes that violence affects women in a variety of ways and obstructs their exercise of other basic civil and political rights, as well as economic, social and cultural rights;¹¹
- The Convention stipulates that States Parties shall act with due diligence to prevent, investigate and punish violence against women that occurs in public and private, within the home or the community, whether perpetrated by individuals or agents of the State;¹²
- It provides that States Parties shall take special account of the vulnerability of women to violence by reason of, among others factors, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration is to be given to women subjected to violence who are pregnant or disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.¹³

12. In other words, the inter-American system recognizes that violence against women and its root cause, discrimination, is a serious human rights problem that has negative consequences for women and the community that surrounds them. Violence and discrimination are encumbrances to the full recognition and enjoyment of women's human rights, including their right to have their lives and their physical, mental and moral integrity respected.

¹⁰ See Convention of Belém do Pará, preamble, Articles 4 and 6. The Commission has addressed the serious consequences that discrimination against women and stereotypes of their role in society can have, which include violence against women. See IACHR, Merits, Report N° 4/01, *María Eugenia Morales de Sierra (Guatemala)*, January 19, 2001, para. 44.

¹¹ See Convention of Belém do Pará, preamble, Articles 4 and 5.

¹² See Convention of Belém do Pará, Articles 2 and 7.

¹³ See Convention of Belém do Pará, Article 9.

13. The principles that underpin the definition of "violence against women" in the Convention of Belém do Pará are reinforced by the definition of violence included in Recommendation 19 of the Committee on the Elimination of Discrimination against Women, which oversees compliance of CEDAW, a convention whose purpose is to promote *de jure* and *de facto* equality between men and women in the exercise of their basic human rights and fundamental freedoms.¹⁴ The Committee, has written that the definition of discrimination contained in the Convention covers violence against women in all its forms, including:¹⁵

(...) acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

14. Using that framework of analysis, this report concludes that while the States have formally and legally recognized that violence against women is a priority challenge, the judicial response to the problem has fallen far short of its severity and prevalence. The IACHR has found that in many countries of the region, a pattern of systemic impunity persists with respect to the judicial prosecution of cases involving violence against women. The vast majority of such cases are never formally investigated, prosecuted and punished by the administration of justice systems in this hemisphere.

15. The States, international organizations and civil society organizations have provided the Commission with statistics showing that relatively speaking, very few investigations are conducted and convictions won in cases of violence against women. In its response to the questionnaire, Chile reported that in 2004, a total of 236,417 cases of intrafamily violence were reported, yet only 14,149 (5.9%) were ever formally investigated.¹⁶ About 92% of the cases were closed after the first hearing. Furthermore, since the entry in force of Law 19.325 to address intrafamily violence since 1994, the complaints of intrafamily violence have risen by 8-10%.¹⁷ In Venezuela's response to the questionnaire, the State reported that most cases of gender-based violence never reach the sentencing phase.¹⁸ The Dominican Republic reported that in 2003, 2,345 complaints of intrafamily violence were recorded, 1,036 final judgments were delivered, and only 246 were convictions for

¹⁴ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, on temporary special measures*, U.N. Doc./CEDAW/C/2004/I/WP.1/Rev.1 (2004), Section II.

¹⁵ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 19, Violence against Women*, U.N. Doc. HRI/GEN/1//Rev.1 (1994), p. 84, para. 11.

¹⁶ Chile's reply to the IACHR's questionnaire on the situation of women's access to justice in the Americas, November 18, 2005, p. 26.

¹⁷ Chile's reply to the IACHR's questionnaire on the situation of women's access to justice in the Americas, November 18, 2005, p. 27.

¹⁸ Venezuela's reply to the IACHR's questionnaire on the situation of women's access to justice in the Americas, October 26, 2005.

violation to law 24-97 addressing intrafamily violence.¹⁹ In 2004, 1,056 complaints were filed; 502 final verdicts were delivered; and only 188 were convictions.²⁰

16. In Bolivia, an investigation conducted by the administration of justice reveals that in 100% of the case files reviewed that address matters related to the rights of women, about 71.2% were rejected by the prosecutors on the basis of lack of evidence and from these 41% corresponded to sexual crimes.²¹ Gender-based discrimination was also identified in the actions of justice officials toward civil and criminal cases, confirmed in the judicial resolutions, the arguments presented by the plaintiffs, defendants and witnesses, by the public prosecutor's office and the police.²² The investigation also reveals that women prosecute more the redress of their rights.²³

17. The research conducted by international and civil society organizations also found that most cases of violence against women are never investigated, prosecuted and punished. In Ecuador, a study done by the Quito-based *Centro Ecuatoriano para la Promoción y Acción de la Mujer* [Ecuadorian Center for the Advancement and Action of Women] (hereinafter "CEPAM") found that criminal proceedings are conducted on a very small percentage of the complaints filed. For example, 804 complaints were filed with 16 courts in the city of Guayaquil, yet proceedings were instituted in only 104 cases, which was 12.96% of the complaints filed.²⁴ In Nicaragua, one research study did an analysis of 1,077 verdicts delivered in criminal cases involving women's rights and found that more than half ended in acquittals; in only 8 cases were protective measures ordered pursuant to existing laws.²⁵

¹⁹ The reply of the Dominican Republic to the questionnaire on the situation of women's access to justice in the Americas, October 31, 2005.

²⁰ The reply of the Dominican Republic to the questionnaire on the situation of women's access to justice in the Americas, October 31, 2005

²¹ See Supreme Court of Justice, Bolivia's Constitutional Tribunal, *Gender Bias in the Administration of Justice*, Dr. Emilse Ardaya, Supreme Court Justice, Dr. Elisabeth Iñiguez, Justice on the Constitutional Bench, the Centro Juana Azurduy and the Spanish International Cooperation Agency.

²² See Supreme Court of Justice, Bolivia's Constitutional Tribunal, *Gender Bias in the Administration of Justice*, Dr. Emilse Ardaya, Supreme Court Justice, Dr. Elisabeth Iñiguez, Justice on the Constitutional Bench, the Centro Juana Azurduy and the Spanish International Cooperation Agency.

²³ See Supreme Court of Justice, Bolivia's Constitutional Tribunal, *Gender Bias in the Administration of Justice*, Dr. Emilse Ardaya, Supreme Court Justice, Dr. Elisabeth Iñiguez, Justice on the Constitutional Bench, the Centro Juana Azurduy and the Spanish International Cooperation Agency.

²⁴ CEPAM Guayaquil-CONAMU, *Ruta que siguen niñas/niños, adolescentes y sus familias en situación de violencia sexual. Un sufrimiento que no se escucha...* [Route that children, adolescents and their families follow in a sexual violence situation. A suffering that is not heard...], Guayaquil-Ecuador, December 2002, (unpublished).

²⁵ IACHR, Thematic Hearing, *Domestic Violence in Central America*, 125th Special Session, Center for Justice and International Law (CEJIL) and member organizations of the *Red Feminista Centroamericana contra la Violencia Hacia Las Mujeres - Las Dignas, Las Mélidas, ORMUSA* and *CEMUJERES* of El Salvador, Costa Rica's *CEFEMINA*, the *Centro de Derechos de Mujeres* de Honduras, the *Red de Mujeres contra la Violencia Nicaragua*, Panama's *Red de Mujeres*

18. Research conducted in Chile, Ecuador and Guatemala found that only a small percentage of cases involving sex-related offenses actually goes to trial in these three countries: in Chile, an average of only 3.89% of the complaints filed in 2002 actually went to trial; in Ecuador, over a 12-month period 2.75% reached the sentencing phase (after having gone to trial); in Guatemala, 0.33% of the complaints actually went to trial.²⁶

19. Similarly, at its thematic hearings the Commission received reports confirming deficiencies in the prosecution and punishment of acts of violence committed against women.²⁷ The reports cite omissions and errors in the investigative proceedings, caused by negligence, bias and insufficient information for a conviction. These reports also point out that the victim is victimized a second time when the authorities are more interested in her private life than in solving the case and punishing the guilty parties. Some

...Continuation

contra la Violencia, and Guatemala's *Red de la No Violencia contra las Mujeres*, July 19, 2006 citing investigation by Maria Auxiliadora Meza, *Judicial Review of Judgments in Cases of Intrafamily and Sexual Violence and Civil Suits in Family Matters*, Managua, 2005.

²⁶ Lidia Casas-Becerra and Alejandra Mera González-Ballesteros, *Delitos Sexuales y Lesiones. La Violencia de Género en la Reforma Procesal Penal en Chile: Informe Final* [Sex Offenses and Sexual Assault and Battery. Gender-based Violence in Criminal Procedure Reform in Chile: Final Report], November 2004, research done under the project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas; Kenia Herrera and Andrea Diez, *Violencia contra las Mujeres: Tratamiento por Parte de la Justicia Penal de Guatemala* [Violence against Women: Their Treatment at the Hands of the Criminal Justice System in Guatemala], November 2004 (research done as part of the Project "Gender and Criminal Procedure Reform", being conducted by the Justice Studies Center of the Americas); Patricia Esqueteni and Jacqueline Vásquez, *Informe: Género y Reforma Procesal Penal – Ecuador* [Report: Gender and Criminal Procedure Reform – Ecuador], November 2004 (research done under the project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas); Margarita Puerto, *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género: Honduras. Informe Final* [Evaluation of Criminal Procedure Reform from a Gender Perspective: Honduras. Final Report], November 2004, (research done as part of the Project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas); Justice Studies Center of the Americas, *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género* [Evaluation of Criminal Procedure Reform from a Gender Perspective], Farith Simon and Lidia Casas, November 2004.

²⁷ See, for example, IACHR, Thematic Hearing, *Domestic Violence in Central America*, 125th Special Session, organized by the Center for Justice and International Law (CEJIL) and member organizations of the *Red Feminista Centroamericana contra la Violencia Hacia Las Mujeres - Las Dignas, Las Mélidas, ORMUSA* and *CEMUJERES* in El Salvador, Costa Rica's *CEFEMINA*, the *Centro de Derechos de Mujeres* in Honduras, Nicaragua's *Red de Mujeres contra la Violencia*, Panama's *Red de Mujeres contra la Violencia*, the *Red de la No Violencia contra las Mujeres* in Guatemala, July 19, 2006; IACHR, Thematic Hearing, *Feminicide in Latin America*, 124th Regular Session, organized by the *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C. (CMDPDH)*, the Center for Justice and International Law (CEJIL), International Helsinki Federation for Human Rights (IHF), the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), *Kuña Aty* (Paraguay), *DEMUS* (Peru), *Amnesty International* (Peru), *Católicas por el Derecho a Decidir* (Mexico), *Centro de Promoción de la Mujeres Gregoria Apaza* (Bolivia), *Red Nacional de Trabajadoras/es de la Información y Comunicación RED ADA* (Bolivia), *Centro para la Acción Legal en Derechos Humanos (CALDH - Guatemala)*, *Sisma Mujeres* (Colombia), *Red de la No Violencia contra las Mujeres in Guatemala*, Washington Office on Latin America (WOLA), March 3, 2006; the IACHR, Thematic Hearing, *Hearing on the Situation of Women and the Administration of Justice in the Region*, 121st Regular Session, organized by the Center for Reproductive Rights (CRR) and the Center for Justice and International Law (CEJIL), October 21, 2004.

administrative and judicial authorities do not respond with the diligence and deliberateness needed to investigate and prosecute the case and punish the guilty parties.

20. Recent *in loco* visits by the Rapporteurship have provided further confirmation of these findings. In a number of countries of the region, the Rapporteurship found that most cases involving violence against women have never been punished. The Rapporteurship's *in loco* visit to Ciudad Juárez, Mexico, found that only 20% of the murder cases involving female victims had gone to trial and resulted in convictions. Hence, the overwhelming majority of these cases went unpunished.²⁸ During the Rapporteurship's visit to Guatemala, both State officials and representatives of civil society said time and time again that the administration of justice system had failed to provide an effective response to crimes of violence. They reported that very few of these cases actually go to trial, leaving the crimes unpunished and making women feel even more insecure.²⁹ On the Rapporteurship's visit to Colombia, a variety of governmental and nongovernmental sources voiced concern over the ineffectiveness of the justice system in prosecuting and punishing cases of violence against women committed as a result of the armed conflict, especially those perpetrated by those engaging in the hostilities and in areas under their control.³⁰

21. The present report is divided into four parts. The first examines the human rights standards that apply to the right of women to adequate and effective judicial recourse when they are victims of violence. The second part of the report is an analysis of the main obstacles that women victims of violence encounter when they attempt to avail themselves of some judicial recourse, with due guarantees. This section exposes the gaps and irregularities in investigations into acts of violence committed against women; failings in the prosecution and punishment of such cases; the ineffectiveness of the mechanisms to protect women from violence; the barriers women victims encounter when they attempt to avail themselves of judicial protective services; structural problems within the justice systems that encumber the prosecution of cases involving violence against women, and the particularly critical situation of indigenous and Afro-descendent women to access judicial protection services. This section also examines a number of obstacles related to the content and implementation of the existing civil and criminal laws that challenge the effective punishment of acts of violence against women.

22. In response to these obstacles, the third part of the report reviews a number of State efforts to face the problem of violence against women in public policies and the administration of justice sector. Finally, the

²⁸ IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003.

²⁹ IACHR, Press Release N° 20/04, *The IACHR Special Rapporteur evaluates the effectiveness of the right of women in Guatemala to live free from violence and discrimination*, Washington DC, September 18, 2004.

³⁰ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. 124/Doc.6, October 18, 2006, para. 222.

fourth part of the report concludes with a series of recommendations urging the States to act with due diligence to improve the judicial response to acts of violence against women.

B. The report's legal framework: International provisions and standards that apply to the right of women to access adequate and effective remedies when they are victims of violence

23. The premise of the inter-American system of human rights is that access to adequate and effective judicial remedies is the first line of defense to protect basic rights, which includes the rights of women victims of violence. In the Americas, the absolutes of equality and non-discrimination are the core of the inter-American human rights system and of the binding instruments relevant to the present analysis, such as the American Convention on Human Rights (hereinafter the "American Convention"), the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration") and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter the "Convention of Belém do Pará"). These instruments uphold a woman's right to a simple and effective recourse, with due guarantees, for protection against acts of violence committed against her. They also establish the State's obligation to act with due diligence to prevent, prosecute and punish these acts of violence and provide redress.³¹

24. The American Declaration and the American Convention have espoused a set of basic principles and obligations pertaining to the right of access to adequate judicial protection. Article XVIII of the American Declaration and articles 8 and 25 of the American Convention provide that every person has the right to resort to a court and the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal when that person believes his or her rights have been violated. The protection of these rights is reinforced by the States' obligation *erga omnes* to respect the rights and obligations recognized in the Convention, an obligation

³¹ Also, key instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights articulate the basic obligations that States have to facilitate their constituents' access to justice. A number of the principles in these instruments that are particularly relevant for this report are the following:

- Human rights must be protected "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Universal Declaration, Article 2)
- Equality before the law and equal protection of the law, without discrimination. (Universal Declaration, Article 7; International Covenant, Article 26)
- The right to an effective remedy by the competent national tribunals for acts violating fundamental rights (Universal Declaration, Article 8)
- Entitlement, in full equality, to a fair and public hearing by an independent and impartial tribunal, in the determination of one's rights and obligations and of any criminal charge against one (Universal Declaration, Article 10; International Covenant, Article 14)
- Equal rights as to marriage, during marriage and at its dissolution (Universal Declaration, Article 16).

undertaken with Article 1.1 of the Convention. The Inter-American Court of Human Rights (hereinafter "Inter-American Court") has expressed the following in this regard:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered... Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention" ... That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees, ... for the determination of his rights, whatever their nature.³²

25. Under Article 1.1 of the American Convention, access to effective judicial protection must be guaranteed "without any discrimination." The right to equal protection of the law is protected under Article 24 of the American Convention.

1. The due diligence obligation

26. The principal objectives of the regional human rights system and the principle of efficacy require that those guarantees be implemented. Therefore, if exercise of any of these rights is not guaranteed *de facto* and *de jure* by States within their jurisdiction, in Article 2 of the American Convention the States Parties have undertaken to adopt such legislative or other measures as may be necessary to give effect to those rights. Therefore, the States' duty to provide judicial remedies is not fulfilled merely by making those remedies available to victims on paper; instead, those remedies must be adequate to remedy the human rights violations denounced.³³ The Inter-American Court has written that:

[t]he absence of an effective remedy to violations of the rights recognized by the Convention is itself a violation of the Convention by the State Party in which the remedy is lacking. In that sense, it should be emphasized that, for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally

³² I/A Court H.R., *Loayza Tamayo Case. Reparations*. Judgment of November 27, 1998. Series C No. 42, para. 169; *Velásquez Rodríguez Case. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 91; *Fairén Garbi and Solís Corrales Case. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 2, para. 90; *Godínez Cruz Case. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 3, para. 93.

³³ The Court's reasoning here was as follows: "In the instant case, to observe the right of access to an effective remedy, it is not sufficient that definitive decisions on petitions seeking *amparo* relief be delivered, ordering that the petitioners' rights be protected. Mechanisms must also be in place to effectively enforce the decisions or judgments, so that the recognized rights are effectively protected. As has been established, one of the effects of *res judicata* is that the ruling becomes binding. Execution of judgments must be regarded as an integral part of the right of recourse, which also includes full performance of the decision delivered. To do otherwise would be to negate this right." I/A Court H.R., *Case of Acevedo Jaramillo et al.* Judgment of February 7, 2006. Series C No. 144, para. 220. [Secretariat's translation].

recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.³⁴

27. Therefore, the State has an obligation to act with due diligence in responding to human rights violations. This duty involves four obligations: prevention, investigation, punishment and redress of the human rights violation and the obligation to prevent impunity.³⁵ The Inter-American Court has held that:

This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.³⁶

28. Impunity *vis-à-vis* violations of human rights exists where there is a "failure to investigate, prosecute, take into custody, try and convict those responsible for violations of rights protected by the American Convention." Further, "(...) the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenseless of victims and their relatives."³⁷ To prevent impunity, the State has an obligation, under Article 1 of the American Convention, to respect and ensure the rights recognized in the Convention:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.

³⁴ I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 235, citing I/A Court H.R., *Cesti Hurtado Case*. Judgment of September 29, 1999. Series C No. 56, para. 121; I/A Court H.R. *Castillo Petruzzi et al. Case*. Judgment of May 30, 1999. Series C No. 52, para. 185; I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

³⁵ See I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4. A number of inter-American conventions expressly establish the State's obligation to apply due diligence to prevent, investigate and impose penalties for violence against women, such as the Inter-American Convention to Prevent and Punish Torture (Article 6) and the Convention of Belém do Pará (Article 7(b)).

³⁶ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, para. 166.

³⁷ I/A Court H.R., *Loayza Tamayo Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 170, citing I/A Court H.R., *The "Panel Blanca" Case (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C No. 37, para. 173.

The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.³⁸

29. The inter-American human rights system has established that the obligation of the States to act with due diligence in response to acts of violence applies as well to non-State actors, third persons and private parties. The Inter-American Court has written that:

The State's international responsibility may also be engaged by acts of private individuals that are not, in principle, attributable to the State. The effects [of the obligations *erga omnes*, incumbent upon States parties to the Convention, to respect and enforce the standards of protection] extend well beyond the relationship between a State's agents and the persons subject to its jurisdiction; those effects manifest themselves in the positive obligation the State has to adopt the measures necessary to ensure effective protection of human rights in inter-personal relationships. The State may also incur responsibility for acts of private individuals when the State, by either the action or omission of its agents serving as guarantors, fails to comply with the obligations *erga omnes* contained in articles 1(1) and 2 of the Convention.³⁹

30. Elaborating upon that standard for attribution of responsibility, in its judgment on the *Case of the Massacre of Pueblo Bello* the Court recently wrote that:

[a] State cannot be held accountable for every human rights violation committed by private individuals under its jurisdiction. Indeed, the *erga omnes* nature of a State party's obligations to ensure the rights protected under the American Convention does not imply that it bears limitless responsibility for any act of private individuals. A State's duty to adopt measures to prevent harm to and protect private individuals in their mutual relations depends on whether it had knowledge of a real and present danger to a particular individual or group of individuals, and whether it had any reasonable chance of preventing or avoiding that danger. In other words, although the legal consequence of a private individual's act or omission may be to violate another private individual's human rights, that violation is not automatically imputable to the State. The circumstances of each particular case have to be considered, as do the measures taken so that those obligations to ensure are fulfilled.⁴⁰

³⁸ IACHR, Merits, Report N° 54/01, *María Da Penha Fernandes* (Brazil), April 16, 2001, para. 43, citing I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, para. 176 and I/A Court H.R., *Godínez Cruz Case*. Judgment of January 20, 1989. Series C No. 5, para. 175.

³⁹ I/A Court H.R., *Case of the "Mapiripán Massacre."* Judgment of September 15, 2005. Series C No. 134, para. 111 [Secretariat's translation].

⁴⁰ I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, para. 123. [Secretariat's translation]

31. To determine whether acts of third parties can be attributed to the State as violations for which it is internationally accountable, the Court has followed the reasoning used by the European Court, which is that the State can incur international responsibility for acts committed by third parties when it is shown that the State had knowledge of a real and immediate risk and failed to adopt reasonable measures to prevent it. The Inter-American Court has cited the European Court's jurisprudence, as follows:

Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see the *Osman* judgment cited above, pp. 3159-60, para. 116).⁴¹

32. The Convention of Belém do Pará establishes that the due diligence obligation has a special connotation in cases of violence against women. This Convention reflects a shared hemispheric concern over the gravity of the problem of violence against women, the relationship between that problem and the discrimination that women have historically endured, and the need to adopt comprehensive strategies to prevent, punish and eradicate violence against women. Despite advances on the legislative front and in public policy, women of the Americas have been and continue to be the victims of discrimination in times of peace and conflict alike. That discrimination has denied women their right to be equal partners in civil and political affairs. They have not been treated as equals within the family and have been the victims of and exposed to various forms of psychological, physical and sexual violence.⁴² The IACHR has previously reported that the fact that women account for over one half the hemisphere's population is not reflected at decision-making levels in the political, social, economic, and cultural spheres.⁴³ The limited access that women have, especially women victims of violence and discrimination, is the product of this pattern of discrimination and inferior treatment.

⁴¹ European Court of Human Rights, *Kiliç v. Turkey*, Judgment of March 28, 2000, Application No. 22492/93, paras. 62 and 63; *Osman v. the United Kingdom*, Judgment of October 28, 1998, *Reports of Judgments and Decisions 1998-VIII*, paras. 115 and 116; I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, para. 124.

⁴² See IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/SER.L/V/II.98, doc. 17, October 13, 1998; IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006.

⁴³ IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/SER.L/V/II.98, doc. 17, October 13, 1998.

33. The Convention of Belém do Pará recognizes the critical link between women's access to adequate judicial protection when denouncing acts of violence, and the elimination of the problem of violence and the discrimination that perpetuates it. Article 7 of the Convention of Belém do Pará spells out the State's immediate obligations in cases of violence against women, which include procedures, judicial mechanisms and legislation to avoid impunity:

- In the administration of justice, the Convention explicitly provides that States must "establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures." They must also "establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies (...)"
- In the area of law, the Convention requires States Parties to include in their domestic legislation "penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures, where necessary," and to take "all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women."
- The State is also required to adopt legal protective measures "to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property."

34. In the Convention of Belém do Pará, the States Parties agree to gradually undertake a series of specific measures aimed at ensuring a woman's right to adequate, effective and prompt access to justice in cases of violence. They include the following:⁴⁴

- Developing training of programs for "all those involved in the administration of justice, police and other law enforcement officers as well as other personnel responsible for implementing policies for the prevention, punishment and eradication of violence against women";
- Implementing educational activities aimed at heightening the general public's awareness of "the problems of and remedies for violence against women" and adopting public measures "to modify social and cultural patterns of conduct of men and

⁴⁴ See Convention of Belém do Pará, Article 8.

women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women."

- Providing "appropriate specialized [support] services for women who have been subjected to violence, through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children", and
- Ensuring "research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes (...)"

35. The IACHR examined the principles upheld in the Convention of Belém do Pará in its report on the case of *Maria da Penha Fernandes*.⁴⁵ The case was filed by a victim of domestic violence in Brazil, whose husband's physical abuse and attempts to murder her tragically left her a paraplegic. All this happened despite the fact that she had filed a number of complaints with the State. In its decision on this case, the Commission invoked the Convention of Belém do Pará for the first time and decided that by failing to try, convict and punish the assailant for 15 years, the State had breached its obligation to exercise due diligence to prevent, punish and eradicate domestic violence.⁴⁶

36. In that case, having found violations of articles 8 and 25 of the American Convention and of Article 7 of the Convention of Belém do Pará, it was the Commission's view that a State's obligation with respect to cases involving violence against women is not merely to prosecute and convict those responsible, but also "to prevent these degrading practices."⁴⁷ With "clear and decisive evidence" to complete a prosecution, there should be no unwarranted delays in ruling on a criminal case, which should be completed swiftly and effectively.⁴⁸ The IACHR found that judicial ineffectiveness *vis-à-vis* cases of

⁴⁵ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001.

⁴⁶ The IACHR found that the State had violated the victim's rights to effective judicial guarantees and judicial protection, as required under Articles 8 and 25 of the American Convention, in combination with the general obligation to respect and ensure these rights under Article 1.1 of the American Convention, and Article 7 of the Convention of Belém do Pará, IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 60.

⁴⁷ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

⁴⁸ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, paras. 38-39, 44.

violence against women creates a climate of impunity conducive to domestic violence, "since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts."⁴⁹

37. In the report on this case, the Commission made a number of concrete recommendations for redressing the wrong done to the victim and putting an end to the State's condoning of domestic violence. The following are among the principles underlying its recommendations to the State: steps must be taken to educate officials in the judiciary and the specialized police so that they understand the importance of not condoning violence against women; educational programs for the general public are also needed; criminal justice proceedings must be simplified so that they can be expedited, but never at the expense of the rights and guarantees of due process; and the number of special institutions to which women victims of violence can turn to file complaints must be increased.⁵⁰

38. The Commission has also established that in cases of violence against women, the right to a recourse set forth in Article 25, interpreted in conjunction with the obligation in Article 1.1 and the provisions of Article 8.1, "must be understood as the right of every individual to go to a tribunal when any of his rights have been violated (whether a right protected by the Convention, the constitution or the domestic laws of the State concerned), to obtain a judicial investigation conducted by a competent, impartial and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation."⁵¹ It also pointed to the investigation as a critical phase in cases of violence against women. The Commission observed that the "importance of due investigation cannot be overestimated, as deficiencies often prevent and/or obstruct further efforts to identify, prosecute and punish those responsible."⁵²

39. The obligations established in Articles 8 and 25 of the American Convention and Article 7 of the Convention of Belém do Pará pertaining to the investigation, trial and redress of human rights violations can be studied by examining the jurisprudence of the inter-American system for the protection of the human rights of all persons under a State's jurisdiction. Accordingly, when the Inter-American Court and the Inter-American Commission assess how effective the internal judicial proceedings are in remedying human rights violations, they look at the entire process into account, including decisions taken at differing levels, in order to thereby ascertain whether all the proceedings and the manner in which the evidence was produced were fair.⁵³

⁴⁹ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

⁵⁰ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 61.

⁵¹ IACHR, Merits, Report N° 5/96, *Raquel Martín de Mejía* (Peru), March 1, 1996, p. 22.

⁵² IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 137.

⁵³ I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63. para. 220.

40. The case law of the inter-American system has underscored the point that the failure to conduct an investigation and punish those responsible constitutes non-compliance with the State's obligation to ensure the free and full exercise of human rights to the victims and their next of kin, and a failure to keep faith with society's right to know the truth.⁵⁴ Inter-American case law has highlighted the importance of conducting an immediate, exhaustive, serious and impartial investigation into human rights violations. The Court has written that the investigation:

[m]ust be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.⁵⁵

41. The IACHR pointed out that an investigation must be undertaken in an immediate, exhaustive, serious and impartial fashion⁵⁶, and it must be aimed at exploring all the possible lines of inquiry to identify the perpetrators of the crime with a view to their subsequent prosecution and punishment. The State can be held accountable for failing to order, practice or evaluate evidence that may be critical to solving a case.⁵⁷

42. The obligation of due diligence to prevent situations of violence, especially where widespread or deeply-rooted practices are concerned, imposes upon the States a parallel obligation. On the one hand, States should monitor the social situation by producing adequate statistical data for designing and assessing public policies. On the other hand, States should take into account the policies implemented by the civil society. The obligation undertaken in Article 7.b of the Convention of Belém do Pará must be read in combination with the obligation established in Article 8.h to guarantee that statistics and other relevant data on the causes, consequences and incidence of violence against women are researched and compiled with a view to evaluating the effectiveness of measures to prevent, punish and eradicate violence against women and then formulating and introducing any needed changes.

⁵⁴ I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99. para. 134; See also IACHR, Resolution No. 1/03 titled *On Trial for International Crimes*, October 24, 2003, in the Annual Report of the Inter-American Commission on Human Rights 2003, December 29, 2002, Annex I; I/A Court H.R. *Case of Trujillo Oroza, Reparations*, (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92. paras. 99-101 and 109; and I/A Court H.R., *Case of Bamaca Velásquez. Reparations*, (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91. paras. 74-77.

⁵⁵ I/A Court H.R., *Godínez Cruz Case*. Judgment of January 20, 1989. Series C No. 5, para. 188; I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, para. 177; I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 226.

⁵⁶ IACHR, Merits, Report N° 55/97, *Juan Carlos Abella y Otros* (Argentina), November 18, 1997, para. 412.

⁵⁷ I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 230.

43. Statistical data on the problem of violence against women is an important public interest issue. Hence, States must have appropriate legal and administrative mechanisms to ensure ample access to that information, establish vehicles for circulating it, and encourage public debate and scrutiny of the policies being implemented in that realm.

44. International experts have identified a set of guiding principles that can be built into any system devised to compile information at the national level in the Americas with a view to gathering statistics on incidents of violence against women.⁵⁸ State agencies charged with compiling national statistics and ministries such as Justice and Health, play key roles in determining what the standards and methods will be for compiling data, in ensuring that the data are obtained on a consistent basis and as often as necessary, and in seeing to it that the data are effectively and promptly circulated. States must compile that information in partnership and consultation with the various sectors that have the critical data, including the victims themselves, their communities, state centers and agencies tasked with this issue, academia, international organizations, and civil society organizations. A cooperative relationship between the producers and users of statistics must be institutionalized.

45. A number of international and regional organizations, such as the Economic Commission for Latin America and the Caribbean (hereinafter "ECLAC") and other United Nations agencies have devised a set of indicators of violence and discrimination against women and have prepared invaluable studies on these issues that are useful tools for States to use in this area. Such efforts must be transparent and treat the victim's safety and privacy as paramount concerns. The information compiled must be accessible to victims, civil society and the general public, and be delivered in a format intelligible to a variety of audiences.

2. Due diligence and access to judicial protection

46. Both the Inter-American Court and the IACHR have repeatedly held that investigation of cases of human rights violations, which includes cases of violence against women, must be conducted by competent and impartial authorities. When investigations are not carried out by appropriate authorities, duly trained in gender-related issues, or when those authorities fail to cooperate with each other, the investigations are needlessly delayed and important clues or evidence overlooked, which will be detrimental to any future proceedings on the case.⁵⁹

⁵⁸ Division for the Advancement of Women, United Nations, Economic Commission for Europe (ECE), and the World Health Organization. Expert Group Meeting. *Violence against women: Statistical overview, challenges and gaps in data collection and methodology and approaches for overcoming them*, April 11-14, 2005, Geneva, Switzerland, Meeting held in preparation for the United Nations Secretary-General's In-depth Study on All Forms of Violence against Women that was recently published. The study is available online at: <http://www.un.org/womenwatch/daw/>.

⁵⁹ I/A Court H.R., *Durand and Ugarte Case*. Judgment of August 16, 2000. Series C No. 68, para. 117; IACHR, Merits, Report No. 53/01, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 2, 2001, para. 81.

47. As for the evidence that must be examined in cases involving violence, international principles stipulate that, as a minimum, all material and documentary evidence and statements of witnesses must be compiled and analyzed. As the Commission has stated, this is the minimum required in cases of suspicious deaths.⁶⁰ The persons in charge of the investigation must have access to the crime scene.⁶¹ In homicide cases, proper autopsies must be conducted and specific pieces of evidence must be preserved in cases of suspected sexual assault.⁶²

48. Also relevant to the analysis done in this report are the obligations undertaken by the States in the international sphere, which spell out their judicial obligations *vis-à-vis* women victims of violence. For example, Article 4 of the Declaration on the Elimination of Violence against Women provides that States must exercise due diligence to prevent and investigate acts of violence against women, whether those acts are perpetrated by the State or by private individuals. It further provides that States must develop "penal, civil, labour and administrative sanctions" in their domestic legislation to redress the wrongs caused to women who are subjected to violence.⁶³ Similarly, paragraph 124(d) of the Beijing Platform for Action,⁶⁴ adopted by the Fourth World Conference on Women, calls for States to take measures to ensure that women subjected to violence have access to just and effective remedies, including compensation and indemnification. The United Nations Rapporteur has recently described the principles that are the underpinnings of the due diligence obligation:

There are certain basic principles that underlie the concept of due diligence. The State can not delegate its obligation to exercise due diligence, even in situations where certain functions are being performed by another State or by a non-State actor. It is the territorial State as well as any other States exercising jurisdiction or effective control in the territory that remain, in the end, ultimately responsible for ensuring that obligations of due diligence are met. Related to this point is the notion that due diligence may imply extraterritorial

⁶⁰ IACHR, Report N° 10/95, *Manuel Stalin Bolaños* (Ecuador), September 12, 1995, paras. 32 - 34; Report N° 55/97, *Juan Carlos Abella y otros* (Argentina), November 18, 1997, paras. 413 - 424; Report N° 48/97, "*Ejido Morelia*" (Mexico), April 13, 1996, paras. 109 - 112.

⁶¹ United Nations, *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions*, recommended by the Economic and Social Council in its resolution 1989/65, May 24, 1989, para. 15.

⁶² Oral, vaginal and rectal fluid should be saved in cases of suspected sexual assault, as should hair, both foreign and pubic. *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, U.N. Doc. E/ST/CSDHA/12 (1991), paras. 29-30.

⁶³ United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994, arts. 4 (c) and (d).

⁶⁴ United Nations, *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, September 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

obligations for States that are exercising jurisdiction and effective control abroad.⁶⁵

49. CEDAW figures prominently among these instruments, as it was crafted for the purpose of achieving women's *de jure* and *de facto* equality with men in the enjoyment of their human rights and fundamental freedoms.⁶⁶ Article 1 of CEDAW features a sweeping definition of "discrimination against women," as follows:

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

50. This definition covers any gender-based differential treatment whose intended purpose or practical effect is to place women at a disadvantage and deny them the full enjoyment of their human rights in public and in private. As previously noted, the Committee that supervises the implementation of the CEDAW has held that the Convention definition of discrimination includes violence against women.⁶⁷

51. Recently, the European Court of Human Rights held that to effectively investigate and punish cases of sexual assault, States must consider both the body of evidence and the context in which the sexual assault occurred, and not confine themselves to direct evidence of physical resistance on the part of the victim.⁶⁸ In the case of *M.C. v. Bulgaria*, the Court found that the State of Bulgaria's international responsibility had been engaged because it had closed a criminal investigation into the rape of a 14-year old minor when no evidence of the use of force or of physical resistance during the rape was found.⁶⁹ The Court reasoned that the authorities had failed to consider all the circumstances that might have prevented physical resistance on the part of the victim in this case, given the particular vulnerability of a minor in cases of rape and the environment of coercion created by the assailant. The Court wrote that:

⁶⁵ Report of the Special Rapporteur on violence against women, its causes and consequences; *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, Commission on Human Rights, Sixty-second session, E/CN.4/2006/61, January 20, 2006, para. 34.

⁶⁶ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, on special temporary measures*, U.N. Doc./CEDAW/C/2004/I/WP.1/Rev.1 (2004), Section II.

⁶⁷ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 19, Violence against women*, U.N. Doc. HRI/GEN/1//Rev.1 (1994), p. 84, para. 11.

⁶⁸ *M.C. v. Bulgaria*, Eur. Ct. H.R., app. No. 39272/98, Judgment of March 4, 2004.

⁶⁹ *M.C. v. Bulgaria*, Eur. Ct. H.R., app. No. 39272/98, Judgment of March 4, 2004, paras. 178-184.

[w]hile in practice it may sometimes be difficult to prove lack of consent in the absence of “direct” proof of rape, such as traces of violence or direct witnesses, the authorities must nevertheless explore all the facts and decide on the basis of an assessment of all the surrounding circumstances. The investigations and its conclusions must be centred on the issue of non-consent.⁷⁰

52. International human rights instruments provide that physical evidence must be gathered by specialists trained in the type of violence being investigated, and preferably should be the same sex as the victim. The victim’s culture and the context in which the assault occurred must be taken into consideration. If necessary, an interpreter should be made available and must not be a government official.⁷¹

53. As for the conduct of members of the judiciary, international principles underscore the importance of a judiciary that decides matters impartially, without restrictions, improper influences, inducements, pressures, threats or interferences of any kind, direct or indirect, from any quarter or for any reason.⁷² In the case of prosecutors, the international principles stipulate that prosecutors are to perform their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination.⁷³ International standards also provide that a government is to ensure that lawyers and legal services are available to all persons subject to the State’s jurisdiction, throughout the national territory and without distinction. Such services are especially intended for socially and economically disadvantaged persons.⁷⁴ Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts and upholding the human rights of all persons.⁷⁵ In arriving at a decision on the arrest or detention of a perpetrator, police are to take into account the need for

⁷⁰ *M.C. v. Bulgaria*, Eur. Ct. H.R., app. No. 39272/98, Judgment of March 4, 2004, para. 181.

⁷¹ United Nations, *United Nations Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations General Assembly Resolution 55/89, December 4, 2000, U.N. Doc. A/RES/55/89, para. 6(a); *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Istanbul Protocol submitted to the United Nations High Commissioner for Human Rights, U.N. Doc. HR/P/PT/8 (1999), paras. 153, 218, 261, 273.

⁷² United Nations, *Basic Principles on the Independence of the Judiciary*, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985, UN Doc. A/CONF.121/22/Rev.1 (1985), p. 59, para. 2.

⁷³ United Nations, *Guidelines on the Role of Prosecutors*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba), 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev. 1 (1990), p. 189, para. 11.

⁷⁴ United Nations, *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba), 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev. 1 (1990), UN Doc. A/CONF.144/28/Rev.1 (1990), para. 118.

⁷⁵ United Nations, *Code of Conduct for Law Enforcement Officials*, G.A. res. 34/169, Annex, 34 U.N. GAOR Supp. (No. 46) p. 186, UN Doc. A/34/46 (1979), para. 186.

the safety of the victim and others related through family.⁷⁶ States, for their part, must hold police accountable when they do not act in accordance with the rule of law and their code of conduct.⁷⁷

54. International instruments also feature a set of principles to steer the proceedings of the administration of justice system when dealing with women victims of violence. The Rules of Procedure and Evidence of the International Criminal Court provide that gender-sensitive measures are to be taken to enable victims of sexual violence to participate and testify at all stages of the proceedings; victims of sexual violence are also to have complete access to information on the proceedings.⁷⁸ A number of international instruments on protection against torture and other cruel, inhuman and degrading treatment underscore the importance of preserving the mental and physical well-being of the victims during the criminal proceedings, which includes the investigative phase. The Commission has or can invoke this principle in cases involving violence against women, to avoid a re-victimization of the women victims.⁷⁹ In general, measures should be adopted for the duration of the criminal process to protect the safety, privacy and dignity of women victims.⁸⁰ Also, victims should be advised of their rights and of how to exercise them throughout the criminal case, during all its phases.⁸¹

55. As for the type of evidence admissible in cases of sexual assault, the International Criminal Court's Rules of Procedure and Evidence make provision for the importance of not inferring a victim's consent in rape cases, as the atmosphere of coercion that the assailant can create and a variety of factors can be reasons why a victim may be unable to physically resist her

⁷⁶ United Nations, *Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women*, Resolution approved by the United Nations General Assembly, A/RES/52/86, February 2, 1998, Annex, Section II.

⁷⁷ United Nations, *Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women*, resolution approved by the United Nations General Assembly, A/RES/52/86, February 2, 1998, Annex, Section II.

⁷⁸ International Criminal Court, *The Rules of Procedure and Evidence*, U.N. Doc. PCNICC/2000/1/Add.1 (2000), Rule 16(1)(d).

⁷⁹ See *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Istanbul Protocol, submitted to the United Nations High Commissioner for Human Rights, 1999, U.N. Doc. HR/P/PT/8; *United Nations Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations General Assembly Resolution 55/89, December 4, 2000, U.N. Doc. A/RES/55/89; *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A.G. res. 40/34, Annex, 40 U.N. GAOR Supp. (No. 53) p. 214, UN Doc. A/40/53 (1985), art. 6.

⁸⁰ United Nations, *Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women*, resolution approved by the United Nations General Assembly, A/RES/52/86, February 2, 1998, para. 9 of Annex.

⁸¹ United Nations, *Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women*, resolution approved by the United Nations General Assembly, A/RES/52/86, February 2, 1998, para. 10 of Annex; United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law*, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (2005), Section VI, para. 5.

assailant.⁸² The Rules also stipulate that evidence of a victim's prior sexual conduct is inadmissible.⁸³

56. Under Article 7.d of the Convention of Belém do Pará, States parties undertook to adopt legal measures to require a perpetrator to refrain from harassing, intimidating or threatening the woman or from using any method that could harm or endanger her life or integrity or cause damage to her property. This provision should be interpreted as one side of the obligation to ensure access to adequate and effective mechanisms of judicial protection, provided for in Article 25 of the American Convention. One specific dimension of the right to judicial protection is the right to seek effective precautionary protection. Article 8.d of the Convention of Belém do Pará indicates spells out some of the elements of the type of protective measures that States are required to provide in cases of violence against women, such as appropriate specialized services, including shelters, counseling services for all family members, care and custody of the affected minors. These specialized services are in addition to court restraining orders or other precautionary measures compelling the assailant to cease and desist and protecting the physical safety, freedom, life and property of the aggrieved women.

57. In its *Report on the situation of human rights defenders in the Americas*, the IACHR established certain general principles that should guide the grant of precautionary measures by States.⁸⁴ There, the Commission wrote the following:

1. Therefore, the right to judicial protection creates an obligation for states to establish and guarantee appropriate and effective judicial remedies for the precautionary protection of rights, including life and physical integrity, at the local level. Several domestic

⁸² United Nations, International Criminal Court, *Rules of Procedure and Evidence*, U.N. Doc. PCNICC/2000/1/Add.1 (2000), Rule 70. The Rule provides that:

In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:

- (a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
- (b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
- (c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;
- (d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

⁸³ United Nations, International Criminal Court, *Rules of Procedure and Evidence*, U.N. Doc. PCNICC/2000/1/Add.1 (2000), Rule 71.

⁸⁴ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, March 7, 2006, pp. 35-36.

bodies of law have adopted these remedies through mechanisms such as *habeas corpus*, *amparo*, action of *tutela*, *writ of injunction*, *mandados de segurança* or individual protection measures, etc.

2. Given the special nature of these remedies, and the urgency and necessity in which they must operate, some basic characteristics are required if they are to be considered suitable in the sense established by the Commission and the Court. Such characteristics include, for example, that the remedies be simple, urgent, informal, accessible, and processed by independent bodies. It is also necessary that individuals have the opportunity to approach federal or national legal entities when bias is suspected in the conduct of state or local bodies. Likewise, these remedies must enjoy broad, active legitimacy so that they may be pursued by relatives or by public entities such as prosecutors or ombudspersons on behalf of the individuals under threat, without requiring the signature of the latter. It is also helpful if such remedies can be processed on an individual basis or as collective precautionary actions, in other words, to protect a particular group or one that is identifiable based on certain parameters as affected or at imminent risk. It is also important to provide for the implementation of protective measures in consultation with the affected parties and with special law enforcement agencies other than those under suspicion, among other provisions.
3. In this sense, because such actions are designed to protect fundamental rights in urgent cases, the evidentiary procedures should not be the same as that required in ordinary proceedings; the idea is that measures be adopted within a brief time period for the immediate protection of the threatened rights. For example, while in criminal law a threat against life only constitutes an offense upon initiation of the execution of the crime, in a precautionary situation, the protection of the right to life should include protection against any act that threatens that right, regardless of the magnitude or degree of probability of the threat, so long as it is genuine.

58. International principles also uphold the right of victims of human rights violations to "adequate, effective, prompt and appropriate" reparation for the acts perpetrated against them, proportional to the wrong suffered.⁸⁵ It

⁸⁵ United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (2005);

must be full reparation and include guarantees of restitution, compensation, rehabilitation, satisfaction and non-repetition.⁸⁶

3. Violence and discrimination

59. Article 6 of the Convention of Belém do Pará provides that the right of every woman to be free from violence includes the right to be free from all forms of discrimination and the right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority and subordination. In its previous cases, the Commission established a close correlation between the obligation to guarantee equality and non-discrimination and preventing violence against women. That being the case, the IACHR looked at what social contexts lend themselves to the commission of violations of women's rights. In each case, the Commission found that gender-based violence was a manifestation of custom and practice or evidence of a social structure that relegated women to a position of subordination and inequality and thus left them at a disadvantage.

60. In the *María Eugenia Morales de Sierra* case⁸⁷ and the *Maria Da Penha Fernandes* case,⁸⁸ the IACHR made express reference to the historically unequal power relations between women and men, which left and still leave women in a position of inferiority *vis-à-vis* men in society. The Commission suggested an examination of the traditional dichotomy between private acts and public acts, a dichotomy in which private, domestic, or intimate matters are considered beyond the purview of the State. In this dichotomy between private and public acts, the family is regarded as the geographic epicenter of domestic matters and a realm into which the State is not to intrude. The misguided reasoning is that the State should refrain from any interference in family matters out of respect for personal autonomy. In these two cases, the Commission pointed to the traditional misconceptions about the State's role in family matters, a notion that implicitly recognizes a hierarchy between the sexes and that condones or tolerates the *de facto* oppression of women within the family. The inequality of the sexes and the tolerance of oppression of women are largely perpetuated by the supposed neutrality of the law and public policy and the inaction of the State.

...Continuation

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147 (2006).

⁸⁶ United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147 (2006) G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (2005), paras. 19-23.

⁸⁷ IACHR, Merits, Report N° 4/01, *María Eugenia Morales de Sierra (Guatemala)*, January 19, 2001.

⁸⁸ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes (Brazil)*, April 16, 2001.

61. Thus, in the *María Eugenia Morales de Sierra case*,⁸⁹ the IACHR found that articles 1, 2, 17 and 24 of the American Convention had been violated by virtue of the fact that the provisions of Guatemala's Civil Code that concern the relationship between husband and wife divided responsibilities between them: the husband was responsible for sustaining the home financially, while the wife was responsible for caring for home and children. The Commission found that "far from ensuring the 'equality of rights and adequate balancing of responsibilities' within marriage," these provisions institutionalize imbalances in the rights and duties of the spouses.⁹⁰ The Commission concluded that the disputed articles of the Civil Code:

[h]ave a continuous and direct effect on the victim in this case, in contravening her right to equal protection and to be free from discrimination, in failing to provide protections to ensure that her rights and responsibilities in marriage are equal to and balanced with those of her spouse, and in failing to uphold her right to respect for her dignity and private life.⁹¹

62. In this case, the Commission expressed its concern over the serious consequences of discrimination against women and the stereotypes of their roles, which created the potential for violence against women. It particularly underscored the grave impact that the disputed provisions have on family matters.⁹² The Commission found that the provisions of the Civil Code applied stereotyped notions of the roles of women and men, which perpetuated *de facto* discrimination against women in the family context.⁹³ It therefore concluded that the use of "stereotyped notions of the roles of women and men" is not a suitable criterion for ensuring the equality of men and women and their equal rights and responsibilities within the family.

63. In its decision, the IACHR recognized the relationship between gender inequality and the prevalence of gender-based violence, a correlation already recognized in Article 6 of the Convention of Belém do Pará. It also relied on the principles established in the instruments of the inter-American and international systems for the protection of human rights that address this issue. It cited its *Report on the Status of Women in the Americas*,⁹⁴ in which it concluded that the women of the region do not enjoy legal equality with men and specifically singled out violence against women as a priority challenge. In that report, the Commission wrote that:

⁸⁹ IACHR, Merits, Report N° 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001.

⁹⁰ IACHR, Merits, Report N° 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 44.

⁹¹ IACHR, Merits, Report N° 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 52.

⁹² IACHR, Merits, Report N° 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, paras. 44 and 48.

⁹³ IACHR, Merits, Report N° 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 44.

⁹⁴ IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100, Doc. 17, October 13, 1998.

Women have not yet achieved full juridical equality in every country in the region (...) although formal equality does not guarantee the elimination of instances of discrimination, recognizing it makes it possible to encourage transformations in society, thereby enhancing the authority of this right. (...) [C]ertain countries possess, in greater or lesser measure, laws that restrict and/or discriminate against the civil rights of women in marriage. (...) In many criminal codes, values such as honor, social decency, virginity, chastity, and good morals prevail over values such as the mental and physical integrity of the woman and her sexual liberty, thereby impeding the due protection under the law of victims of such crimes, or compelling them to prove that they resisted in the case of the crime of rape, or subjecting them to interminable procedures that perpetuate victimization. (...) [T]he situations such as those described in which women who are the victims of violence are left unprotected still exist because of a lack of adequate legislation or because the legislation in force is not observed.⁹⁵

64. In the *María Eugenia Morales de Sierra case*, one of the sources of law upon which the IACHR relied was General Recommendation No. 19⁹⁶ of the Committee on the Elimination of Discrimination against Women, which states that "[l]ack of economic independence forces many women to stay in violent relationships."⁹⁷

⁹⁵ IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100, Doc. 17, October 13, 1998, Conclusions.

⁹⁶ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 19, Violence against Women*, U.N. Doc. HRI/GEN/1/Rev.1 (1994).

⁹⁷ In this case, the IACHR makes express reference to paragraphs 23 and 11 of Recommendation 19. To fully grasp the sense of the Committee's citation, the paragraphs in question should be cited *verbatim*. Paragraph 23 of General Recommendation 19 reads as follows:

Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

For its part, paragraph 11 expresses that:

Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.

65. In consequence, the IACHR observes that the unequivocal language used in the Convention of Belém do Pará made it clear that the inter-American system had recognized that gender-based violence was a "manifestation of the historically unequal power relations between women and men."⁹⁸ It also wrote that the traditional attitudes that regard women as subordinate to men or lock them into stereotyped roles, serve to perpetuate widespread practices involving violence or coercion, such as family violence and abuse. Thus, violence against women is a form of discrimination that seriously impairs women's ability to exercise and enjoy their rights and freedoms on an equal footing with men. During the processing of the case and as a direct consequence of it, important amendments were introduced into the Guatemalan Civil Code, one of which was to recognize women's right to work without explicit permission from their spouses.

66. Another case in which the IACHR established the nexus between the discrimination and the violence that women endure is the previously cited case of *Maria da Penha Fernandes*.⁹⁹ In its decision, the IACHR established the presence of a general pattern of State tolerance of domestic violence and a lack of effectiveness on the part of the judicial branch in prosecuting such cases. The Commission held that the obligation of the States to act with due diligence goes beyond the prosecution of the case and conviction of the guilty party; it also includes an obligation "to prevent these degrading practices."¹⁰⁰

67. In this case, the Commission found that the violence, the ineffectiveness of the Brazilian judicial systems, their misguided application of domestic and international laws, and discrimination were all interrelated. It cited its 1997 special report on Brazil, where the Commission found that "there was clear discrimination against women who were attacked, resulting from the inefficiency of the Brazilian judicial system and inadequate application of national and international rules."¹⁰¹ The Commission went on to add that "tolerance by the State organs is not limited to this case; rather, it is a pattern. The condoning of this situation by the entire system only serves to perpetuate

⁹⁸ Convention of Belém do Pará, Preamble.

⁹⁹ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001.

¹⁰⁰ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

¹⁰¹ It goes on to say that:

Given the fact that the violence suffered by Maria da Penha is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case involves not only failure to fulfill the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices. That general and discriminatory judicial ineffectiveness also creates a climate that is conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts. IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 47.

the psychological, social, and historical roots and factors that sustain and encourage violence against women. "¹⁰²

68. Other special reports prepared by the Commission's Rapporteurship on the Rights of Women have also drawn the connection between violence and discrimination.¹⁰³ This was especially true of the report prepared on violence against women in Ciudad Juárez, which was the study in which the Commission probed most deeply into the disturbing correlation between gender-based violence and discrimination. In that report, the Commission concluded that gender-based discrimination was one of the factors that explained why so little was being done to stop the murders of women in Ciudad Juárez and to punish the perpetrators. The report highlighted the link between women's subordination and violence:

In this sense, it must be emphasized that, as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará") makes clear, violence against women is a manifestation of the historically unequal power relations between men and women. Violence based on gender originates in and perpetuates those negative power imbalances. As the Beijing Declaration and Platform for Action adopted by the UN Fourth World Conference on Women sets forth, such violence "is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men." The lack of due diligence to clarify and punish such crimes, and to prevent their repetition reflects that they are not perceived as a serious problem. The impunity in which such crimes are then left sends the message that such violence is tolerated, thereby fueling its perpetuation.¹⁰⁴

69. The IACHR stresses that violence and non-responsiveness to cases of this type is because of discrimination against women. As observed in the paragraph cited above, women are in a subordinate position vis-à-vis men. The report states that:

(...) insufficient attention has been devoted to the need to address the discrimination that underlies crimes of sexual or domestic violence, and that underlies the lack of effective clarification and prosecution. The

¹⁰² IACHR, Merits, Report No. 54/01, *María Da Penha Fernandes* (Brazil), April 16, 2001, para. 55. It is important to note that as a result of the *María da Penha* case, on September 7, 2006 Brazil enacted Law 11,340, called the *María da Penha Act*, which features a set of State measures geared to preventing, investigating and punishing domestic and family violence against women and its differing manifestations. See Press Release No. 30/06 of the Inter-American Commission on Human Rights, *The Rapporteurship on the Rights of Women of the IACHR Celebrates Brazil's Enactment of a Specific Law to Prevent and Eradicate Domestic and Family Violence*.

¹⁰³ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. 124/Doc.6, October 18, 2006; IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003.

¹⁰⁴ IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 7.

resolution of these killings requires attention to the root causes of violence against women – in all of its principal manifestations.¹⁰⁵

70. In the decisions and reports discussed here, the IACHR has consistently underscored the States' obligation to organize the government structure to prevent, investigate and punish acts of violence and discrimination against women and provide them with redress, invoking such instruments as the Convention of Belém do Pará, the American Convention and the Inter-American Convention to Prevent and Punish Torture. In its reports on the merits of cases such as those of *Maria da Penha Fernandes* and *María Eugenia Morales de Sierra*, the Commission has asserted critical aspects of women's rights, such as their right to live free from violence. Binding principles have been established that must govern the States' obligations and be embodied in their laws and policies. One of those is the States' duty to effectively and swiftly eradicate acts of various forms of violence against women committed by state and non-state agents alike; the duty to provide effective and impartial remedies to victims of violence; and the obligation to take measures to eradicate discrimination against women and stereotyped patterns of behavior that foster unequal treatment in their societies. For women, this has meant that they do not have equal access to the rights and benefits gained with political, civil and social progress.¹⁰⁶

a. The duty to amend discriminatory norms, practices and policies

71. As part of the obligation of due diligence, Article 7.e of the Convention of Belém do Pará requires that States take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women. Owing to the obvious relationship between discrimination and violence, Article 7.e must be interpreted as

¹⁰⁵ IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 11.

¹⁰⁶ Although the Commission made no specific reference to the principle of non-discrimination in the *Raquel Martín Mejía* case and the *González Pérez Sisters'* case, it did cite the Inter-American Convention to Prevent and Punish Torture and the American Convention in finding that rape constitutes torture. In its analysis of the rape alleged in the *Raquel Martín Mejía* case, the Commission established the presence of the three factors that the Inter-American Convention to Prevent and Punish Torture prescribes for a conduct to constitute torture, namely: "it must be an intentional act through which physical and mental pain and suffering is inflicted on a person; 2) it must be committed with a purpose; [and] 3) it must be committed by a public official or by a private person acting at the instigation of the former." The analysis of the first factor takes into consideration the physical and psychological suffering caused by the rape. The report also points out the short- and long-range consequences for the victim, and the reluctance of many victims to report rape. The Commission observed that the victim's right to honor and dignity under Article 11 had been denied. See IACHR, Merits, Report No. 5/96, *Raquel Martín de Mejía* (Peru), March 1, 1996. In the case of the González Pérez sisters, the Commission cited the European Court of Human Rights (*Aydin v. Turkey*, 57/1996/676/866-, 25/9/97, para. 83.). In its judgment, the European Court had cited the European Commission's argument to the effect that "rape committed by an official or person in authority on a detainee must be regarded as treatment or punishment of an especially severe kind. Such an offence struck at the heart of the victim's physical and moral integrity and had to be characterised as a particularly cruel form of ill-treatment involving acute physical and psychological suffering (...)". See IACHR, Merits, Report N° 53/01, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 4, 2001.

requiring States to amend discriminatory laws, practices and public policies or those whose practical effect is to discriminate against women. Section II.B of this report examines these kinds of discriminatory laws and regulations.

72. The articulation of the principle of non-discrimination used when examining gender-related problems can have differing ramifications that denote the scope of the protection afforded. One formulation of this principle that is narrower in the protection it affords proscribes those laws, practices and policies whereby a man is chosen for a job or position by virtue of the fact that he is a man or because of traits or qualities believed to be inherently male. One example would be laws or rules that stipulate that only men may study for a professional degree, perform a certain job, or be administrators of conjugal property. Therefore, in this sense, the principle of non-discrimination holds that persons should not be treated as unequal based on their sex is associated with transactional fairness in the distribution of scarce opportunity among a group of competing candidates in which gender is not a factor. This approach assumes a world of "autonomous individuals starting a race or making free choices."¹⁰⁷

73. In the case of women, this approach to non-discrimination equates sexual equality with equal treatment, and posits that tolerance or recognition of intrinsic differences between men and women in the law is unacceptable. It disregards the fact that men and women may be running different races from differing starting points. What matters most to this position is that the law serves the liberal ends of objectivity and neutrality. Thus, the gender experts who subscribe to this line of thinking have focused on amending the law to dismantle legal barriers to women being treated like men in the public sphere, the assumption being that the equal treatment requirement will be sufficient to compensate for the disadvantages that women have experienced.¹⁰⁸

74. The narrow concept of the principle of non-discrimination, associated with classic liberal thinking, is not sufficient to justify affirmative action measures –a man rejected in a selection process that favors women can claim unfair treatment, too- nor does it adequately call into question those systems that appear neutral in principle –such as a meritocracy- but that in fact serve to perpetuate long-standing discrimination. Nor is it useful in challenging deeply rooted social concepts about women’s role in society, which make them the primary care-givers and homemakers while excluding them from public spheres such as the workplace, education and politics.

¹⁰⁷ On the notion of the competitive process that underlies equal treatment, see María Angeles Barrere Unzueta, and Owen Fiss, *Another Equality, Issues in Legal Scholarship, The Origins and Fate of Antisubordination Theory* (2004): Article 20. Available online at: <http://www.bepress.com/ils/iss2/art20>.

¹⁰⁸ For a succinct description of the various feminist positions on equality, see: Hilary Charlesworth, Christine Chinkin and Shelley Wright, *Feminist Approaches to International Law*, in *American Journal of International Law*, (85 A.J.I.L. 613), 1991; Hilary Charlesworth, "What are 'Women's International Human Rights?'" in *Human Rights of Women: National and International Perspectives*, Rebecca Cook (editor), University of Pennsylvania Press, Philadelphia, 1994; Isabel Cristina Jaramillo, *La Crítica Feminista al Derecho*, in *Género y Teoría del Derecho*, Editorial Universidad de los Andes, Bogotá, 2000; Cristina Motta, *Observatorio legal de la Mujer. El legado de la Constitución*, Estudios Ocasionales CIJUS, Bogotá, Universidad de los Andes, part one, 1998.

75. A broader concept of non-discrimination is associated with the idea of ending the subordination of women as a group. This concept (which some call the principle of anti-subordination¹⁰⁹) condemns practices that have the effect of creating or perpetuating society a subordinate position for certain disadvantaged groups, such as women. By this definition of non-discrimination, discrimination against women is unacceptable not just because it presupposes unfair treatment for some individual women, but also because its function is to subordinate women as a group and to thereby create and perpetuate a gender hierarchy. Discrimination is regarded as one of a number of social factors responsible for the hierarchy of the sexes that leaves women at the bottom of the pyramid.

76. A broad interpretation of the principle of non-discrimination encourages an examination of standards and practices that *prima facie* appear neutral –for example, using criteria such as meritocracy, stature or seniority in a position- and social practices –such as the subtle and widespread practices of instilling the duties of child care and homemaking in women. The anti-subordination theory also helps justify affirmative action.¹¹⁰

77. Taking the anti-subordination approach to non-discrimination, the social significance and legality of a supposedly neutral law or practice must be evaluated in terms of its impact on the group as whole. Hence, the eminently group or collective nature of this approach. In other words, discrimination is present if, for example, a woman is not hired because of what it means, socially and job-wise, to belong to the group that is women. The discriminatory treatment manifests itself in individual cases, but is deeply rooted in a prejudice against the group.¹¹¹ Structural intervention is needed to undo the gender hierarchy so firmly entrenched and institutionalized in society and so resistant to change. In other words, intervention has to be geared toward introducing change in basic social realms and institutions, such as justice, politics, the family and the marketplace.

¹⁰⁹ See María Angeles Barrere Unzueta, *Problemas del Derecho Antidiscriminatorio: Subordinación versus Discriminación y Acción Positiva versus Igualdad de Oportunidades* [Problems of Anti-discrimination Law, Subordination versus Discrimination and Affirmative Action versus Equal Opportunity], in *Revista Vasca de Administración Pública*, No. 60, 2001, and *Igualdad y discriminación positiva: un esbozo de análisis conceptual, Género y Derechos Humanos* [Equality and affirmative action: a conceptual analysis, Gender and Human Rights], Zaragoza, 2002, and Owen Fiss.

¹¹⁰ This was taken into account in General Recommendation No. 25 of the Committee on the Elimination of Discrimination against Women (CEDAW) in connection with Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, concerning special temporary measures, where the Committee wrote that “questions of qualification and merit, in particular in the area of employment in the public and private sectors, need to be reviewed carefully for gender bias as they are normatively and culturally determined. For appointment, selection or election to public and political office, factors other than qualification and merit, including the application of the principles of democratic fairness and electoral choice, may also have to play a role.” United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, on special temporary measures*, U.N. Doc./CEDAW/C/2004/I/WP.1/Rev.1 (2004), Section III, para. 23.

¹¹¹ María Angeles Barrere Unzueta, *Problemas del Derecho Antidiscriminatorio: Subordinación versus Discriminación y Acción Positiva versus Igualdad de Oportunidades* [Problems of Anti-discrimination Law, Subordination versus Discrimination and Affirmative Action versus Equal Opportunity], *Revista Vasca de Administración Pública*, No. 60, 2001.

78. General Recommendation No. 25 of the Committee on the Elimination of Discrimination against Women (CEDAW) states the following:

The Convention goes beyond the concept of discrimination used in many national and international legal standards and norms. While such standards and norms prohibit discrimination on the grounds of sex and protect both men and women from treatment based on arbitrary, unfair and/or unjustifiable distinctions, the Convention focuses on discrimination against women, emphasizing that women have suffered, and continue to suffer from various forms of discrimination because they are women.¹¹²

79. Discrimination can have many faces. One is the discrimination caused by unequal treatment based on a prohibited or suspect factor that precludes, restricts or adversely affects the exercise of a right. Discrimination of this type can manifest itself when the prohibited or suspect factor is explicitly cited as grounds for separate treatment or exclusion (for example, when a woman is prohibited from practicing a profession or administering property without the husband's consent). Another form of discrimination occurs when a legal obligation to adopt positive measures established by domestic or international law, is not fulfilled.

80. In the first type of discrimination, i.e., when gender is used as grounds for unequal treatment, the inter-American system of human rights and the case law of the supreme courts of a number of countries of this hemisphere have held that the discriminatory nature of the restrictive measure or policy is presumed. Therefore, when those suspect factors are the basis for treating an individual or group differently, they have to be more closely scrutinized to determine whether they are reasonable.¹¹³

81. In Advisory Opinion 4/84,¹¹⁴ the Inter-American Court of Human Rights established the scope of articles 1 and 24 of the American Convention. There the Court wrote that:

¹¹² United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, on special temporary measures*, U.N. Doc./CEDAW/C/2004/I/WP.1/Rev.1 (2004), Section II.

¹¹³ It has been said that the categories singled out as suspect have certain distinctive features, namely: (i) they are based on individuals' permanent features, which these individuals cannot choose to alter without risking the loss of their own identity; (ii) historically, they have been subjected to cultural value systems and patterns that tend to disparage them; and (iii) they are not, per se, criteria that can be used as the basis for a rational and equitable distribution of property, rights or roles in society. Judgment C-101/05, delivered by Colombia's Constitutional Court, involved a case in which the constitutionality of Article 1134 of the Civil Code was being challenged as a violation of the constitutionally recognized principle of equality and the prohibition of gender-based discrimination. Under Article 1134 of the Civil Code, for example, a man could write a will in which the woman could only inherit if she remained single or widowed. The Court declared that the provision in question was not exigible.

¹¹⁴ Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84, January 19, 1984, Inter-Am. Ct. H.R. (Ser. A) No. 4 (1984). [Secretariat's translation]

(...) The notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified. It is impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character.¹¹⁵

82. While the Court observes that not all inequalities in legal treatment are discriminatory, it adds that the legitimacy of the distinction depends on whether "the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review. These aims may not be unjust or unreasonable, that is, they may not be arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind."¹¹⁶ In another opinion, the Court added that if various options are available to achieve an objective, the one that "least restricts the right protected must be selected."¹¹⁷ The case law of the Court, therefore, requires a reasonable relationship of proportionality if any distinction is to be made when restricting a fundamental right; the option that least restricts the right should always be chosen.

83. For its part, the Commission has repeatedly maintained that any restriction based on criteria such as those listed in Article 1.1 of the American Convention –namely, race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition- must be closely scrutinized and analyzed, because those factors qualify as so-called "suspect categories." The restriction must be shown to be necessitated by some overriding or urgent stated objective, adequate or proportional to the end sought, and the least restrictive of the protected right. When the restriction cannot be credibly shown to satisfy these requirements, it will be invalid as it will be motivated solely by prejudice.

84. In the report titled *Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination*,¹¹⁸ the

¹¹⁵ Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84, January 19, 1984, para. 55. [Secretariat's translation]

¹¹⁶ Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84, January 19, 1984, para. 57. The Court took this position again in Advisory Opinion OC-18/03, *Juridical Condition and Rights of the Undocumented Migrants*, para. 91. [Secretariat's translation]

¹¹⁷ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights)*. Advisory Opinion OC-5/85, November 13, 1985, Series A No. 5, para. 46.

¹¹⁸ IACHR *Annual Report 1999, Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination*, Chapter VI.

Commission observed that "[i]dentifying discriminatory treatment requires a showing of a difference in treatment between persons in a sufficiently analogous or comparable situation."¹¹⁹ However, it went on to point out that not every difference in treatment in similar circumstances is necessarily discriminatory. It notes that a "distinction which is based on 'reasonable and objective criteria' may serve a legitimate state interest in conformity with the terms of Article 24. It may, in fact, be required to achieve justice or to protect persons requiring the application of special measures. (...) A distinction based on reasonable and objective criteria (1) pursues a legitimate aim and (2) employs means which are proportional to the end sought."¹²⁰

85. When a consideration like sex is used as the basis for a difference in treatment, the latter can be justified only if the motive adduced for that unequal treatment between men and women is compelling or of great import or weight. The Commission contends that "the law is expected to be even-handed between women and men unless just, legitimate and reasonable compelling bases have been adduced to justify a difference in treatment."¹²¹ The Commission then proceeds to introduce the idea of the detailed examination required in the case of distinctions based, for example, on the sex of the person: "Statutory distinctions based on status criteria, such as, for example, race or sex, necessarily give rise to heightened scrutiny" such that "very weighty reasons would have to be put forward to justify a distinction based solely on the ground of sex."¹²²

86. This very same articulation of the strict test of reasonability is developed in the case of *María Eugenia Morales de Sierra*, one that is very pertinent to this report.¹²³ Here, the Commission invoked the principle of non-discrimination to censure distinctions drawn between men and women in marriage. In this case, the IACHR held that under Article 24 of the American Convention, certain forms of differences in treatment, for example those based on sex, are highly suspect and the State must provide very weighty reasons to justify them. Whenever the distinction is made for certain suspect factors or

¹¹⁹ IACHR *Annual Report 1999, Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination*, Chapter VI, III.B.

¹²⁰ IACHR *Annual Report 1999, Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination*, Chapter VI, III.B.

¹²¹ IACHR *Annual Report 1999, Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination*, Chapter VI, III.B.

¹²² IACHR *Annual Report 1999, Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination*, Chapter VI, III.B.

¹²³ IACHR, Merits, Report N° 4/O1, *María Eugenia Morales de Sierra (Guatemala)*, January 19, 2001, paras. 31 and 36. In this case, Guatemala was ordered to amend the Civil Code wherein the husband was given exclusive administration of the community property, while severe limitations were imposed on married women working outside the home. This case will be examined in detail later in this report.

categories, the law or policy that makes the distinction will be closely scrutinized or strictly monitored.¹²⁴

87. The Commission reiterated this doctrine in the *Report on Terrorism and Human Rights*¹²⁵ where it wrote that "While the doctrine of the inter-American human rights system does not prohibit all distinctions in treatment in the enjoyment of protected rights and freedoms, any permissible distinctions must be based upon objective and reasonable justification, must further a legitimate objective, regard being had to the principles which normally prevail in democratic societies, and the means must be reasonable and proportionate to the end sought. (...) Distinctions based on grounds explicitly enumerated under pertinent articles of international human rights instruments are subject to a particularly strict level of scrutiny whereby states must provide an especially weighty interest and compelling justification for the distinction."¹²⁶ Therefore, for the Commission a sex-based restriction must be based on very compelling reasons; the burden of proof rests with the State. Hence, when a restriction is premised on a "suspect category," the Commission accepts the "reversal of the burden of proof" and the "presumption of invalidity."

88. Reforming laws, practices and public policies that establish sex-based differences in treatment is a duty incumbent upon the various institutions of the State, the judicial branch, the executive branch, the parliament and the legislative bodies, all with a view to bringing the domestic legal system and the functioning of the State into compliance with the human rights treaties in force. At the same time, it is up to the States to make adequate and effective judicial recourses available so that individual citizens, national institutions for the protection of human rights, ombudsman's offices, general human rights prosecutors, nongovernmental organizations and other social actors can turn to the policy-making bodies and the courts to demand that the lawfulness of these norms, practices and policies be scrutinized. The adoption of discriminatory laws and the failure to comply with the positive obligations that a law or regulation imposes are *direct* manifestations of discrimination.

89. Discrimination can also manifest itself in *indirect* ways. Arbitrary or disproportionate distinctions can be made in the application of laws, measures, practices or policies that at first glance appear to be neutral but that in fact have an impact that is prejudicial to groups in vulnerable situations.¹²⁷

90. An examination of laws and policies to ensure that they comport with the principles of effective equality and non-discrimination should also look for their *potential discriminatory impact*, even when their formulation

¹²⁴ IACHR, Merits, Report N° 4/01, *María Eugenia Morales de Sierra (Guatemala)*, January 19, 2001, paras. 31 and 36.

¹²⁵ IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr, October 22, 2002.

¹²⁶ IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr, October 22, 2002, para. 338.

¹²⁷ For example, when it was established that all laborers should work nonstop for eight hours a day, this did not take into account the working women who need to nurse their babies.

or wording appears neutral¹²⁸ or they apply to everyone, without distinction. This was the finding of the Inter-American Court in the *Case of the Girls Yean and Bosico*¹²⁹ regarding the Dominican Republic's standards and procedures for belated registration of birth. The practical consequence of the onerous requirements and bureaucratic red tape was to increase the number of undocumented children who had no way to prove their nationality. For children of immigrant parents, the effect was to exacerbate their deprivation by denying them access to social benefits and rights.

91. If the effect of a law or regulation is direct discrimination, all that need be done to prove the discrimination is to show that the legal distinction uses a prohibited factor or that the positive action mandated by law was not taken. If the effect is one of indirect discrimination, the disproportionately prejudicial effect or result that the provision has on a group has to be shown. In such cases, empirical data must be produced showing that the alleged "invisible" or "neutral" bias in the adoption of decisions has a disparate effect on some group or groups.

92. Therefore, to examine norms and policies for their adherence to the principle of effective equality and non-discrimination, one has to look at their discriminatory *impact* –even those whose formulation is neutral or those that apply to everyone, without exception. The emphasis must be on objective factors –including the discriminatory effect or result- in preference to the declared *intention* to discriminate.

93. The jurisprudence of the American States has long taken this position. In *Andrews v. Law Society of British Columbia*,¹³⁰ the Supreme Court of Canada ruled that the purpose of the Canadian Charter of Rights and Freedoms was to protect all disadvantaged groups in society against

¹²⁸ This was the finding of the Court in the *Case of the Girls Yean and Bosico*: "The Court finds that the binding principle of equal and effective protection of the law and non-discrimination requires that the implementing legislation for the mechanisms through which nationality is recognized must contain no discriminatory regulations or regulations that have discriminatory effects on a population's various groups when they exercise their rights. Furthermore, States must combat discriminatory practices at all levels, especially within public agencies, and must take the affirmative measures necessary to ensure that all persons are equal before the law." See I/A Court H.R., *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 141. [Secretariat's translation]

¹²⁹ I/A Court H.R., *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 141.

¹³⁰ This was the first case the Supreme Court of Canada heard in which section 15 (Equality Rights) of the Canadian Charter of Rights and Freedoms was challenged. In this case, the Court developed a test, called the Andrews Test, to determine whether a *prima facie* breach of the equality right provided for in section 15 had occurred. The Supreme Court held that "...discrimination may be described as a distinction, whether intentional or not but based on grounds relating to the personal characteristics of the individual or group which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed on others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classified", [1989] 1 SCR 143, para. 280.

discrimination. Discrimination is present when a law, both in terms of its end goal/intent (purpose) and effect (impact), imposes a disadvantage on the members of those groups that it does not impose on other members of society. To approach the ideal of full equality before and under the law, the main consideration must be the impact of the law on the individual or the group concerned. While not every difference in treatment between individuals under the law will necessarily result in some inequality, it is also true that identical treatment may frequently produce serious inequality. This is why the Supreme Court has so resoundingly rejected "the same or identical treatment" as the standard for equality. Canada's Supreme Court held that it is not simply a distinction in the treatment of groups and individuals, but also the imposition of some disadvantage on certain groups.

94. The Constitutional Court of Colombia used similar arguments in reasoning its judgments C-673, C-507 and C-534/05.¹³¹ In these rulings, it cited two main principles as the underpinnings of the juridical protection of individuals' interests. The first is the general principle of equality, which has three dimensions and obligations. The first of these dimensions is equal protection, whereby the law is to apply equally to all persons. However this dimension of equality is no guarantee that the law itself will treat all persons as equals. Colombia's Constitutional Court therefore found that a second dimension of the general principle of equality was needed, which is equal treatment, guaranteeing to all persons that the applicable law will equally regulate the situation of persons that should be treated differently. When the distinctions that the law establishes are not reasonable, this dimension of the equality obligation is being ignored.

95. Colombia's Supreme Court held further that a law that does not establish differential treatment and is applied to all persons equally can nonetheless afford different degrees of protection to different people, thus necessitating the principle of equal protection, which ensures that people will effectively enjoy the same rights, freedoms and opportunities.¹³² This

¹³¹ In the case decided in Judgment C-534/05, the term "male" and the expression "females under the age of twelve," contained in one article of the Civil Code, were declared to be non-exigible because they violated the equal protection clause of the Constitution; in the case decided by Judgment C-507/04, the gender-based age difference in the grounds for nullification of marriage was declared to be non-exigible. The court explained that an examination of the history of the provisions of Colombia's Civil Code on the matter of women's rights found that the gender-based differences in treatment were due to traditional notions of women's place and role in society; in the case decided in Judgment C-673/01, the argument was that equal treatment for public school teachers and private school teachers in terms of the national teacher ranking, training and benefits, is a violation of the right to equality, because the provisions being challenged disregard the principle of equal treatment of equals and unequal treatment of unequals, either with respect to persons (career-ranked public-school teachers and private-school teachers) or situations (education in the private sector, where an emphasis is placed on pluralism and individual free will, and education in the public sector, where the emphasis is on public-administration and personnel rules). The Court declared the challenged provision to be non-exigible. For a detailed examination of the jurisprudence of the Colombian Constitutional Court on the rights of women, see Cristina Motta, *Observatorio legal de la Mujer. El legado de la Constitución*, Estudios Ocasionales CIJUS, Bogotá, Universidad de los Andes, part one, 1998.

¹³² Frances Olsen writes that: "[t]o achieve a substantive equality of outcome, it may be necessary for the law to take account of existing differences among people and consequently to deny formal legal equality. (...) Feminists urging "special treatment" claim to favor a truly neutral

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dimension of the principle of equality is substantive and positive: substantive because it examines the situation of the groups to be compared to determine whether the type and degree of protection they receive is unequal, when it should be equal; positive because should some objectively unwarranted inequality be detected, the State is obligated to take measures to guarantee equal protection. The Constitutional Court writes that in order to determine whether this right to equality has been violated, the degree of effective protection given to the rights, freedoms and opportunities has to be determined; should inequalities be present, the measures necessary to correct them have to be established.

96. The second criterion of juridical protection established by Colombia's Constitutional Court is to better protect the interests of certain persons; in other words, the Court held that the State has a special duty to grant preferential treatment/special protection to groups that are discriminated against or disadvantaged. The Court's reasoning was that equality is protected when the law and public policy take into account the particular circumstances and characteristics of those who are in a position of social, political, economic or legal disadvantage.¹³³

97. Therefore, while in principle egalitarian treatment would seem to require that the same standards apply to all persons, in reality no standards of conduct and compliance are entirely neutral since their impact on a given group may vary according to that group's circumstances and characteristics. The law itself is crafted by members of a society who are themselves immersed and often protagonists in a discriminatory culture.¹³⁴ Hence, the commitment to equality is more than just achieving equality in the law; it must also be a commitment to equality in all social institutions such as the family, the marketplace and political institutions.

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result and debunk certain instances of formal equality as 'pseudoneutrality'." Frances Olsen, "The Sex of Law," in *The Politics of Law*, David Kairys (ed.) (New York, Basic Books, 1998), p. 698-699.

¹³³ As Iris Young wrote, "Thus, where there are group differences in capacities, socialization, values, and cognitive and cultural styles, only attending to such differences can enable the inclusion and participation of all groups in political and economic institutions. This implies that instead of always formulating rights and rules in universal terms that are blind to difference, some groups sometimes deserve special rights." Iris Marion Young, "Polity and Group Difference" in *Ethics*, Vol. 99, No. 2 (Jan. 1989), p. 269.

¹³⁴ Here, Iris Young wrote that "[W]here some groups are privileged and others oppressed, the formulation of law, policy, and the rules of private institutions tend to be biased in favor of the privileged groups, because their particular experience implicitly sets the norm." See Iris Marion Young, "Polity and Group Difference" in *Ethics*, Vol. 99, No. 2 (Jan. 1989), p. 269. She also wrote that "[t]hough in many respects the law is now blind to group differences, the society is not, and some groups continue to be marked as deviant and as the other. In everyday interactions, images, and decision making, assumptions continue to be made about women, blacks, Latinos, gay men, lesbians, old people, and other marked groups, which continue to justify exclusions, avoidances, paternalism, and authoritarian treatment. Continued racist, sexist, homophobic, ageist, and ableist behaviors and institutions create particular circumstances for these groups, usually disadvantaging them in their opportunity to develop their capacities and giving them particular experiences and knowledge." See Iris Marion Young, "Polity and Group Difference" in *Ethics*, Vol. 99, No. 2 (Jan. 1989), p. 268.

98. The IACHR has recognized that *de jure* equality alone will not be sufficient to achieve gender equality. The practices that generate and perpetuate women's position of inferiority in society have to be undone. Nevertheless, the importance of formal equality should not be underestimated. The law plays a vital role in effecting social change: "although formal equality does not guarantee the elimination of instances of discrimination, recognizing it makes it possible to encourage transformations in society, thereby enhancing the authority of this right."¹³⁵

99. While the inter-American system espouses a formal notion of equality in the sense of requiring that any difference in treatment be based on reasonable and objective criteria, thus precluding any unreasonable, capricious or arbitrary differences in treatment, it is also moving toward a concept of material or structural equality that is premised upon an acknowledgement of the fact that for certain sectors of the population, special equalizing measures have to be adopted. The circumstances of the disadvantaged group might necessitate a difference in treatment because equal treatment could have the effect of limiting or encumbering their access to some service or good or the exercise of a right.¹³⁶

b. Due diligence and positive antidiscrimination measures

100. Occasionally, the special measures of protection and measures to promote equality –including affirmative action- are measures to provide the guarantees necessary to ensure that certain sectors that are victims of structural equality or long-standing exclusion have access to and are able exercise certain rights. The international and regional human rights systems have embraced the idea of using special measures to protect against discrimination.

101. The Commission observes that the State's due diligence obligations under Article 7 of the Convention of Belém do Pará include, in particular, the duty to prevent or transform structural or widespread violence against women. These should be counted among the special measures to promote equality and eradicate social and cultural patterns that foster discrimination against women in society. Section III of this report examines various policies being implemented in a number of States in this hemisphere and the public policy guidelines that could be followed to achieve that objective.

¹³⁵ IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/Ser.L/V/II.100 Doc. 17, October 13, 1998, Chapter IV.

¹³⁶ For an examination of the ideas expressed here, see also Iris Marion Young, *Justice and the Politics of Difference*, Princeton University Press, 1990; Ferrajoli, Luis, *Igualdad y diferencia* [Equality and Difference], in *Derechos y garantías. La ley del más débil*, Editorial Trota, pp. 73-96; Barrére Unzueta, María Angeles, *Discriminación, Derecho Antidiscriminatorio y Acción Positiva a favor de las mujeres* [Discrimination, Anti-discrimination Law and Affirmative Action for Women], Madrid, 1997, and *Igualdad y discriminación positiva: un esbozo de análisis conceptual*; Fiss, Owen, *Another Equality*, and *Groups and the Equal Protection Clause*, 5 *Philosophy and Public Affairs* 107 (1975).

102. The United Nations Human Rights Committee has observed that the obligation to ensure to all persons the rights recognized in the Covenant, established in articles 2 and 3 thereof, requires that States parties "take all necessary steps to enable every person to enjoy those rights."¹³⁷ These steps include (i) the removal of obstacles to the equal enjoyment of such rights, (ii) the education of the population and of State officials in human rights, and (iii) the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant. The Committee also noted that "[t]he State party must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women."¹³⁸

103. The United Nations Committee on Economic, Social and Cultural Rights has established that the State as an obligation *vis-à-vis* groups in vulnerable circumstances or those whose economic, social and cultural rights are susceptible to violation, which is to enact laws that protect them from that discrimination and to adopt special measures, among them active policies of protection.¹³⁹

104. Within the inter-American region, Article 2 of the American Convention on Human Rights provides that States must promote measures that make the enjoyment of human rights possible: "(...) the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

¹³⁷ United Nations, Human Rights Committee, General Comment (GC) No. 28, *Equality of rights between men and women*, 2000.

¹³⁸ United Nations, Human Rights Committee, General Comment (GC) No. 28, *Equality of rights between men and women*, 2000, para. 3.

¹³⁹ A number of instruments call for the adoption of special measures, including legislative measures, and active policies aimed at protecting the economic, social and cultural rights of vulnerable groups. The obligation to protect the most vulnerable and least protected groups during periods of adjustment appears in General Comment (GC) No. 2, paragraph 9 and General Comment No. 3, paragraphs 12 and 13; the obligation to protect persons with disabilities and the elderly appears in GC No. 5, paragraph 9, and GC No. 6, paragraph 17, respectively. GC No. 4, paragraph 8 e) provides that adequate housing must be accessible to those entitled to it. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be assured some degree of priority consideration in the housing sphere, including access to land for landless or impoverished segments of society. In GC No. 7, paragraph 10, the Committee observes that women, children, youth, older persons, indigenous people, ethnic and other minorities and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction, imposing an additional obligation upon governments to ensure that appropriate measures are taken to ensure that no form of discrimination is involved. In GC No. 5, paragraph 18, the Committee writes that because appropriate measures need to be taken to undo existing discrimination and to establish equitable opportunities for persons with disabilities, such actions should not be considered discriminatory in the sense of article 2(2) of the International Covenant, as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective. Special measures to protect vulnerable groups or individuals are referenced in the Limburg Principles (principles 14 and 39).

105. In the *Case of the Girls Yean and Bosico*, the Inter-American Court held that to be in compliance with its obligation of equal and effective protection of the law and non-discrimination, the State's first duty when crafting the mechanisms by which nationality is recognized is to refrain from enacting any regulations that are either discriminatory or that have a discriminatory impact on a given group.¹⁴⁰ Second, a State must combat discriminatory practices at all levels, particularly in public institutions. Lastly, a State must take the affirmative measures needed to ensure that all persons are truly equal before the law.

106. The Court also underscored this obligation of the State in Advisory Opinion OC-18.¹⁴¹ There, the Court emphasized the special obligation to protect that a State must exercise against discriminatory acts and practices in which third parties engage with that State's tolerance or acquiescence.¹⁴² The Court ruled along similar lines in the *Case of the Girls Yean and Bosico*, where it held that Article 24 of the American Convention requires that States not only refrain from exercising discriminatory policies and practices, but that it also protect its people against any discriminatory practices and conduct, whether by public agents or non-State actors.¹⁴³

107. This type of protection considerably magnifies the State's obligations to protect the principle of equality before and under law. It requires a State to craft preventive policies, especially with regard to widespread discriminatory practices or structural discriminatory situations, even when those practices and situations are attributable to private persons. The IACHR examined this very obligation in the *Maria Da Penha* case, referenced earlier in this report.¹⁴⁴

108. With specific reference to the gender issue, the IACHR, through its Rapporteurship on the Rights of Women, has maintained that States must employ special measures in their efforts to reduce gender inequality. Accordingly, and pursuant to articles 20 and 24 of the American Declaration and Article 23 of the American Convention, the Commission has urged the States to continue and expand measures to encourage participation by women in

¹⁴⁰ I/A Court H.R., *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130, para. 141.

¹⁴¹ I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18.

¹⁴² "(...) States are obliged to take affirmative action to reverse or change discriminatory situations that exist in their societies to the detriment of a specific group of persons. This implies the special obligation to protect that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations." I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 104.

¹⁴³ I/A Court H.R., *Case of the Girls Yean and Bosico*. Judgment of September 8, 2005. Series C No. 130.

¹⁴⁴ IACHR, Merits, Report No. 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001. In this case, the Commission found the State's international responsibility had been engaged by its failure to comply with its due diligence obligation to prevent, punish and eradicate domestic violence.

decision-making in the public sphere, including positive measures.¹⁴⁵ The IACHR has urged the States to ensure that women have appropriate representation at all levels of government –local, provincial, state and national; to develop strategies to get more women involved in political parties; and to take further steps to bring the different sectors of civil society, including those that represent women’s interests, fully into the process of developing and implementing policies and programs.¹⁴⁶

109. "*Special measures*" is the phrase that international human rights instruments use to refer to temporary measures whose purpose is to ensure that certain groups are able to advance. The committees that oversee international treaties, and the States Parties as well, have used terms such as "affirmative action," "positive action," "positive measures," "reverse discrimination" and "positive antidiscrimination."¹⁴⁷ They have justified measures of this type as corrective, compensatory and promotional.¹⁴⁸

110. General Recommendation No. 25 of the Committee on the Elimination of Discrimination against Women discusses the scope and significance of the special measures referenced in paragraph 1, Article 4 of the CEDAW, and states that such measures:

[m]ust be determined in the context of the overall object and purpose of the Convention, which is to eliminate all forms of discrimination against women with a view to achieving women’s *de jure* and *de facto* equality with men in the enjoyment of their rights and fundamental freedoms. States parties to the Convention are under a legal obligation to respect, protect, promote and fulfill this right to non-discrimination for women and to ensure the development and advancement of women in order to improve their position to one of *de jure* as well as *de facto* equality with men.¹⁴⁹

¹⁴⁵ IACHR Annual Report 1999, *Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination*, Chapter V, C.1.

¹⁴⁶ IACHR Annual Report 1999, *Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination*, Chapter V, C.1.

¹⁴⁷ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, on special temporary measures*, U.N. Doc./CEDAW/C/2004/II/WP.1/Rev.1 (2004), para. 17.

¹⁴⁸ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, on special temporary measures*, U.N. Doc./CEDAW/C/2004/II/WP.1/Rev.1 (2004).

¹⁴⁹ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, on special temporary measures*, U.N. Doc./CEDAW/C/2004/II/WP.1/Rev.1 (2004), Section II. Some feminists criticize this position, arguing that it forces women to adapt to a masculine model. This approach, however, is inadequate to challenge and change a world in which the distribution of goods and resources is based on a hierarchy of genders. See Hilary Charlesworth, Christine Chinkin y Shelley Wright, *Feminist Approaches to International Law*, en *American Journal of International Law*, 85 A.J.I.L. 613, 1991; Hilary Charlesworth, *What are "Women's International Human Rights"?* in *Human Rights of Women: National and International Perspectives*, Rebecca Cook (editor), Profamilia, Bogotá, 1997. According to these authors, the development of international human rights law in

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111. The question of how long the temporary special measures will remain in place is a function of how long the inequality between men and women persists. Hence, measures of this type should remain in place until equality between the sexes is achieved.¹⁵⁰

112. The term "special" should be understood to mean that these measures are calculated to serve a specific purpose; it should not be construed as meaning that the groups that the measures are intended to protect are somehow weak or vulnerable.¹⁵¹ The means used to achieve that end can vary, depending on the context:

The term "measures" encompasses a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames, and quota systems. The choice of a particular "measure" will depend on the context in which article 4, paragraph 1, is applied and on the specific goal it aims to achieve.¹⁵²

113. In the report titled *Considerations regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-Discrimination*, the IACHR refers to Article 4 as a standard of interpretation.¹⁵³ This article provides important guidance in understanding the legal grounds for taking special affirmative action measures intended to further women's political participation, and "recognizes that, even where women are accorded equality as a matter of law, this does not equate to a guarantee of equality of opportunity or treatment. Special measures to remedy persistent conditions of discrimination in fact are permitted as long as those conditions persist, and until equality of opportunity is achieved. It must be emphasized that, under those circumstances, and where implemented as required, Article 4 provides as a

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general has been one-side and androcentric, and the content of the rules of international law privilege men. The very structure of this law is built upon the silence of women.

¹⁵⁰ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, on temporary special measures*, U.N. Doc./CEDAW/C/2004/II/WP.1/Rev.1 (2004), para. 20. The duration of a special temporary measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time. Temporary special measures must be discontinued when their desired results have been achieved and sustained for a period of time.

¹⁵¹ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, on temporary special measures*, U.N. Doc./CEDAW/C/2004/II/WP.1/Rev.1 (2004), para. 21.

¹⁵² United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, on temporary special measures*, U.N. Doc./CEDAW/C/2004/II/WP.1/Rev.1 (2004), para. 22.

¹⁵³ Art. 4: "Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved."

matter of law that such measures do not constitute discrimination."¹⁵⁴ Affirmative actions can be taken, therefore, only if the discriminatory patterns that those actions are intended to correct are present and will last only as long as true equality of opportunity is not achieved.

114. Therefore, differential treatment of men and women, in law and by the authorities, is justified when such treatment is advantageous to women and provided the underlying hidden purpose is not to lock women into the traditional roles that they have historically been given.

115. Special measures serve a number of basic objectives.¹⁵⁵ On the one hand, they are essential in order to remedy the pernicious consequences of the prejudice that women have endured and still endure.¹⁵⁶ On the other hand, special measures also serve to eliminate the group hierarchy that is so deeply rooted in social structures.¹⁵⁷ Special measures can also be justified as compensation for the domination of women practiced in the past, in that such measures can afford them an added advantage in the distribution of resources.

116. In Advisory Opinion OC-16, the Inter-American Court confirmed the countervailing nature of measures adopted to eliminate real inequality. There the Court wrote the following:

To accomplish its objectives, the judicial process must recognize and correct any real disadvantages that those brought before the bar might have, thus observing the principle of equality before the law and the courts and the corollary principle prohibiting discrimination. The presence of real disadvantages necessitates countervailing measures

¹⁵⁴ The Commission also cites General Recommendation No. 5 of the CEDAW, which recommends that "States Parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment."

¹⁵⁵ For an articulation of the various possible justifications for affirmative action, see Iris Marion Young, Catherine MacKinnon, María Angeles Barrere Unzueta and Owen Fiss, and Marcela V. Rodríguez, *Igualdad, Democracia y Acciones Colectivas*, in Alda Facio and Lorena Fries (eds.) *Género y Derecho*. Chile, Lom Ediciones, 2000, and *Sobre la constitucionalidad de la cuota mínima de mujeres en los partidos políticos* in *Capacitación Política para mujeres: Género y Cambio Social en la Argentina: Mitos y Realidades*, Ed. Diana Maffia and C. Kuschnir. Buenos Aires: Ed. Feminaria, 1994.

¹⁵⁶ Frances Olsen wrote that "Affirmative action for women, a departure from sex blindness, may be justified and supported as a method to counteract years of teaching women to be irrational, passive and so forth. (...) Affirmative action might then be justified and supported as a technique for counteracting prejudiced, inaccurate views that women are irrational, passive, and so forth." See Frances Olsen, "The Sex of Law," in *The Politics of Law: A Progressive Critique*, David Kairys (ed.) (New York, Basic Books, 1998), p. 694.

¹⁵⁷ Iris Young writes that "affirmative action policies [can be understood] as compensating for the cultural biases of standards and evaluators used by the schools or employers. These standards and evaluators reflect at least to some degree the specific life and cultural experience of dominant groups –whites, Anglos, or men. In a group-differentiated society, moreover, the development of truly neutral standards and evaluations is difficult or impossible, because female, black, or Latino cultural experience and the dominant cultures are in many respects not reducible to a common measure. Thus, affirmative action policies compensate for the dominance of one set of cultural attributes." See Iris Marion Young, "Polity and Group Difference" in *Ethics*, Vol. 99, No. 2 (Jan. 1989), p. 271.

that help to reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defense of one's interests. Absent those countervailing measures, widely recognized in various stages of the proceeding, one could hardly say that those who have the disadvantages enjoy a true opportunity for justice and the benefit of the due process of law equal to those who do not have those disadvantages.¹⁵⁸

117. The IACHR, too, has made express reference to the compensatory purpose that special measures serve:

Where certain groups within a population have historically been subject to certain forms of public or private discrimination, the existence of legislative prescriptions may not be a sufficient mechanism for ensuring equality in society. The right to equal protection of and before the law may also require the adoption of positive measures to protect against discriminatory treatment within the public and private sectors.¹⁵⁹

118. Not all societies discriminate against the same groups. Some societies discriminate against certain ethnic, religious or political groups that other societies assimilate and absorb. Then, too, over the course of history, new targets of discrimination have emerged that did not exist before (for example, carriers of HIV-AIDS). Groups that are in a vulnerable situation will vary from one society to the next and from one point in history to another. Therefore, every State has a duty to determine who those groups are and to devise inclusive policies suited to each group and capable of ensuring to them the free and full exercise of their rights. This was the finding of, for example, the United Nations Committee on Economic, Social and Cultural Rights with regard to a number of rights, among them the right to housing¹⁶⁰ and to public health.¹⁶¹

119. Colombia's Constitutional Court has written at length on the idea of substantive equality. It held that the purpose of a substantive concept of equality is not just equality in the eyes of the law, but equality in practice as well. The political formula of the social and democratic rule of law manifests itself in the promotion of this equality and "(...) is fully manifested in the mandate to afford special protection and consideration to the comparatively more disadvantaged when administering and meting out limited resources."¹⁶² The Constitutional Court went on to add that equal protection is achieved by what States do in action and in practice, and not by what they abstain from doing.¹⁶³

¹⁵⁸ I/A Court H.R., *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 119.

¹⁵⁹ IACHR, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96 Doc. 10 rev. 1, cap. 10, April 24, 1997.

¹⁶⁰ United Nations, General Comments No. 4, para. 13.

¹⁶¹ United Nations, General Comments No. 14, paras. 43 f and 53.

¹⁶² Citing Judgment C-1064/01 in Judgment C-507/04. [Secretariat's translation]

¹⁶³ Judgment C-507/04.

120. Colombia's Constitutional Court has also written on the grounds for and scope of the positive actions referenced in the Colombian Constitution (Article 13, paragraph 2). In so doing it has alluded to the substantive dimension of equality, which it defines as the "State's commitment to remove the obstacles that *de facto* economic and social inequalities pose. Substantive equality, therefore, has a corrective, compensatory, emancipatory, countervailing and defensive quality for groups in positions of inferiority, through the positive actions taken in the branches of government."¹⁶⁴

121. In Judgment C-507/04, Colombia's Constitutional Court asserted that one of the essential purposes of the State is to ensure the effectiveness of the principles, rights and duties recognized in the Constitution (Article 2). Thus, the fundamental right to equal protection implies that the "State is to adopt the necessary measures" to materially ensure effective enjoyment of those rights. In other words, substantive and positive measures designed to ensure that every person receives the same protection from the "authorities," as the Colombian Constitution states (Article 13), making no distinction between public, civilian, military, judicial and any other kind of authorities, such as legislative.

122. In Judgment C-410/94,¹⁶⁵ Colombia's Constitutional Court asserted that the "elimination of sexual discrimination required under Article 13 of the Constitution is more than just a prohibition of such discrimination; instead, the constitutional intent is to undo the inferior status that Colombian women have historically had to endure. Based on the principle of protection, that ruling authorizes positive measures aimed at correcting *de facto* inequalities, compensating for the relegation they have endured and promoting women's true and effective economic and social equality." The justices in this case went on to write that protective measures "make it necessary to *determine those particularly vulnerable spheres in which such measures are needed*; in addition to family and State, the workplace is one area in which sexual discrimination is most likely to raise its head."¹⁶⁶

¹⁶⁴ In a number of cases the Constitutional Court cited the Colombian Constitution in reasoning its case for the need for special and specific measures on women's behalf, to protect them from the violence to which they had been subjected (Judgment C-408/96). The Court also held that during pregnancy and in the *post-partum* period, women shall enjoy special assistance and protection from the State and shall receive a child support subsidy from it if unemployed at the time. A pregnant woman is also entitled to special protection in the workplace. Special treatment is also mandated in the case of female heads of household (Judgments C-470/97, T-426/98, T-568/96, C-710/96, C-470/97, T-426/98 and C-991/04). [Secretariat's translation]

¹⁶⁵ In this case, the Court examined the age at which men and women qualify for old-age pensions and for the pension that employers are to pay to workers when they are dismissed without cause. In both cases, the qualifying age was younger for women. The Court considered this a fair practice.

¹⁶⁶ In another case, Colombia's Constitutional Court held that an analysis to determine whether the principle of equal protection has been violated must weigh the circumstances. That protection will evolve as circumstances change; by extension, the degree and scope of the protection will change if the risks and the threats change, and when the purposes of protection are altered. In Judgment C-507/04. [Secretariat's translation]

II. INADEQUACIES IN THE JUDICIAL RESPONSE TO CASES OF VIOLENCE AGAINST WOMEN: OBSTACLES TO THE FULFILLMENT OF THE OBLIGATION TO PRACTICE DUE DILIGENCE AND COMBAT IMPUNITY

A. Administration of justice: inefficacy and impunity in cases involving violence against women

123. This section examines how the administration of justice system has responded to incidents involving violence against women, using the States' international obligations as its frame of reference. The IACHR is mindful of the efforts that States have made to adopt a legal and political framework through which to address gender-based violence, one that features a variety of judicial protective resources and institutions. However, while the formal existence of the law and policy is one thing, their practicality and effectiveness in remedying acts of violence against women is altogether another. The IACHR has found that the judicial response to cases involving violence against women is notably deficient and hardly on a par with the severity and incidence of the problem.

124. The pattern in a number of countries is one of systematic impunity in the judicial prosecution of and proceedings on cases of violence against women. This is because the vast majority of these cases are never effectively investigated and punished or proper redress provided. The impunity that attends these human rights violations perpetuates a social acceptance of gender-based violence, which in turn feeds women's sense of insecurity and their abiding mistrust of the administration of justice system. Given these deficiencies, the number of trials and convictions in no way measures up to the severity of the problem.¹⁶⁷ This challenge and its consequences were consistently cited by the representatives of the States, the administration of justice systems, civil society, academia and women belonging to differing ethnic and racial groups who participated in the present project's implementation. It has also been borne out by the information the Commission has received through the various mechanisms of the inter-American system.

125. The IACHR has also established that violence and discrimination against women are still accepted practices in the American societies, as evidenced by how officials in the administration of justice systems respond to women victims of violence and handle their cases. The tendency is to regard cases of gender-based violence as domestic disputes that would be better settled without the State's intervention.

126. This section highlights gaps, irregularities and deficiencies in the investigation, prosecution, trial and punishment of cases involving violence against women, and in the conduct of judicial officials. It also examines the obstacles in the way of effective State protection against imminent acts of violence and explores a number of problems that deter women from filing

¹⁶⁷ The IACHR has received information from the States confirming that the problem of violence against women is still alarmingly prevalent. This information is summarized in the annexes to this report.

complaints in cases involving acts of violence, above all the inadequate treatment that victims too often receive when they turn to judicial protective institutions. The report singles out a number of structural problems within the justice systems that have adverse consequences for the prosecution of cases involving violence against women and the proceedings. The section then examines the special needs of indigenous and Afro-descendant women to effectively turn to the justice system.

1. Gaps and irregularities in the investigation of cases involving violence against women

127. The IACHR notes that a variety of factors conspire to undermine proper investigation of cases involving gender-based violence. First, the institutions conducting the investigations cause unwarranted delays. They tend not to regard these cases as priorities and, as a result, are slow to take the necessary steps to move the investigation forward. The failure to investigate the reported cases is in part a function of discriminatory socio-cultural patterns that discredit women victims and feed the perception that these crimes are not priorities.

128. Then, too, gaps and irregularities in the investigative procedures *per se* thwart the prosecution of such cases and the eventual punishment of the crimes committed. Other deficiencies include the failure to take evidence that is key to ascertaining the identity of the guilty parties; authorities who are neither competent nor impartial in their conduct of the investigations; emphasis on physical evidence and testimony to the exclusion of evidence of other types; the scant credibility attached to the victims' claims; and the improper treatment of women victims and members of their families when they endeavor to cooperate in the investigation into the facts. This combination of problems and deficiencies in the investigation of cases of violence perpetrated against women means that in the end, the number of cases that are actually investigated and go to trial pales by comparison to the number of complaints filed.

129. The IACHR has established violations of the American Convention and other international instruments caused by unwarranted delays in investigating cases of violence against women, the very kind of case that the Commission's thematic reports have singled out as a critical problem. In the *Maria da Penha Fernandes* case,¹⁶⁸ the Commission determined that the State had violated articles 8 and 25 of the American Convention and Article 7 of the Convention of Belém do Pará; the investigation of the battering had dragged on for more than 17 years, constituting an unwarranted delay in the administration of justice *vis-à-vis* these incidents of domestic violence. The Commission wrote that:

More than 17 years have elapsed since the launching of the investigation into the attack on the victim Maria da Penha Maia Fernandes and to date, based on the information received, the case against the accused remains open, a final ruling has not been handed down, and remedies have not

¹⁶⁸ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001.

been provided for the consequences of the attempted murderer of Mrs. Fernandes... The Commission concludes that the police investigation completed in 1984 provided clear and decisive evidence for concluding the trial and that the proceedings were delayed time and time again by long waits for decisions, acceptance of appeals that were time-barred, and unwarranted delays. Moreover, in the view of the Commission, the victim/petitioner in this case has fulfilled the requirement related to procedural activity with respect to the Brazilian courts, which is being handled by the Office of the Public Prosecutor and the pertinent courts, with which the victim/complainant has cooperated at all times. In the view of the Commission therefore, the characteristics of the case, the personal situation of persons involved in the proceedings, the level of complexity, and the procedural action of the interested party cannot explain the unwarranted delay in the administration of justice in this case (...).¹⁶⁹

130. The *González Pérez Sisters* case, the Commission observed at the time, was one of complete impunity since more than six years after the date on which the human rights violations were committed and reported, the State had still not fulfilled its duty to prosecute and punish those responsible and to compensate the victims for the harm and losses that the rapes caused.¹⁷⁰ The Commission took the opportunity to reaffirm a basic tenet of human rights that is particularly pertinent to investigations into acts of violence against women: investigations must be conducted by competent and impartial authorities. When the authorities conducting investigations into these cases are neither trained in nor sensitive to gender-related issues, or fail to cooperate with one another, the investigations are needlessly delayed and matters are overlooked, which in the end is detrimental the case. The assailants in this case were members of the Army which meant, as the Commission noted, that "the investigation was transferred to the military courts, which clearly ha[d] no competence with respect to the matter and lack[ed] the impartiality necessary to establish the facts in accordance with due process."¹⁷¹ During its visits to Mexico and Guatemala, the Women's Rights Rapporteurship observed that the authorities in charge of investigations into incidents of violence against women were neither competent nor impartial, which considerably foreshortened any possibility that these cases would ever be prosecuted and the guilty parties punished.

131. As for the competence of the investigative bodies, during its trip to Guatemala in 2004 and its follow-up visit in 2006, the Rapporteurship learned that the national civil police and the public prosecutor's office –the two institutions in charge of investigating cases of violence against women- often do not collaborate by sharing information, which only slows investigations into these cases.

¹⁶⁹ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, paras. 38-39, 44.

¹⁷⁰ IACHR, Merits, Report N° 53/01, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 4, 2001, para. 88.

¹⁷¹ IACHR, Merits, Report N° 53/01, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 4, 2001, para. 88.

132. In its report on the situation of women's rights in Ciudad Juárez, Mexico, the IACHR observed gender biases in the conduct of the prosecutors and investigators working cases involving violence against women, biases that demeaned the women victims throughout the investigation process:

(...) almost as soon as the rate of killings began to rise, some of the officials responsible for investigation and prosecution began employing a discourse that in effect blamed the victim for the crime. According to public statements of certain highly placed officials, the victims wore short skirts, went out dancing, were "easy" or were prostitutes. Reports document that the response of the relevant officials to the victims' family members ranged from indifference to hostility.¹⁷²

133. By the date of the publication of this report, the IACHR has admitted eight petitions in which the petitioners are alleging unwarranted delays in the investigation into murders of women in the area of Ciudad Juárez, Mexico and Guatemala. Each case alleges that the investigations have dragged on for almost five years, and still no suspect has been identified, much less a guilty party convicted and sentenced.¹⁷³ The Commission's report on the violence against women in Ciudad Juárez pointed out that the investigations of the killings and other crimes moved slowly and were riddled with irregularities.¹⁷⁴

134. The Commission has also learned that incidents of mistreatment of relatives of women victims of violence are on the rise. Family members are inadequately treated when they attempt to obtain information about or cooperate in the investigation. The kind of treatment they receive violates their right of access to justice and Articles 1 and 2 of the United Nations Code of Conduct for Law Enforcement Officials. The United Nations Code of Conduct provides that in the performance of their duties, law enforcement officials "shall respect and protect human dignity and maintain and uphold the human rights of all persons."

¹⁷² IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 4.

¹⁷³ IACHR, Report N° 32/06 – admissibility, Petition 1175-03, Paloma Angélica Escobar Ledesma *et al.* (Mexico); IACHR, Report N° 31/06 – admissibility, Petition 1176-03, Silvia Arce *et al.* (Mexico); IACHR, Report N° 18/05 – admissibility, Petition 283/02, Laura Berenice Ramos Monárrez (Mexico); IACHR, Report N° 17/05 – admissibility, Petition 282/02, Esmeralda Herrera Monreal (Mexico); IACHR, Report N° 16/05 – admissibility, Petition 281/02, Claudia Ivette González (Mexico); IACHR, Report N° 92/06 – admissibility, Petition 95-04, María Isabel Véliz Franco (Guatemala); IACHR, Report N° 93/06 – admissibility, Petition 972-03, Valentina Rosendo Cantú (Mexico); IACHR, Report N° 94/06 – admissibility, Petition 540-04, Inés Fernández Ortega *et al.* (Mexico).

¹⁷⁴ IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 136.

135. The IACHR has also been apprised of two different types of violations that authorities commit when women are reported missing or disappeared: 1) they fail to launch an immediate search for the victim, and 2) they blame the victim for what happened, thereby implying that the missing woman is somehow undeserving of state efforts to locate and protect her. This type of state response is particularly egregious in the case of minors, and was brought to the Commission's attention when it processed individual cases having to do with the situation in Ciudad Juarez, Mexico, and Guatemala and during its *in loco* visits to other countries.

136. In regards to the gaps and irregularities that affect the investigation of cases of violence against women, the IACHR has confirmed that during the investigation of the vast majority of these cases, key types of evidence to establish the truth are not collected. On the one hand, the IACHR has identified the absence of physical, scientific and psychological evidence to establish the facts, which can bring a case to a standstill and hinder the prosecution's ability to make its case. On the other hand, the IACHR has verified that the majority of evidence-collection efforts related to acts of violence against women focus on physical and testimonial evidence, neglecting other types of evidence that can be crucial to establishing the facts, such as that of a scientific and psychological nature. The IACHR also observes the lack of protocols to describe the complexity of these cases in regard to evidence and an itemization of the minimum evidence that needs to be gathered to properly substantiate a case.

137. For example, during the Rapporteurship's recent follow-up visit to Guatemala, its members met with staff of those units in the Public Prosecutor's Office that are in charge of investigating various crimes against women, including crimes of intrafamily violence. The prosecutors observed that in cases of domestic assault, much more weight was attached to evidence of physical injuries. In its report on the Colombian armed conflict's impact on women, the IACHR expressed concern over the "chain of custody"¹⁷⁵ in cases involving violence and its exclusive emphasis on preserving physical evidence.

138. The IACHR has verified that evidence other than physical evidence and testimonies needs to be weighed to prove cases of violence against women, particularly those related to sexual violence. The Rules of Procedure and Evidence of the International Criminal Court address several factors that can inhibit a victim from physically resisting a sexual aggression, even when the act has not been consented, and how these factors must be

¹⁷⁵ The "chain of custody" is a series of procedures that officials in charge of physical evidence must follow in order to preserve it until it can be used in trial. Under Law 906 of 2004, the Attorney General of the Nation is empowered to fully regulate the requirements, functions, safeguards and responsibilities of the chain of custody. See IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, note 222.

considered within the context of a judicial process.¹⁷⁶ According to the rules, these factors may include: "force, threat of force, coercion or taking advantage of a coercive environment" which might have undermined the victim's ability to give "voluntary and genuine" consent.¹⁷⁷ As the European Court of Human Rights ruled in the case of *M.C. v. Bulgaria*, certain circumstances might impede the victim from physically resisting sexual abuse, including the environment of coercion created by the assailant. The result can be an absence of "direct" proof or witnesses of the sexual aggression.¹⁷⁸ Therefore, medical-legal reports that confine to physical observations, such as determining whether the victim's hymen was still intact, are only part of a group of evidence that must be evaluated to clarify the facts in a sexual violence crime.¹⁷⁹

139. The IACHR has received reports of delays in gathering evidence in the wake of an assault, which poses critical challenges to collecting adequate testimony and expert evidence. The IACHR has also been informed that evidence provided by victims or their relatives is not introduced into the overall body of evidence in cases involving women victims of violence. Another frequent complaint was that States refuse to provide information on an investigation's progress. Additionally, a partialized gathering and processing of evidence as well as the absence of skilled personnel to conduct the required processes has been registered.

140. For instance, a telling example involving El Salvador was brought up during one of the Rapporteurship's working meetings, where the findings of a study conducted by the nongovernmental organization *Las Dignas* were introduced. The study concluded that the vast majority of investigations

¹⁷⁶ United Nations, International Criminal Court, *The Rules of Procedure and Evidence*, U.N. Doc. PCNICC/2000/1/Add.1 (2000), Rule 70. The Rules establish that:

In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:

- (a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
- (b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
- (c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;
- (d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

¹⁷⁷ United Nations, International Criminal Court, *The Rules of Procedure and Evidence*, U.N. Doc. PCNICC/2000/1/Add.1 (2000), Rule 70.

¹⁷⁸ *M.C. v. Bulgaria*, Eur. Ct. H.R., app. No. 39272/98, Judgment of March 4, 2004, paras.178-184.

¹⁷⁹ Patricia Esqueteni and Jacqueline Vásquez, *Informe: Género y Reforma Procesal Penal – Ecuador* [Report: Gender and Criminal Procedure Reform – Ecuador], November 2004.

into sex offenses are not scientific in nature and protocols and methods for investigation of these crimes are lacking.¹⁸⁰

141. Overall, justice systems do not adequately protect women victims' dignity and privacy during the investigation process. These women end up being re-victimized by the lack of sensitivity to their plight, their sex, and the seriousness of the facts alleged. During the working meetings that the Rapporteurship organized, an example from Nicaragua was brought up where it was noted that in Nicaragua, the authority who receives the original complaint –generally the police- asks the victim to undergo examination by the Institute of Legal Medicine and a psychologist so that they can use their expert opinions as evidence. In general, however, these people are discredited by the assailant, who orders that a battery of other tests be taken.¹⁸¹ In Honduras, a research study describes the problem as follows:

The double victimization of women who file complaints for sex offenses is obvious from the moment the complaint is first filed with the authorities. As a rule, no physical space is set aside where such complaints can be filed in a manner that guarantees the complainant's privacy and security. Most such statements have to be made in open areas where the curiosity and staring of individuals unrelated to the investigation compound the complainant's sense of vulnerability. It is utterly incomprehensible why a statement or testimony should have to be given six times over in the presence of various actors who, although members of differing institutions, are nonetheless part of the same criminal justice system.¹⁸²

142. Then, too, the establishments where victims receive support and assistance are not always able to guarantee their privacy. Victims may have to wait long periods before being attended. Victims are questioned in public by multiple officials, including one or two police officers, a prosecutor, a forensic physician, a clerk, a judge, a defense attorney. Yet throughout all this they are never informed of the judicial process in general.

143. Problems of this kind are examined in a research study done by the Observatory for a Violence-Free Life in Ecuador [*Observatorio para Una Vida Libre de Violencia en el Ecuador*], with support from the *Consejo Nacional de*

¹⁸⁰ Asociación de Mujeres por la Dignidad y la Vida, Las Dignas, *Sistematización sobre Violencia Sexual e Intrafamiliar, Años 1998-2000* [Report: Systematization about Sexual and Intrafamily Violence, Years 1998-2000], Programa de Derechos Sexuales y Reproductivos y Una Vida Libre de Violencia, February 2003, pp. 14 – 15; Meeting of Experts: *A Review of Access to Justice in Mexico and the Central American Countries*, San José, Costa Rica, August 11 and 12, 2005, held under the IACHR's auspices and organized by the Inter-American Institute for Human Rights.

¹⁸¹ Meeting of Experts: *A Review of Access to Justice in Mexico and the Central America Countries*, San José, Costa Rica, August 11 and 12, 2005, sponsored by the IACHR and organized by the Inter-American Institute for Human Rights.

¹⁸² Margarita Puerto, *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género: Honduras. Informe Final* [Evaluation of Criminal Procedure Reform from a Gender Perspective: Honduras. Final Report], November 2004, research done as part of the Project "Gender and Criminal Procedure Reform", being conducted by the Justice Studies Center of the Americas; Justice Studies Center of the Americas, p. 65. [Secretariat's translation]

Mujeres and the *Fondo de Justicia y Sociedad* (Fundación ESQUEL-USAID).¹⁸³ The study followed 50 cases of sex offenses and intrafamily violence in five communities in Ecuador. One of the chief findings was that many women victims feel mistreated by the administration of justice system. When they file their complaints, they then have to undergo a number of invasive examinations and repeat their testimony over and over again. Most cases of intrafamily violence and sexual abuse occur in private and leave no physical evidence, with the result that the case rests solely on the word of the victim against that of her assailant. In such cases, the justice system is more inclined to believe the assailant. The forensic medical examinations are not always helpful in establishing the facts because those who perform them are not trained in cases involving violence against women and the findings may simply be a physician's subjective interpretation.

144. The Commission has observed principles applicable to the prosecution of cases of violence against women, which grant prosecutors considerable latitude in deciding which crimes they will seek indictments for and which they will not. This latitude can result in the influence of discriminatory socio-cultural patterns in a prosecutor's decision of which crimes to investigate. The Commission examined this problem in its report on the impact of the Colombian armed conflict on women. There, a number of sources, including the Ombudswoman for Children, Women and the Family, communicated to the Rapporteurship its concern over the incorrect application of the principle of opportunity, whereby in cases involving violence against women, prosecutors have the authority to decide which cases they will investigate and seek indictments for and which they will not, and for which crimes.¹⁸⁴ Given so much latitude on occasion, a prosecutor's personal beliefs and attitudes can play a pivotal role in the decision he or she makes.

145. The incorrect application by the prosecutor's offices of the principle of opportunity in some countries does not take into account the vulnerability or defenselessness of women victims of violence. Nor does it consider the fact that women who are raped or subjected to other forms of violence may feel compelled to remain silent because they fear their assailant's reprisals and/or community ostracism. This situation and the dangers posed by allowing prosecutors this degree of discretion were mentioned by the experts at the working meetings organized by the Rapporteurship, during the discussions on Paraguay¹⁸⁵ and Guatemala.¹⁸⁶ A research study on Chile's criminal justice

¹⁸³ CEPLAES – CONAMU – Fondo de Justicia y Sociedad, *Observatorio de los derechos de las mujeres a una vida libre de violencia. Sistematización de Casos de Delitos Sexuales y Violencia Intrafamiliar*, ESQUEL-USAID, Quito, Ecuador, 2004, (unpublished).

¹⁸⁴ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, paras. 206-207.

¹⁸⁵ Meeting of Experts, *An Analysis of Access to Justice in the Southern Cone Countries*, National Senate, Arturo Illia Salon, Buenos Aires, Argentina, September 12 and 13, organized in cooperation with the *Equipo Latinoamericano de Justicia y Género* and the *Centro de Estudios Legales y Sociales*.

¹⁸⁶ Meeting of Experts: *An Analysis of Access to Justice in Mexico and the Central American Countries*, San José, Costa Rica, August 11 and 12, 2005, held under the auspices of the IACHR and organized by the Inter-American Institute for Human Rights; see also RED ALAS, Continued...

system and the handling of cases involving gender-based violence describes the problem as follows:

Prosecutors appear to seek indictments only in those cases where they feel certain that a conviction can be won. In determining whether a case can be won, prosecutors tend to look more at the strength of the evidence in a case, and less at the seriousness of the facts under investigation. These are dubious criteria since, for example, sex-related criminal cases are, by nature, not cases where victory is a certainty. Because of the emphasis placed on the certainty of victory, the criminal justice system has not done enough to solve crimes of this type, which are, by nature, different from other crimes.¹⁸⁷

146. Research on the situation in Chile, Honduras, Ecuador and Guatemala found that the percentage of sex offenses that go to trial is extremely small in these countries. The reasons cited include the inefficacy of the investigations conducted by the public prosecutor's office and the tendency to take to trial only those cases in which the evidence is considered to be sufficient to win a conviction.¹⁸⁸ One persistent problem cited is the fact that the public prosecutor's offices solely rely on evidence like medical reports of physical injuries and the testimony of witnesses, without efficiently compiling "evidence that can be used to prove and reconstruct the crime." Very little protection is provided to victims and witnesses during the proceedings. A research study conducted in Bolivia on discrimination against women within the administration of justice system found that prosecutors tend to associate

...Continuation

Mas Allá del Derecho, Justicia y Género en America Latina [Beyond the Law: Justice and Gender in Latin America], Ed. Luisa Cabal and Cristina Motta, 2006.

¹⁸⁷ Lidia Casas-Becerra and Alejandra Mera González-Ballesteros, *Delitos Sexuales y Lesiones. La Violencia de Género en la Reforma Procesal Penal en Chile*: Final Report [Sex Offenses and Sexual Assaults and Battery. Gender-based Violence in Criminal Procedure Reform in Chile: Final Report], November 2004 (research done under the project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas), p. 35. [Secretariat's translation]

¹⁸⁸ Lidia Casas-Becerra and Alejandra Mera González-Ballesteros, *Delitos Sexuales y Lesiones. La Violencia de Género en la Reforma Procesal Penal en Chile*: Final Report [Sex Offenses and Sexual Assault and Battery. Gender-based Violence in Criminal Procedure Reform in Chile: Final Report], November 2004 (research done under the project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas); Kenia Herrera and Andrea Diez, *Violencia contra las Mujeres: Tratamiento por Parte de la Justicia Penal de Guatemala* [Violence against Women: Their Treatment at the Hands of the Criminal Justice System in Guatemala], November 2004 (research done as part of the Project "Gender and Criminal Procedure Reform", being conducted by the Justice Studies Center of the Americas); Patricia Esqueteni and Jacqueline Vásquez, *Informe: Género y Reforma Procesal Penal – Ecuador* [Report: Gender and Criminal Procedure Reform – Ecuador], November 2004; Margarita Puerto, *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género: Honduras. Informe Final* [Evaluating Criminal Procedure Reform from a Gender Perspective: Honduras. Final Report], November 2004 (research done as part of the Project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas); Justice Studies Center of the Americas, *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género* [Evaluating Criminal Procedure Reform from a Gender Perspective], Farith Simon and Lidia Casas, November 2004, p. 10.

sexual violence with physical violence, thereby downplaying the severity of a sexual assault.¹⁸⁹

2. Flaws in the prosecution and punishment of cases involving violence against women

147. The problems with the investigation of cases involving violence against women are further compounded by the inefficacy of the criminal justice systems in prosecuting and punishing such cases. The Commission has found that certain discriminatory socio-cultural patterns influence the conduct of officials at all levels of the judicial branch, with the result that even today, the very few cases that actually go to trial and end in convictions are in no way reflective of the number of complaints filed and the prevalence of the problem. The Commission's work has found that violence and discrimination against women are still condoned in society in this hemisphere, as evidenced by the way in which officials in the administration of justice system respond to women victims of violence and treat their cases. Even today, the tendency is to regard cases involving violence against women as private, domestic disputes, low priorities, and areas into which the State should not intrude.

148. The following statements made during the Rapporteurship's working meetings capture the view of the majority of experts consulted during this project as to the systemic barrier that culture represents when women in their countries file complaints of violence:

The patriarchal culture helps shape the mentality of many of our peoples. Violence against women is in fact a symptom, but not the disease. Women will not have equal access to justice and violence against women will not be eliminated until a new mentality is cultivated, one that regards women as equals and not inferiors. The mindset today is the root cause of violence against women.¹⁹⁰

The changes made thus far are for the good, but we have not yet transformed society.¹⁹¹

149. In its cases, the Commission has recognized the presence of this cultural problem and how it impacts the conduct of judicial officials. Accordingly, the Commission has reminded the States of their obligation to address it adequately. As noted earlier, in the *Maria da Penha Fernandes*

¹⁸⁹ See Supreme Court of Justice of Bolivia, Constitutional Tribunal, *Sesgo de Género en la Administración de la Justicia* [Gender Bias in the Administration of Justice], Dr. Emilse Ardaya, Justice of the Supreme Court, Dr. Elisabeth Iñiguez, Justice of the Constitutional Tribunal, the Centro Juana Azurduy and the Spanish International Cooperation Agency.

¹⁹⁰ Presentation by Dr. Silvia Pimentel, Expert from the CEDAW Committee, Meeting of Experts: *A Review of Access to Justice in the Southern Cone Countries*, Buenos Aires, Argentina, September 23-24, 2005, held under the auspices of the IAVHR and organized in cooperation with the *Equipo Latinoamericano de Justicia y Género* and the *Centro de Estudios Legales y Sociales*. [Secretariat's translation]

¹⁹¹ Presentation by Dr. Merle Mendoca, Meeting of Experts: *A Review of Access to Justice in the Anglo Caribbean Countries*, Kingston, Jamaica, September 29-30, 2005, held under the auspices of the IACHR and the United Nations Development Fund for Women.

case,¹⁹² the IACHR applied the Convention of Belém do Pará and found that, in addition to the violations in the individual case, there existed in Brazil a pattern of discrimination evidenced by the condoning of domestic violence against women, with the result that the judicial branch was ineffective in prosecuting and punishing such cases. The Commission underscored that the State's due diligence obligation involved more than a duty to prosecute and convict; it also involved a duty to "prevent these degrading practices."¹⁹³

150. Under item 7 of the questionnaire¹⁹⁴ that the IACHR sent to the States concerning gender-based violence and discrimination, the States were asked what were their greatest accomplishments and challenges in implementing laws and public policies to prevent, punish and eradicate discrimination and violence against women. In their responses, a number of States pointed to the cultural problem as one of the challenges that influenced the conduct of State officials, and described it as follows:

The cultural and silent acceptance of male domination.¹⁹⁵

The most entrenched obstacle to the prevention, protection and punishment of violence against women is the persistence of sexist imaginaries that are highly tolerant of violence against women.¹⁹⁶

Traditional stereotypes, attitudes and expectations of society continue to pose challenges.¹⁹⁷

Maintaining training and refresher courses for police and court personnel to eradicate the sexist practices that encumber the exercise of the right to justice in the case of women victims of violence.¹⁹⁸

A major challenge that OVW [Office of Violence against Women] faces is one of perception. Historically, the criminal justice system treated domestic violence as a private, family matter. Only in the past two decades has spousal and partner violence been acknowledged as a crime requiring the full force and attention of the criminal justice system (...) Another challenge that OVW faces is addressing the cycle of violence. Many states are beginning to recognize the impact of domestic violence on children. Numerous studies have noted the impact that witnessing domestic violence has on children. These

¹⁹² IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001.

¹⁹³ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

¹⁹⁴ See Annex B.

¹⁹⁵ Antigua's reply to the IACHR's questionnaire on the situation of women's access to justice in the Americas, February 15, 2006.

¹⁹⁶ Colombia's reply to the IACHR's Questionnaire on the Situation of Women's Access to Justice in the Americas, January 27, 2006. [Secretariat's translation]

¹⁹⁷ Belize's reply to the IACHR's Questionnaire on the Situation of Women's Access to Justice in the Americas, October 18, 2006.

¹⁹⁸ Costa Rica's reply to the IACHR's Questionnaire on the Situation of Women's Access to Justice in the Americas, 2006. [Secretariat's translation]

studies indicate that children who are exposed to domestic violence often exhibit higher levels of behavioral, social and emotional problems than children who have not witnessed such violence.¹⁹⁹

Implementation of the following measures is critical to the prevention, punishment and eradication of violence and discrimination against women: (...) e) permanently rooting out discriminatory concepts and values in the law; in the case of sex offenses, examples might include such concepts as chastity, honesty, or the possibility of circumventing criminal punishment if the offender marries the victim; f) training those who work in the justice system (those attached to the public prosecutor's office, police, forensic physicians, public servants and technicians) to be respectful of women's human rights and sensitive to the gender perspective; g) including the gender perspective in children's early education, and promoting the creation of public policies free of gender stereotypes and sexism (...) Domestic violence is legitimized and endures in large part because of the cultural practices underlying gender relations, which are commonly based on "myths, stereotypes of inferiority, male dominance, women's submission and control of women by men."²⁰⁰

The fact is that in our country, the law is changing faster than socio-cultural gender patterns in Peruvian families. In effect, these patterns, which have become beliefs, myths and prejudices, continue to influence the way in which the male and female identities are shaped, with each sex having its own roles but unequal status. These factors become obstacles to democratic relations within families and cut short women's progress at every stage in life.²⁰¹

Challenges include the cultural beliefs, the religious education about the roles of men and women, the ambivalence of victims of abuse to seek redress and lack of financial and human resources.²⁰²

Challenges include cultural beliefs that perpetuate gender stereotyping that sometimes results in violence and discrimination against women.²⁰³

151. Other influences include a set of socio-cultural values and ideas that are premised on women's inferiority by virtue of their biological differences and reproductive capacity. These influences, too, are detrimental to the prosecution of women's cases within the justice systems and contribute to the perception that discrimination and violence against women are private affairs

¹⁹⁹ The United States of America's reply to the IACHR's questionnaire on the situation of women's access to justice in the Americas, March 31, 2006.

²⁰⁰ Mexico's reply to the IACHR's questionnaire on the situation of women's access to justice in the Americas, November 2005. [Secretariat's translation]

²⁰¹ Peru's reply to the IACHR's questionnaire on the situation of women's access to justice in the Americas, October 24, 2005. [Secretariat's translation]

²⁰² St. Kitts and Nevis' reply to the IACHR's questionnaire on the situation of women's access to justice in the Americas, February 2, 2006.

²⁰³ Saint Lucia's reply to the IACHR's questionnaire on the situation of women's access to justice in the Americas, February 2006.

and low priorities.²⁰⁴ These discriminatory socio-cultural patterns influence the behavior of attorneys, prosecutors, judges and other officials in the administration of justice system in general, and the police. They have a negative effect on the judicialization of these cases and effective enforcement of court orders. They are also one of the reasons why so few convictions are won in cases involving violence against women. The Convention of Belém do Pará and the CEDAW have underscored the link between violence against women and discrimination, and the way in which certain stereotypes and social and cultural practices that are premised on women's inferiority to men can have a negative influence on the conduct of public officials.²⁰⁵

152. Experts and magistrates from the region have described the problem of gender-based discrimination in court proceedings as follows:

Most representatives of the governments of the region, the NGOs and regional and country-specific studies agree with this assertion and that the great majority of the problems with enforcement of domestic violence laws and with prosecution of the most serious cases can be traced to the patriarchal beliefs and values of the responsible authorities: beliefs and values –recognized or not, conscious or not– such as: domestic violence is a private matter; the family should always stay together, if a woman is mistreated or abused, she asked for it, and so on.²⁰⁶

The obvious trend toward enacting laws intended to eliminate discrimination and protect the basic rights of all persons is not matched by a similar trend in the judiciary, where the decisions delivered tend to be based on moral and religious systems that put form over substance and where laws are interpreted narrowly, feeding the roots of discrimination and inequity in the region.²⁰⁷

153. Research studies that the justice systems themselves have conducted at the national level have also described and analyzed this very problem. One such study, on the justice system in Bolivia, was ordered by the

²⁰⁴ See, Luz Rioseco Ortega, Economic Commission for Latin America and the Caribbean, *Buenas Prácticas para la Erradicación de la Violencia Doméstica en la Región de América Latina y el Caribe* [Best Practices for Eradicating Domestic Violence in Latin America and the Caribbean], Santiago de Chile, September 2005, p. 28.

²⁰⁵ See Preambles to the CEDAW and the Convention of Belém do Pará; see the Convention of Belém do Pará, Article 6; Committee for the Elimination of Discrimination against Women, General Recommendation 19, *Violence against Women*, U.N. Doc. HRI/GEN/1//Rev.1 (1994).

²⁰⁶ Luz Rioseco Ortega, Consultant, Economic Commission for Latin America and the Caribbean, *Buenas Prácticas para la Erradicación de la Violencia Doméstica en la Región de América Latina y el Caribe* [Best Practices for Eradicating Domestic Violence in Latin America and the Caribbean], Santiago de Chile, September 2005, p. 28. [Secretariat's translation]

²⁰⁷ Centro Legal para Derechos Reproductivos y Políticas Públicas, *Cuerpo y Derecho: Legislación y Jurisprudencia en América Latina* [Body and Law: Legislation and Jurisprudence in Latin America], Facultad de Derecho Universidad de los Andes, Ed. Luisa Cabal, Julieta Lemaitre and Mónica Roa], Colombia, 2001, pp. 465-466. [Secretariat's translation]

justices on Bolivia's Supreme Court²⁰⁸ and found that discrimination against women permeated everything that judges, attorneys and litigants do –both men and women in different areas. This is particularly true in cases of intrafamily violence and sexual violence.²⁰⁹ The research found that:

The percentages of gender bias encountered are significant and are a function of the discriminatory laws in force and the androcentric culture expressed by judges, attorneys and litigants –male and female alike. They all assume that the superiority of men is the natural order of things and that it is natural for men to be violent, thus legitimizing male violence. This thinking is not confined to the private realm; it is pervasive in the public-professional realm as well, and manifests itself in the attitudes and the reasoning in judicial decisions that weigh the conduct of men and the conduct of women differently. It is also present in the factual and legal arguments used by attorneys and litigants, male and female alike.²¹⁰

154. The research conducted in Bolivia also found that gender-based discrimination was a factor in 100% of rape cases, that the cases are tried on the basis of moral considerations and social mores rather than protection of the victim's human rights. It also found that property-related and economic crimes committed against women have more priority than violence cases. A research study ordered by Paraguay's Supreme Court²¹¹ found varying degrees of discrimination in the prosecution of cases of violence against women, particularly on the part of male and female prosecutors and examining magistrates, who are not sensitive enough to complaints filed by women victims of domestic violence:

The mediation of the judge –male or female- is of fundamental importance for proper application of the law. The frustration felt by the victims of domestic violence interviewed was obvious as they recounted the insensitivity with which the magistrates received their complaints. Their sense of frustration and disappointment increases when the judge –whether male or female- refuses to hear or receive their complaint or when they are asked the wrong questions or no questions at all. Although no one ever said so, this may be one of the reasons why women so frequently give up on their own cases. For a

²⁰⁸ Supreme Court of Justice, Bolivia's Constitutional Tribunal, *Gender Bias in the Administration of Justice*, Dr. Emilse Ardaya, Supreme Court Justice, Dr. Elisabeth Iñiguez, Justice on the Constitutional Bench, the Centro Juana Azurduy and the Spanish International Cooperation Agency.

²⁰⁹ See Supreme Court of Justice, Bolivia's Constitutional Tribunal, *Gender Bias in the Administration of Justice*, Dr. Emilse Ardaya, Supreme Court Justice, Dr. Elisabeth Iñiguez, Justice on the Constitutional Bench, the Centro Juana Azurduy and the Spanish International Cooperation Agency.

²¹⁰ See Supreme Court of Justice, Bolivia's Constitutional Tribunal, *Gender Bias in the Administration of Justice*, Dr. Emilse Ardaya, Supreme Court Justice, Dr. Elisabeth Iñiguez, Justice on the Constitutional Bench, the Centro Juana Azurduy and the Spanish International Cooperation Agency. [Secretariat's translation]

²¹¹ Supreme Court of Justice of Paraguay, Myrna Arrúa de Sosa, *Obstáculos para el Acceso a la Justicia de la Mujer Víctima de Violencia en Paraguay* [Obstacles Impairing Access to Justice in the Case of Women Victims of Violence in Paraguay], 2005.

victimized woman to even file a complaint, she has often had to overcome circumstances that outsiders who do not feel her pain cannot even imagine, which is why it is so important that women receive qualified, patient, direct and respectful assistance and guidance from the judge. In the end, the judge's authority to weigh the credibility of the complaint relies entirely on his or her mediation skills.²¹²

155. The influence exerted by discriminatory socio-cultural patterns may cause a victim's credibility to be questioned in cases involving violence, or lead to a tacit assumption that she is somehow to blame for what happened, whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant and so on. The result is that prosecutors, police and judges fail to take action on complaints of violence. These biased discriminatory patterns can also exert a negative influence on the investigation of such cases and the subsequent weighing of the evidence, where stereotypes about how women should conduct themselves in interpersonal relations can become a factor.²¹³

156. In its report on the situation in Ciudad Juárez, the Rapporteurship described how these socio-cultural patterns can be at work in judicial and police proceedings.²¹⁴ The report observed that at around the time that the murder rate began to climb, some of the officials in charge of the murder investigations and prosecution of the perpetrators began to use the language of 'blame the victim'. The report found "a notorious practice on the part of officials of discrediting the victims -- by pointing to the length of their skirts, or that they went out at night, or even that they were 'easy' or prostitutes."²¹⁵ The reaction of the authorities to the victims' relatives reportedly ranged from indifference to hostility. The Commission has admitted six cases alleging attitudes of this type on the part of judicial authorities *vis-à-vis* alleged women victims of violence.²¹⁶

²¹² Supreme Court of Justice of Paraguay, Myrna Arrúa de Sosa, *Obstáculos para el Acceso a la Justicia de la Mujer Víctima de Violencia en Paraguay* [Obstacles Impairing Access to Justice in the Case of Women Victims of Violence in Paraguay], 2005, p. 76. [Secretariat's translation]

²¹³ See analysis in Center for Reproductive Rights and Public Policy, *Cuerpo y Derecho: Legislación y Jurisprudencia en América Latina* [Body and Law: Legislation and Jurisprudence in Latin America], Law School, Universidad de los Andes, Ed. Luisa Cabal, Julieta Lemaitre and Mónica Roa, Colombia, 2001.

²¹⁴ IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 4.

²¹⁵ IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 4.

²¹⁶ IACHR, Report No. 32/06 – admissibility, Petition 1175-03, Paloma Angélica Escobar Ledesma *et al.* (Mexico); IACHR, Report No. 31/06 – admissibility, Petition 1176-03, Silvia Arce *et al.* (Mexico); IACHR, Report 18/05 – admissibility, Petition 283/02, Laura Berenice Ramos Monárrez (Mexico); IACHR, Report 17/05 – admissibility, Petition 282/02, Esmeralda Herrera Monreal (Mexico); IACHR, Report 16/05 – admissibility, Petition 281/02, Claudia Ivette González (Mexico); IACHR, Report N° 92/06 – admissibility, Petition 95-04, María Isabel Véliz Franco (Guatemala); IACHR, Report N° 93/06 – admissibility, Petition 972-03, Valentina Rosendo Cantú (Mexico); IACHR, Report N° 94/06 – admissibility, Petition 540-04, Inés Fernández Ortega *et al.* (Mexico).

157. Through the individual petitions filed with the inter-American system, the IACHR's thematic hearings and research on the issue, the IACHR has learned that the interpretation of evidence in cases involving violence against women can be biased.²¹⁷ For example, in its decision on the *Maria da Penha Fernandes* case, the Commission describes the acceptance of domestic violence by state officials and the negative impact it had on this case. During the legal proceedings they failed to take into account the unmistakable and resounding proof that the police investigation had uncovered, thereby unnecessarily delaying the assailant's punishment.²¹⁸

158. The IACHR has also learned of a number of assumptions and criteria influenced by personal beliefs that prosecutors use to determine whether the evidence in a case involving violence against a woman is sufficient to serve as the basis of an investigation. The use of these assumptions and criteria has a discriminatory impact on women. For example, on the occasion of the working meetings organized by the Rapporteurship, a number of experts voiced concern over what little credibility prosecutors and representatives of the public prosecutor's office give to women victims in cases involving gender-based violence. They assume that if a complainant withdraws a complaint, she was not credible. The IACHR observes that conclusions of this type reflect an ignorance of the reasons why a victim may decide not to pursue cases of this type, which include social stigmatization, her economic dependence, and her

²¹⁷ See, for example, IACHR, Thematic Hearing, *Domestic Violence in Central America*, 125th Special Session, organized by the Center for Justice and International Law (CEJIL), and the member organizations of the Red Feminista Centroamericana contra la Violencia Hacia Las Mujeres - Las Dignas, Las Mélidas, ORMUSA and CEMUJERES of El Salvador, Costa Rica's CEFEMINA, the Centro de Derechos de Mujeres de Honduras, the Red de Mujeres contra la Violencia Nicaragua, the Red de Mujeres contra la Violencia de Panama, the Red de la No Violencia contra las Mujeres de Guatemala, July 19, 2006; the IACHR, Thematic Hearing, *Hearing on the Situation of Women and the Administration of Justice in the Region*, 121st Regular Session, organized by the Center for Reproductive Rights (CRR) and the Center for Justice and International Law (CEJIL), October 21, 2004; on investigations, see for example, Luz Rioseco Ortega, Economic Commission for Latin America and the Caribbean, *Buenas Prácticas para la Erradicación de la Violencia Doméstica en la Región de América Latina y el Caribe* [Best Practices for Eradicating Domestic Violence in Latin America and the Caribbean], Santiago de Chile, September 2005; Justice Studies Center of the Americas (CEJA), *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género* [Evaluating Criminal Procedure Reform from a Gender Perspective], Farith Simon and Lidia Casas, November 2004; Lidia Casas-Becerra and Alejandra Mera González-Ballesteros, *Delitos Sexuales y Lesiones. La Violencia de Género en la Reforma Procesal Penal en Chile: Final Report* [Sex Offenses and Sexual Assault and Battery. Gender-based Violence in Criminal Procedure Reform in Chile: Final Report], November 2004, research done under the project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas; Kenia Herrera and Andrea Diez, *Violencia contra las Mujeres: Tratamiento por Parte de la Justicia Penal de Guatemala* [Violence against Women: Their Treatment at the Hands of the Criminal Justice System in Guatemala], November 2004 (research done as part of the Project "Gender and Criminal Procedure Reform", being conducted by the Justice Studies Center of the Americas); Patricia Esqueteni and Jacqueline Vásquez, *Informe: Género y Reforma Procesal Penal – Ecuador* [Report: Gender and Criminal Procedure Reform – Ecuador], November 2004; Margarita Puerto, *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género: Honduras. Informe Final* [Evaluating Criminal Procedure Reform from a Gender Perspective: Honduras. Final Report], November 2004 (research done as part of the Project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas).

²¹⁸ IACHR, Merits, Report N° 54/01, *Maria Da Penha Fernandes* (Brazil), April 16, 2001.

fear of reprisals.²¹⁹ The research studies done in Chile and Honduras feature examples that illustrate the problem:

The factors that may explain why so few cases go to trial are, in part at least, a mishandling of the characteristics peculiar to investigations of sex offenses in general, and the characteristics of the victims of those crimes, especially when the time comes to evaluate their credibility. Axial, for example, is illustrative of the situation that occurred in the case of two girls under the age of 12, who were sexually assaulted by their father over a number of years. The reports produced by the SML (Legal Medicine Service) found clear evidence of sexual activity. The psychiatric reports indicated sexual abuse and all the statements with professionals from the Victims Unit indicated that the violence was severe. The accused was held in preventive custody for a long period of time. As the months passed, however, and the loss of his earning power began to be felt, the girls retracted their statements in the CAVAS. The prosecution decided not to take the case to trial and terminated it invoking its "authority not to pursue a case." The thinking was that the girls were lying and could not stand up under questioning at trial. The Victims Unit thought differently. It believed that the case should go to trial without the girls, because there was sufficient expert evidence.²²⁰

One of the problems cited by the prosecutors interviewed in Tegucigalpa was pursuing cases that complainants have already "abandoned"; this ties in with a number of factors, among them the economic means to mobilize and move the individual and witnesses, intimidation or threats on the part of the accused, or the use of extrajudicial avenues to settle the family dispute, such as mediation before other bodies. Our view is that such cases should not be considered abandoned, since the problems with the system in terms of double victimization and the difficulties of getting a court hearing at no cost and on an equal footing, are more often the reasons why a victim is unable to see her case through to the end.²²¹

159. During the working meetings, the Rapporteurship was informed of phrases and concepts used by judges presiding over trials involving cases of violence against women, indicative of a bias in the prosecution of these cases in favor of the assailant. At a meeting of experts that the IACHR organized on Central America, one representative of Costa Rica's Office of the

²¹⁹ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, paras. 209-210.

²²⁰ Lidia Casas-Becerra and Alejandra Mera González-Ballesteros, *Delitos Sexuales y Lesiones. La Violencia de Género en la Reforma Procesal Penal en Chile: Informe Final* [Sex Offences and Sexual Assault and Battery. Gender-based violence in Criminal Procedure Reform in Chile: Final Report], November 2004, research done under the Project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas, p. 35. [Secretariat's translation]

²²¹ Margarita Puerto, *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género: Honduras. Informe Final* [Evaluation of Criminal Procedure Reform from a Gender Perspective: Honduras. Final Report], November 2004, research done under the project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas, p. 37. [Secretariat's translation]

Ombudsperson for Women introduced, by way of example, a documented case in which a woman filed a rape complaint and the judge's finding was that "the only victims in this case were the sexual assailants, who did not know that they were assaulting a woman with mental problems."²²² Interviews conducted by the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (hereinafter "ILANUD") as part of its projects to get the gender perspective into the administration of justice found that women judges may be fearful of ruling in favor of aggrieved women, so as to avoid being accused of being "feminist" or having to face up to the abuses that they themselves are suffering.²²³ By the same token, male judges are fearful of appearing effeminate or less manly.²²⁴

160. For a study done in Ecuador on how cases involving women's rights are handled in the criminal justice system, interviews were conducted with the persons in charge of running legal services and the attorneys working for those services on how judges weigh evidence. The study found that: "Judges do not attach the same importance to sex offenses or intrafamily crimes that they attach to other types of crime, like drug or murder cases. They don't treat them the same."²²⁵ One of the attorneys interviewed said the following:

Age, without a doubt. We had an experience with one judge who was reputedly "super-sensitized.... But some years ago this very same judge dismissed a rape case on the grounds that the victim had consented, when in fact the victim was a deaf mute child and was 12 years old at the time. So, yes, there are culturally-charged biases."²²⁶

161. Among the dangers and threats that have been troubling for the IACHR is the fact that various judicial bodies are encouraging the use of conciliation during the investigative process, as one means of solving crimes of violence against women, especially in cases of domestic violence.²²⁷ Yet it is

²²² Presentation by Laura Fernández Díaz, Office of the Costa Rican Ombudsperson for Women's Affairs, Meeting of Experts, *A Review of Access to Justice in Mexico and the Central American Countries*, August 11-12, 2005, San José, Costa Rica, organized in cooperation with the Inter-American Institute for Human Rights.

²²³ Alda Facio Montejó, *Modernization of the Administration of Justice and Gender Equality*, paper presented at the IX International Congress of the CLAD on State and Public Administration Reform, Madrid, Spain, November 2-5, 2004.

²²⁴ Alda Facio Montejó, *Modernization of the Administration of Justice and Gender Equality*, paper presented at the IX International Congress of the CLAD on State and Public Administration Reform, Madrid, Spain, November 2-5, 2004.

²²⁵ Patricia Esqueteni and Jacqueline Vásquez, *Informe: Género y Reforma Procesal Penal – Ecuador* [Report: Gender and Criminal Procedure Reform – Ecuador], November 2004, research done under the project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas, p. 71.

²²⁶ Patricia Esqueteni and Jacqueline Vásquez, *Informe: Género y Reforma Procesal Penal – Ecuador* [Report: Gender and Criminal Procedure Reform – Ecuador], November 2004, research done under the project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas, p. 92. [Secretariat's translation]

²²⁷ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, para. 210.

internationally recognized that conciliation and mediation is inadvisable in such cases.²²⁸ Many experts and international organizations have underscored the dangers of using conciliation as a means of settling cases of violence, especially domestic violence.²²⁹ They have pointed out that by allowing a crime of this type to be settled by conciliation, the crime becomes a subject of negotiation and transaction between the victim and her assailant. Conciliation is premised on the notion that the parties at the table are operating from equal bargaining positions, which is generally not true in cases of intrafamily violence. In a number of countries it has become clear that the agreements reached in the framework of mediation compound the physical and emotional risks for women given the unequal power relationship between the victim and her assailant.²³⁰ As a rule, the assailant does not honor the agreement and the agreement itself does not address the causes and consequences of the violence.²³¹

162. The judicial culture is in need of the kind of sustainable reform that will enable women to obtain *de jure* and *de facto* access to justice. Training programs for public officials, members of the judiciary, the police and community agents need to be created and strengthened. And despite the proliferation in training programs targeted at officials in the administration of justice system and the police,²³² the IACHR has noted that the impact of these programs has been uneven. Many have not had a sustainable impact, as they have not become established institutions or do not boast accountability mechanisms, both factors needed to effect meaningful change. The major challenges for these programs' impact have been described as follows:

²²⁸ Pan American Health Organization, United Nations Population Fund, United Nations Development Fund for Women, Inter-American Commission of Women of the Organization of American States, Inter-American Parliamentary Group on Population and Development, Center for Reproductive Rights, IPAS, ISIS International and the Latin American Committee for the Defense of Women's Rights, *Modelo de Leyes y Políticas Sobre Violencia Intrafamiliar contra las Mujeres* [Model Laws and Policies on Domestic Violence against Women], April 2004, p. 20.

²²⁹ IACHR, Thematic Hearing, *Domestic Violence in Central America*, 125th Special Session, organized by the Center for Justice and International Law (CEJIL), and the member organizations of the *Red Feminista Centroamericana contra la Violencia Hacia Las Mujeres - Las Dignas, Las Mélidas, ORMUSA* and *CEMUJERES* of El Salvador, Costa Rica's *CEFEMINA*, the *Centro de Derechos de Mujeres de Honduras*, the *Red de Mujeres contra la Violencia Nicaragua*, Panama's *Red de Mujeres contra la Violencia*, the *Red de la No Violencia contra las Mujeres de Guatemala*, July 19, 2006.

²³⁰ IACHR, Thematic Hearing, *Domestic Violence in Central America*, 125th Special Session, organized by the Center for Justice and International Law (CEJIL), and the member organizations of the *Red Feminista Centroamericana contra la Violencia Hacia Las Mujeres - Las Dignas, Las Mélidas, ORMUSA* and *CEMUJERES* of El Salvador, Costa Rica's *CEFEMINA*, the *Centro de Derechos de Mujeres de Honduras*, the *Red de Mujeres contra la Violencia Nicaragua*, Panama's *Red de Mujeres contra la Violencia*, the *Red de la No Violencia contra las Mujeres de Guatemala*, July 19, 2006.

²³¹ IACHR, Thematic Hearing, *Domestic Violence in Central America*, 125th Special Session, organized by the Center for Justice and International Law (CEJIL), and the member organizations of the *Red Feminista Centroamericana contra la Violencia Hacia Las Mujeres - Las Dignas, Las Mélidas, ORMUSA* and *CEMUJERES* of El Salvador, Costa Rica's *CEFEMINA*, the *Centro de Derechos de Mujeres de Honduras*, the *Red de Mujeres contra la Violencia Nicaragua*, Panama's *Red de Mujeres contra la Violencia*, the *Red de la No Violencia contra las Mujeres de Guatemala*, July 19, 2006.

²³² Discussed in Section III of this report.

Training programs targeted at police, judges and officers of the court have in practice shown their enormous limitations and limited effectiveness, as they have not been matched by organizational, budgetary, normative changes, monitoring and evaluation mechanisms that guarantee that the implementation of these programs will not hinge solely on the determination of individuals and that they will become institutionalized in ways that bring about substantive changes in practices and genuine cultural transformations.²³³

163. In order to result in sustainable changes, the IACHR highlights that these programs should be vested with the needed mechanisms to guarantee their institutionalization and efficacy. States have to take steps to sanction public officials who violate women's rights during criminal proceedings. The public needs to be educated from an early and formative age of the problem of violence against women to prevent the creation of stereotypes that relegate women to a subordinate position.

164. It is just as critical to strengthen policies to prevent the abuses and the various forms of violence that state authorities perpetrate against women during judicial proceedings, as an express and immediate obligation articulated in Article 7 of the Convention of Belém do Pará. Thus far, most prevention policies at the state level focus on public awareness campaigns and outreach programs to disseminate information to the general public about violence and discrimination against women as separate problems. To be effective, prevention strategies need to address the risk factors at the family and social levels that foster in judicial personnel a tolerance for violence against women. The direction that prevention strategies must take has been described as follows:

Prevention strategies need to be geared toward reducing the risk factors and increasing the protective factors. The risks include structural factors like job instability, poverty or massive migration triggered by economic crises in regions or countries and requiring global intervention with medium-term results; social factors like isolation or lack of networks; family factors such as the background of family violence that each partner brings to a marriage; or individual factors such as drug or alcohol abuse, aggressiveness or cultural values that legitimize the use of violence and abuse of power.²³⁴

²³³ IACHR, Thematic Hearing, *Domestic Violence in Central America*, 125th Special Session, organized by the Center for Justice and International Law (CEJIL), and the member organizations of the *Red Feminista Centroamericana contra la Violencia Hacia Las Mujeres - Las Dignas, Las Méridas, ORMUSA* and *CEMUJERES* of El Salvador, Costa Rica's *CEFEMINA*, the *Centro de Derechos de Mujeres de Honduras*, the *Red de Mujeres contra la Violencia Nicaragua*, Panama's *Red de Mujeres contra la Violencia*, the *Red de la No Violencia contra las Mujeres de Guatemala*, July 19, 2006. [Secretariat's translation]

²³⁴ Luz Rioseco Ortega, Economic Commission for Latin America and the Caribbean, *Buenas Prácticas para la Erradicación de la Violencia Doméstica en la Región de América Latina y el Caribe* [Best Practices for Eradicating Domestic Violence in Latin America and the Caribbean], Santiago de Chile, September 2005, p. 32, citing Larrain 2002. [Secretariat's translation]

165. By the same token, the IACHR is troubled by the fact that the focal point of existing prevention campaigns continues to be domestic violence, to the exclusion of other forms of violence that occur in other realms. Prevention policies have to take all forms of violence against women into account and the context in which that violence occurs, in keeping with the Convention of Belém do Pará and other international human rights instruments.

3. Ineffectiveness of preventive mechanisms in protecting women from violence

166. On the matter of prevention and protection, the IACHR has found that state authorities –the police in particular- are not fully complying with their duty to protect women victims of violence against imminent threats. The most serious problems are with enforcement and follow-up of restraining orders or other preventive measures ordered. The situation is particularly severe in the case of intrafamily violence. The inaction on the part of State authorities is in part explained by their tendency to disbelieve the allegations made by women victims of violence and their perception of intrafamily violence as a private and low-priority affair. In many cases, women have been killed even after seeking the State's preventive protection; in some cases, restraining orders were issued to protect women but then not properly enforced or monitored.

167. The United Nations Special Rapporteur on violence against women, its causes and consequences (hereinafter "United Nations Rapporteur on violence against women") has recently expressed concern over the conduct of police and their failure to intervene to prevent acts of violence and implement protective orders, and has ranked this among the chief obstacles to the practice of due diligence at the global level.²³⁵ This kind of behavior fosters impunity and because of it crimes of this kind go on and are repeated over and over again. Conduct of this kind is a breach of the States' obligation to practice due diligence to prevent violence against women. When a restraining order is not enforced, a woman can continue suffering acts of violence that can result in a homicide against her and her children. Frequently, when restraining orders are not enforced, a woman repeatedly suffers violence, which can result in homicide against her and her children. As previously stated, the duty of the States to practice due diligence applies to State and non-State actors alike, and is particularly critical in cases where the States know that acts of violence are a real and immediate threat.

168. As for the specific conduct of the police, various research studies have found that the police do not regard the problem of violence against women as a priority among criminal offenses and tend not to believe the victims when they report threats of imminent violence, even when specialized units have been established and a number of training programs introduced to make police more sensitive to gender issues:

²³⁵ United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Yakin Ertürk, *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, E/CN. 4/2006/61, para. 49.

The police need more training because they sometimes think that domestic problems should be settled at home. They say things like "they'll settle this at home." What they don't see is that the problem has already gone public...²³⁶

Some police officers interviewed also underscored these considerations, saying that "If a woman leaves a party at three in the morning with three men and she tells you that they raped her, can she be believed? Many women file complaints as a cover-up for infidelity."²³⁷

169. A United Nations Development Fund for Women (hereinafter "UNIFEM") and ECLAC-sponsored research study on the English-speaking countries of the Caribbean and presented during the working meeting organized by the Rapporteurship, found that police authority was rarely used to ensure implementation of the law, particularly in cases of incest and child abuse.²³⁸ The study also makes the point that patriarchal norms about the privacy of family affairs persist and are accepted among police officers. Through the American Civil Liberties Union (ACLU), which works to advance and promote civil rights, the IACHR has learned of incidents where the police in a number of states in the United States do not enforce restraining orders and do not take action even when the victims ask that these orders be enforced.²³⁹

170. The IACHR has also been informed that States frequently take the position that victims are themselves responsible for monitoring the preventive measures, which leaves them utterly defenseless and in danger of becoming the victim of the assailant's reprisals, even when these women victims were diligent in exercising their right to file a complaint about the failure to enforce the measure. For example, the Commission is disturbed by the fact that on the follow-up visit made to Guatemala in 2006, representatives of the Public Prosecutor's Office expressed the view that the beneficiary of the precautionary or preventive measures is responsible for ensuring their effectiveness when family-court judges and magistrates do not effectively

²³⁶ Patricia Esqueteni and Jacqueline Vásquez, *Informe: Género y Reforma Procesal Penal – Ecuador* [Report: Gender and Criminal Procedure Reform – Ecuador], November 2004, research conducted under the project on "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas, p. 71. [Secretariat's translation]

²³⁷ Lidia Casas-Becerra and Alejandra Mera González-Ballesteros, *Delitos Sexuales y Lesiones. La Violencia de Género en la Reforma Procesal Penal en Chile*: Final Report [Sex Offenses and Sexual Assault and Battery. Gender-based Violence in Criminal Procedure Reform in Chile: Final Report], November 2004, research conducted as part of the project on "Gender and Criminal Procedure Report" being conducted by the Justice Studies Center of the Americas, p. 16. [Secretariat's translation]

²³⁸ Meeting of Experts: *A Review of Access to Justice in the English-speaking Countries of the Caribbean*, Kingston, Jamaica, September 29-30, 2005, held under the auspices of the IACHR and the United Nations Development Fund for Women.

²³⁹ The ACLU's response to the IACHR's questionnaire on access to justice, 2006. Among the studies it cited are the following: *Report to the California Attorney General, Keeping the Promise: Victim Safety and Batterer Accountability 1, 35-36 (2005)*; *Jane C. Murphy, Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women, 11 Am. U. J. Gender Soc. Pol'y & L. 499, 509 (2003)*; *T.K. Logan et al., Protective Orders in Rural and Urban Areas: A Multiple Perspective Study, 11 Violence Against Women 876, 889 & 899 (2005)*.

monitor their enforcement and police fail to act. Then, too, on the visit made to Guatemala in 2004, the Rapporteurship received information on two cases in which the murdered women had restraining orders on their person at the time they were killed; it was also told that 31% of the women murdered had been threatened beforehand.

171. Judges and prosecutors weigh certain factors when issuing and following up on restraining orders and other precautionary measures. Unfortunately, little if any consideration is given to the risk to the victim; much more consideration is given to the impact that the order will have on the aggressor. For example, one research study conducted in Chile on the behavior of judges when ordering precautionary measures found that in the case of sex offenses, the criterion used is the danger the aggressor poses to society but not the safety of the victim.²⁴⁰ The Commission has also been informed of difficulties with the enforcement of protective measures ordered caused by delays on the part of those operating the justice system or a lack of coordination between police and the public prosecutor's office.²⁴¹

4. Barriers which victims encounter when seeking judicial protection

172. Particularly disturbing to the Commission is the fact that women victims of violence tend not to turn to the justice system for protection and are chronically mistrustful of the justice system's ability to solve their problems. These attitudes can in part be attributed to the re-victimization that women experience when they attempt to report what they have suffered; the lack of protections and judicial guarantees to safeguard their dignity, security and privacy and that of the witnesses during a case; the financial cost of judicial proceedings and the geographic location of judicial bodies that take complaints. The Commission is also troubled by the lack of information available to women victims and their family members about how to access the justice system to seek protection and prosecution of their cases.

173. Research studies done in four countries in the region - Chile, Guatemala, Honduras and Ecuador - identify reasons why the justice system is so little used in cases of violence against women:

The four studies found that the complaints the system receives represent only a small percentage of the acts of violence (physical or sexual) committed against women in each country. The nature of these crimes, the social attitudes about them, the way in which the

²⁴⁰ Lidia Casas-Becerra and Alejandra Mera González-Ballesteros, *Delitos Sexuales y Lesiones. La Violencia de Género en la Reforma Procesal Penal en Chile: Informe Final* [Sex Offences and Sexual Assault and Battery. Gender-based violence in Criminal Procedure Reform in Chile: Final Report], November 2004, research done under the Project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas, p. 63. [Secretariat's translation]

²⁴¹ See, by way of example, the discussion in Patricia Esqueteni and Jacqueline Vásquez, *Informe: Género y Reforma Procesal Penal – Ecuador* [Report: Gender and Criminal Procedure Reform – Ecuador], November 2004 (research done under the project "Gender and Criminal Procedure Reform" being conducted by the Justice Studies Center of the Americas, p. 58.

authorities react to these cases, the environment in which the complaints have to be filed, the criteria for selecting which cases will be prosecuted, the manner in which the technical examinations are conducted, the fact that women victims have no one to serve as “advocates” to provide them with support, the difficulties encountered in accessing institutions, the victims’ vulnerability within the system, the little response they receive, the duration of the cases, and so on, are just some of the factors that explain this figure, which we believe is higher than the same figure for other crimes.²⁴²

174. Salient among the factors that influence the way in which the judicial authorities treat women victims of violence is the acceptance and socialization of violence and discrimination against women as normal behaviors within the social structure, and the belief that the problem of violence against women is essentially a private matter.

175. During its *in loco* visits, one of the most serious problems that the Rapporteurship encountered was the treatment that women victims of violence receive when they attempt to avail themselves of judicial remedies. During its visit to Colombia, the Rapporteurship was told that women victims of violence are fearful of being re-victimized by the justice system and are suspicious of the justice system’s ability to investigate, punish and redress what Colombian women have endured as a result of the armed conflict.²⁴³ Other factors that make Colombian women reluctant to report acts of violence is their fear of being socially stigmatized by making the crime public and their unfamiliarity with the judicial recourses available to them.²⁴⁴

176. During its visit to Guatemala, the Rapporteurship took testimony to the effect that in many cases, the various authorities charged with investigating and prosecuting crimes of violence committed against women, have been disrespectful to the relatives of the victims, revealing the way in

²⁴² See summary at Justice Studies Center of the Americas, *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género*, [Evaluating Criminal Procedure Reform from a Gender Perspective], Farith Simon and Lidia Casas, November 2004, p. 8; Lidia Casas-Becerra and Alejandra Mera González-Ballesteros, *Delitos Sexuales y Lesiones. La Violencia de Género en la Reforma Procesal Penal en Chile: Informe Final* [Sex Offenses and Sexual Assault and Battery. Gender-based Violence in Criminal Procedure Reform in Chile: Final Report], November 2004, research done under the project “Gender and Criminal Procedure Reform” being conducted by the Justice Studies Center of the Americas; Kenia Herrera and Andrea Diez, *Violencia contra las Mujeres: Tratamiento por Parte de la Justicia Penal de Guatemala* [Violence against Women: Their Treatment at the Hands of the Criminal Justice System in Guatemala], November 2004 (research done as part of the Project “Gender and Criminal Procedure Reform”, being conducted by the Justice Studies Center of the Americas); Patricia Esqueteni and Jacqueline Vásquez, *Informe: Género y Reforma Procesal Penal – Ecuador* [Report: Gender and Criminal Procedure Reform – Ecuador], November 2004; Margarita Puerto, *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género: Honduras. Informe Final* [Evaluating Criminal Procedure Reform from a Gender Perspective: Honduras. Final Report], November 2004 (research done as part of the Project “Gender and Criminal Procedure Reform” being conducted by the Justice Studies Center of the Americas). [Secretariat’s translation]

²⁴³ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006.

²⁴⁴ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006.

which discriminatory stereotypes operate in practice. The Rapporteurship described the situation as follows:

These attitudes range from a lack of sensitivity to the situation of the person concerned to openly hostile and discriminatory attitudes that devalue the person. They may, for example, blame the victim and her family for the way they live, the clothes they wear, or the time they spend outside their home; further, the definition of many of these crimes as “crimes of passion” without due investigation reflects a pattern of discrimination. This lack of respect for the dignity of the victims or their families has the effect of “re-victimizing” them.²⁴⁵

177. In its report on the situation of violence against women in Ciudad Juárez, the Rapporteurship pointed out that when victims’ family members tried to get information on cases, the response of the authorities ranged from indifference to hostility.²⁴⁶ The IACHR has admitted eight cases involving this all-too-common behavior. These cases also allege that the authorities demeaned the victims and mistreated members of their families when they asked state authorities for information on the progress made in the investigations or tried to cooperate with them.²⁴⁷

178. A study on gender discrimination in the administration of justice in Bolivia found that women no longer turn to the justice system for a variety of reasons, including the lack of identification papers, a preconceived notion that it must be costly to work through the judicial system, the time they need to invest to go through with proceedings, fear of losing the case and the possibility of reprisals on the part of the aggressor. They also believe that the administration of justice is politicized and can be bought.²⁴⁸ During the subregional meetings organized by the IACHR, it was clear that the lack of identification papers severely limits victims’ access to the judicial system,²⁴⁹ and is particularly

²⁴⁵ IACHR, Press Release No. 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free from Violence and Discrimination*, Washington DC, September 18, 2004, para. 26.

²⁴⁶ IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 4.

²⁴⁷ IACHR, Report No. 32/06 – Admissibility, Petition 1175-03, Paloma Angélica Escobar Ledesma *et al.* (Mexico); IACHR, Report No. 31/06 – admissibility, Petition 1176-03, Silvia Arce *et al.* (Mexico); IACHR, Report 18/05 – admissibility, Petition 283/02, Laura Berenice Ramos Monárrez (Mexico); IACHR, Report 17/05 – admissibility, Petition 282/02, Esmeralda Herrera Monreal (Mexico); IACHR, Report 16/05 – admissibility, Petition 281/02, Claudia Ivette González (Mexico); IACHR, Report N° 92/06 – admissibility, Petition 95-04, María Isabel Véliz Franco (Guatemala); IACHR, Report N° 93/06 – admissibility, Petition 972-03, Valentina Rosendo Cantú (Mexico); IACHR, Report N° 94/06 – admissibility, Petition 540-04, Inés Fernández Ortega *et al.* (Mexico).

²⁴⁸ Supreme Court of Justice, Constitutional Tribunal of Bolivia, *Gender Bias in the Administration of Justice*, Dr. Emilse Ardaya, Justice of the Supreme Court, Dr. Elisabeth Iñiguez, Justice of the Constitutional Court, the “Juana Azurduy” Center and the Spanish International Cooperation Agency.

²⁴⁹ Presentation by Flor Elena Ruiz, Meeting of Experts: *A Review of Access to Justice in Mexico and the Central American Countries*, San José, Costa Rica, August 11 and 12, 2005, held under the auspices of the IACHR and organized by the Inter-American Institute for Human Rights.

problematic for migrant women.²⁵⁰ To address these problems, more support and assistance options have to be available to victims during the processing of cases involving violence against women. They also need other advocacy options during court proceedings. All this in order to enable women to use the judicial system to report acts of violence and be treated respectfully by state authorities.²⁵¹

179. In the past, the Commission has observed that women victims of violence may be disinclined to turn to the courts to seek justice because they fear being ostracized in their communities and feel a sense of shame when reporting the facts. For example, one of the critical factors in the Commission's decision in the case of *Raquel Martín Mejía*²⁵² was the fact that she, her family and her community would have been impacted had she turned to the courts to redress the human rights violations she suffered. The victim told the Commission that when she tried to file a complaint with the Oxapampa police concerning her husband's kidnapping and murder, she could not bring herself to report the fact that she herself had been raped because:

As she states in her testimony, after having been raped she "was in a state of shock, sitting there alone in her room". She was in no hurry to file the appropriate complaint for fear of suffering "public ostracism". "The victims of sexual abuse do not report the matter because they feel humiliated. In addition, no woman wants to publicly announce that she has been raped. She does not know how her husband will react. [Moreover], the integrity of the family is at stake, the children might feel humiliated if they know what has happened to their mother."²⁵³

180. Given this situation, campaigns are needed to make the general public aware of the seriousness of these crimes and to encourage women to report them.

²⁵⁰ Presentation by Ana Carcedo, *Centro Feminista de Información y Acción*, and Laura Fernández Díaz, Office of the Ombudsperson for Women of Costa Rica, Meeting of Experts: *A Review of Access to Justice in Mexico and the Central American Countries*, San José, Costa Rica, August 11 and 12, 2005, held under the auspices of the IACHR and organized by the Inter-American Institute for Human Rights.

²⁵¹ IACHR, Thematic Hearing, *Domestic Violence in Central America*, 125th Special Session, organized by the Center for Justice and International Law (CEJIL), and the member organizations of the *Red Feminista Centroamericana contra la Violencia Hacia Las Mujeres - Las Dignas, Las Mélidas, ORMUSA* and *CEMUJERES* of El Salvador, Costa Rica's *CEFEMINA*, the *Centro de Derechos de Mujeres de Honduras*, the *Red de Mujeres contra la Violencia Nicaragua*, Panama's *Red de Mujeres contra la Violencia*, the *Red de la No Violencia contra las Mujeres de Guatemala*, July 19, 2006.

²⁵² IACHR, Merits, Report N° 5/96, *Raquel Martín de Mejía* (Peru), March 1, 1996, Section b, p. 15.

²⁵³ IACHR, Merits, Report N° 5/96, *Raquel Martín de Mejía* (Peru), March 1, 1996, Section b, p. 15.

5. Structural problems within the justice systems that affect the prosecution of cases involving violence against women

181. The IACHR has identified a number of structural problems within the justice systems that impair the prosecution of cases involving violence against women and other human rights violations. Examples include the absence of institutions for the administration of justice in rural, poor and marginalized areas; the lack of court-appointed attorneys for victims of violence who are indigent; the lack of human and financial resources with which to address the persistent and structural problems; the institutional failings of the public prosecutors offices and the police who investigate the crimes; and the lack of specialized units within the public prosecutors offices, the police and the courts and with the technical skills and specialized expertise required for such cases. Yet another important obstacle is that the data systems needed to compile statistics on incidents and cases of violence against women are scarce and are not coordinated with each other. Data systems are essential in order to be able to analyze possible causes and trends and to evaluate the response of the justice system to acts of violence against women.

182. The judicial presence and state advocacy services available to women victims nationwide is inadequate, which means that victims have to draw on their own economic and logistical resources to file a complaint and then participate in judicial proceedings. Therefore, the IACHR highlights the importance of community resources such as justices of the peace and community ombudspersons and that these have mechanisms and resources to provide basic services to women victims of violence in rural, marginal and poor areas, as well as information on legal procedures, support with administrative procedures, and legal assistance to victims in judicial proceedings.²⁵⁴

183. The IACHR has learned that the number of institutions competent to receive complaints of violence against women has increased markedly, yet there is no cooperation among them, which creates confusion and makes it more financially difficult for women victims to pursue their cases. States are making efforts to reverse this trend,²⁵⁵ but those efforts still fall short of what women victims of violence need.

184. Women of means have far greater access to the justice system than do economically disadvantaged women. In their replies to the questionnaire, some States said that *pro bono* legal services were being

²⁵⁴ See World Bank, *Addressing Gender-Based Violence in the Latin America and Caribbean Region: A Critical Review of Interventions*, Andrew Morrison, Mary Ellsberg, Sarah Bott, Policy Research Working Paper 3438, October 2004, p. 4; Meeting of Experts: *A Review of Access to Justice in the Countries of the Andean Region*, Lima, Peru, August 1-2, 2005, held under the auspices of the IACHR and organized in cooperation with the *Instituto de Defensa Legal*.

²⁵⁵ For example, during the meeting in the English-speaking Caribbean a pilot project was introduced that had been implemented in Saint Lucia to reorganize and restructure the Supreme Court of the Eastern Caribbean. The restructuring will create four divisions (criminal, civil, family and business). A family unit is being created so that the existing bodies will be merged into a single unit that will receive the complaints. The idea is to prosecute cases involving violence against women more swiftly and properly.

provided to victims.²⁵⁶ The IACHR, however, notes that given the severity and prevalence of the problem of violence against women, recognized as being one of the priority challenges, more *pro bono* legal services are needed. At the present time, it is difficult to determine whether these programs are in fact answering the victims' needs.

185. In general, the IACHR notes shortages in human, financial and technical resources that seriously affect the investigation, prosecution and punishment of cases of violence against women. The Commission has received information about the excessive workload that all the institutions involved are carrying, the inadequate budgets, the lack of equipment and human resources needed to conduct a thorough investigation and prosecution, including personnel specialized in the area of violence against women. The public prosecutors offices, the police and the courts have neither the economic nor human resources essential to conducting effective investigations and prosecuting the cases through to the sentencing phase. This problem is particularly acute in rural, marginal and poor areas. For example, during the Rapporteur's visit to Guatemala in 2004, the IACHR described the institutional weaknesses in the following terms:

Amongst the weaknesses, the authorities themselves point out that they have inadequate resources in terms of staff, infrastructure, equipment, and budget, for carrying out their work of investigating and prosecuting crime. The investigation and trials are based almost entirely on testimony; there is a blatant lack of physical or scientific evidence. The men and women who run the justice system confirm that many cases get no further than the investigation stage because of the lack of proof, and in those cases that do get as far as trial, the lack of physical

²⁵⁶ Some States reporting the existence of these programs were Venezuela (through the Office of the National Ombudsperson for the Defense of Women's Rights and municipal and regional defenders), Peru (through the ALEGRA Program run by the Ministry of Justice and the National *Court-Appointed* Defense Service), Argentina (through the Ombudsmen for the Poor, the Disabled and the Disappeared in Civil and Commercial Law, the Centers for Community Legal Services that are part of the Secretariat for Legislative Affairs of the Ministry of Justice, and the legal services under the Government of the City of Buenos Aires and other public agencies). Other States, like Antigua, reported having legal services centers for victims of limited means, including women, where the basic fee required can be waived under certain circumstances. Other States like Brazil mentioned institutions like the Public Defenders Offices created to assist in the defense of rights using court-appointed attorneys. In Mexico, the Federal Institute of Court-Appointed Legal Counsel Services is part of the federal judicial branch and governed by the Federal Court-Appointed Legal Counsel Act. The services are provided free of charge to anyone. However, the State acknowledges that it knows of no instance in which its services were provided specifically in a case of discrimination or violence on a gender basis. In Belize, a legal aid office exists under the Office of the Attorney General. The State reports that its services are used, though not extensively. In Paraguay, the Office of the Director of SEDAMUR (Women's Support Service) in the Secretariat for Women is charged with providing legal and psychological counsel to women victims of intrafamily violence. Its services are provided free of charge. In the Dominican Republic, the Secretariat of State for Women, the Department of Non-Violence and every provincial and municipal office of the Secretariat of State for Women are working on the prevention of gender-based violence. Teams of lawyers have been made available; their services are provided free of charge. Advocacy teams have also been formed to assist women victims of violence.

or scientific evidence with which to corroborate the statements, throws the reliability of the process into question.²⁵⁷

186. A number of countries in the region have set up special units within the government attorneys offices, public prosecutors offices, the courts and the police,²⁵⁸ However, these units do not have specialists on staff or the economic resources needed to function effectively. One example identified during the project's implementation was in Bolivia, where Family Protection Brigades have been established to provide assistance to victims of domestic violence who report some imminent threat. The IACHR learned of an evaluation done of the Brigades' work. The findings are very reflective of what these specialized units can accomplish and the challenges they face in various countries.²⁵⁹ On the positive side, these brigades can arrive on the scene and provide basic assistance to victims faster than a non-specialized police unit. However, there are systemic challenges: 80% of the staff are working long hours; they do not have the necessary office materials and furnishings; the level of training and awareness of the personnel is not what it should be, and the assigned staff are rotated so often that training efforts cannot be sustained.²⁶⁰ During the follow-up visit made to Guatemala in July 2006, the Women's Rapporteurship found that the police homicide unit that investigates murders where the victim is female does not have the human, financial and technical resources needed to perform its job effectively.

187. The IACHR has also learned that basic and advanced training programs are often not available for personnel like forensics experts, who play a key role in developing scientific evidence and introducing it in court. The vast majority of the forensics personnel do not have the specialized training needed for cases involving violence against women, where forensic evidence is crucial because the body of evidence in such cases is so complex. However, in their responses to the questionnaire, the States report that some efforts to provide the needed training are underway.²⁶¹ The Commission is urging that these

²⁵⁷ IACHR, Press Release N° 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free From Violence and Discrimination*, Washington, D.C., September 18, 2004, para. 20.

²⁵⁸ The States' efforts to create specialized units will be examined in section III about efforts in the area of the administration of justice.

²⁵⁹ Civil Society and Access to Justice Program, of the Office of the Deputy Minister of Justice in Bolivia and the *Instituto de Formación Femenina Integral, Evaluación de la Ley 1674 Desde Una Perspectiva de Género y de los D.E.S.C.* [Evaluation of Law 1674 from the Perspective of Gender and the D.E.S.C], Cochabamba, Bolivia, 2004.

²⁶⁰ Civil Society and Access to Justice Program, of the Office of the Deputy Minister of Justice in Bolivia and the *Instituto de Formación Femenina Integral, Evaluación de la Ley 1674 Desde Una Perspectiva de Género y de los D.E.S.C.* [Evaluation of Law 1674 from the Perspective of Gender and the D.E.S.C], Cochabamba, Bolivia, 2004, pp. 31-38.

²⁶¹ Mexico reports in its reply to the questionnaire that in some states like Jalisco, Nuevo León, Chihuahua, the Federal District and elsewhere, forensic medicine units, institutes of forensic sciences and/or prosecutor's offices now have personnel specialized in legal medicine, who treat women victims of violence and, in most cases, provide psychological support. Panama reports that the forensic medicine personnel have received some training on the subject of gender-based violence, specifically domestic violence and rape. However, the forensic physicians that work out of the Institute of Legal Medicine are general practitioners; none of the medical personnel on staff treats cases of violence against women exclusively. The Paraguayan State mentions that with

Continued...

efforts be expanded in the future, given the magnitude and severity of the violence problem.

188. In the administration of justice systems, the IACHR has also observed faults and weaknesses in processing and recording data on cases involving violence against women. These faults and weaknesses are compounded by the fact that the statistics from every quarter of government grossly underestimate the magnitude of the problem of gender-based violence. The Commission has expressed concern over the fact that violence against women, of all kinds and in all contexts, is much more common than is believed, than what the media report, and what the official statistics and records suggest.²⁶² As long as such problems exist, public policy in the area of justice will never accurately mirror the severity and prevalence of violence against women. The United Nations has emphasized recently the importance of judicial statistics in the sphere of violence against women:

Although criminal court cases represent a very small and non-representative sample of cases of violence against women, court statistics are important. They can contribute to understanding the response of the criminal justice system to violence against women. In particular, the effectiveness of laws and sanctions designed to protect women can be assessed through statistics that track repeat offenders. However, in many countries, feedback from the courts to the ministry of justice is inadequate.²⁶³

189. The faults and weaknesses in the area of statistical data on cases of violence against women were reflected in the States' answers to question 21 on the IACHR's questionnaire.²⁶⁴ The question asked was: "Can it be identified how many complaints have been received in the last 5 years of violations of the rights of women, above all in cases of discrimination and violence? How many of these cases have reached the Sentencing stage?". A number of States like Brazil, the Bahamas and Belize stated outright that they do not have that information. Others supplied a variety of statistics, all in different formats, compiled by various government units. Argentina, for example, submitted statistics from the judicial branch of government, from the

...Continuation

support from the Spanish International Cooperation Agency (AECI), a project will soon be underway on comprehensive treatment of victims of gender-based violence. The project will help the *Instituto de Medicina Legal* enhance its examination and testing system for cases of gender-based violence, and will create systems to train new professionals in a forensics specialty. In Guatemala, too, state agencies have efforts underway to train forensic physicians. In its reply to the questionnaire, Guatemala mentions that between November 2004 and 2005, the University of San Carlos in Guatemala offered a course for specialized training in Legal and Forensic Medicine. Participating were attorney-advisors from the University's own law clinic, as well as prosecutors and forensic physicians who have taken courses on violence against women and intrafamily violence.

²⁶² IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, para. 63.

²⁶³ United Nations, Report of the Secretary-General, *In-depth Study on All Forms of Violence against Women*, A/61/122/Add.1, July 6, 2006, para. 209. Available online at: <http://www.un.org/womenwatch/daw/>

²⁶⁴ See Annex B.

Office of the Director General for Women's Affairs of the City of Buenos Aires, and from the Buenos Aires Provincial Court Attorney's Office. Venezuela's figures came from the Office of the National Ombudsperson. Peru submitted figures from the Family Court, while Mexico's figures were compiled by the Federal District's Government Attorney's Office, the states' government attorney's offices and the National Human Rights Commission.

190. During its *in loco* visits, the IACHR has found that judicial bodies have difficulty producing uniform and reliable national statistics on cases of gender-based violence, with the result that the problem of violence against women becomes invisible. This lack of reliable statistics also hinders development of public policies in the judicial area that match the severity and magnitude of the problem. By way of example, following its visit to Guatemala the Rapporteurship observed that:

We can see from the absence of studies or statistics on the prevalence of family or domestic violence and from the lack of information on the prevalence of sexual crimes that mostly affect women that the issue of violence against women is largely ignored.²⁶⁵

191. The Inter-American Commission of Women of the Organization of American States has written the following about this problem: "The absence of gender-disaggregated data and statistics on the incidence of violence makes the elaboration of programs and the monitoring of progress very difficult. The lack of data impedes efforts to design specific intervention strategies."²⁶⁶ The United Nations has also established recently that:

Accurate and comprehensive data and other documentation are crucial in monitoring and enhancing State accountability for violence against women and for devising effective state responses. States' role in promoting research, collecting data and compiling statistics is addressed in police instruments.²⁶⁷

192. The vast majority of the public prosecutors offices and specialized units in the national government attorney's offices only have data on cases reported in the countries' capitals. The Rapporteurship observed this problem during its *in loco* visits to Guatemala and Colombia. A research study on Honduras describes this problem in the following terms:

It is important to bear in mind that the total number of complaints of crimes of this type (violence against women) that the public

²⁶⁵ IACHR, Press Release N° 20/04, *The IACHR Special Rapporteur Evaluates the Effectiveness of the Right of Women in Guatemala to Live Free from Violence and Discrimination*, Washington DC, September 18, 2004.

²⁶⁶ Inter-American Commission of Women of the Organization of American States, *Violence in the Americas - A Regional Analysis, including a review of the implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women*, July 2001, pp. 79-80.

²⁶⁷ United Nations, Report of the Secretary-General, *In-depth Study on All Forms of Violence against Women*, A/61/122/Add.1, July 6, 2006, para. 274. Available online at: <http://www.un.org/womenwatch/daw/>

prosecutor's office received nationwide was 2,898 in 2002 and 4,255 in 2003. From this we can infer that in these two years, only 4% of the total number of complaints received are actually taken to trial by the Office of the Special Prosecutor for Women. However, the data from the Special Prosecutor's Office are only for the capital; the public prosecutor's office does not have discrete data sets on a national level that show exactly how many cases of crimes involving violence against women went to trial each year nationwide.²⁶⁸

193. The IACHR is concerned by the disorganized proliferation of state efforts to compile data on these incidents and the fact that the various agencies are all using different formats. Coordination among institutions is poor and sectors (government, administration of justice, health, international and regional organizations, academia and civil society) have to do more to share information. While in their responses to the questionnaire a number of States indicated that various government departments and units are compiling data on the problem of violence against women,²⁶⁹ the information provided does not report what mechanisms they are using to coordinate and share their data. Furthermore, the official statistics that the States supplied to the Commission show that such data are not always classified by such key variables as sex, race and ethnic origin, and are not compiled and analyzed from a perspective that is sensitive to either victims or their sex.

194. There seems to be little grasp or appreciation of how the various forms of violence perpetrated against women –physical, psychological and sexual- interrelate. For example, in homicide cases involving female victims, the investigations frequently fail to gather any information about any sexual abuse that may have been committed when the victim was murdered. This problem is compounded by a reluctance on the part of female victims of violence to report sexual abuse or rape, for fear that they will be ostracized by their communities or because they dread the lack of respect and indifference that they may encounter from the judicial authorities, or because they simply do not know where they should go to file a complaint.

²⁶⁸ Margarita Puerto, *Evaluación de la Reforma Procesal Penal desde una Perspectiva de Género: Honduras. Informe Final* [Evaluation of Criminal Procedure Reform from a Gender Perspective: Honduras. Final Report], November 2004, research done under the project "Gender and Criminal Procedure Reform," being conducted by the Justice Studies Center of the Americas, p. 38. [Secretariat's translation]

²⁶⁹ The following are among the institutions compiling data: the State office or department for women's affairs, the police, hospitals, health services, centers assisting victims of domestic violence, legal aid centers, the public prosecutor's office, the Ombudsperson Offices, the civil police and the national institutes of legal medicine.

6. Access to justice for indigenous and Afro-descendant women: discrimination and racism

195. Violence, discrimination and the obstacles to adequately access justice are even more challenging²⁷⁰ for indigenous and Afro-descendant women, who are particularly exposed to human rights violations based on racism.²⁷¹ The Commission has found that the obstacles such women must overcome to be able to avail themselves of adequate and effective remedies to redress the violations they suffer are even more daunting because such women must contend with a combination of various forms of discrimination: discrimination by virtue of their sex, discrimination based on their ethnic or racial original and/or discrimination by virtue of their socio-economic condition.²⁷²

196. Racism is commonly thought of as the basis of one form of *discrimination*, a difference in behavior dictated by a person's origin. It manifests itself over and over again in everyday interpersonal relations. Racism permeates all social behavior, personal as well as institutional. By varying degrees and in different ways, it is part of the ideological construct that spawned the dominance and inequality and that helps keep it alive.²⁷³

197. This section illustrates the special needs that indigenous and Afro-descendant women have. States are not taking them into full consideration when implementing their judicial action policies. It is imperative that States develop programs to compile information –statistics, research studies and studies examining the specific needs of these women- in order to ensure their rights particularly in the area of justice.

²⁷⁰ The Durban Declaration recognized the fact that racism, racial discrimination and xenophobia have a different effect on women, aggravating their situation of social, economic and cultural inequality, all in disregard and violation of their human rights: "We are convinced that racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights." Geneva, January 15-16, 2001.

²⁷¹ Racism is the set of beliefs underlying the notion of ethnic superiority; it is premised on the notion that inequalities among groups are the *natural* order of things and not really the result of a given social structure. Racism as a set of ideas has changed over the course of time, to adapt its function as a "naturalization process" to fit the circumstances. When *biological* differences could no longer be invoked to justify unequal treatment, *cultural* differences were used. In other words, initially racism was premised on biological differences and inferiority; nowadays, racism rests mainly on "cultural traits."

This means that today, racism posits that there are ethnic groups that are "backwards" and therefore an obstacle to development, by contrast to other groups whose characteristics, values and achievements represent the desired modernity. Again, they presuppose the *naturalization* of those differences, in a way that on surface seems contradictory. United Nations Development Program, National Human Development Report 2005, *Ethnic-Cultural Diversity: Citizenship in a Plural State*. Guatemala 2005, p. 14. [Secretariat's translation]

²⁷² IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, para. 102.

²⁷³ United Nations Development Program, National Human Development Report 2005, *Ethnic-Cultural Diversity: Citizenship in a Plural State*, Guatemala 2005, p. 14.

a. Indigenous women

198. In the Americas, between 45 and 50 million persons belong to more than 400 indigenous peoples who preserve their own languages, world views and socio-political organizational structures. Over fifty percent of these are women, most of them victims of double discrimination: discrimination by virtue of being a woman, and discrimination by virtue of being indigenous. Indigenous women are members of culturally different societies, with a strong attachment to their ancestral lands and the resources there. It is an attachment that exists, in part at least, because that land and those resources are their principal means of subsistence; it is also because the land and its resources are integral parts of the indigenous people's view of the natural order.

199. From a variety of sources and through implementation of the inter-American system's mechanisms, the IACHR has compiled information on the obstacles that indigenous women encounter in attempting to access the justice system.²⁷⁴ These obstacles are generally a function of the social exclusion and ethnic discrimination that they have historically suffered. The problem that women encounter is compounded by the geographic remoteness of indigenous territories.²⁷⁵ To be able to access the justice system, indigenous women may have to walk for days, overland or by water, to get to the nearest city to report the violence they have suffered. This also poses evidentiary problems. Indeed, an indigenous woman's problems do not end when she reaches the city, because there she will likely encounter obstacles of another sort: financial problems, a lack of information, discomfort with an urban environment. A lack of command of the language of the court is also routinely cited as one of the factors that makes access to justice difficult for indigenous women.²⁷⁶

²⁷⁴ The most common definition of social exclusion is: a chronic scarcity of opportunity and access to quality basic services, to job markets and credit, to proper physical and infrastructural conditions and to the system of justice.

²⁷⁵ A report published by Inter-American Development Bank's Indigenous Peoples and Community Development Unit explains that in general, indigenous peoples live in the least inviting areas of the hemisphere: the arid Andean and MesoAmerican highlands, the Paraguayan Chaco and the remote parts of the tropical jungle in the Amazon and Orinoco basins and Central America. In the more accessible areas, the indigenous populations were either wiped out or driven to remote and isolated regions during the colonial period. Estimates are that over 90% of the indigenous peoples are sedentary subsistence farmers. The other 10% live in tropical rain forest or dry forests. Generally speaking, they are hunters and gatherers. Despite the difficult natural environments in which they live and the increasing pressures upon them, indigenous peoples have managed to survive in ecologically delicate environments with limited capacity to sustain a large population. Many of these peoples have a profound understanding and knowledge of the environment in which they live and of the various species of plants and animals that live there, and have developed sophisticated techniques for sustainable use of these resources. See: Inter-American Development Bank, Department of Sustainable Development, Anne Deruyttere, *Pueblos Indígenas, globalización y desarrollo con identidad: Algunas reflexiones de estrategia*, 2001, p. 3 Available online at: <http://www.iadb.org/sds/doc/Ind-ADLasaWP.pdf>.

²⁷⁶ Testimonies of indigenous women collected in Colombia, Guatemala, Honduras, Panama and Paraguay.

200. Indigenous women's access to justice implies, on the one hand, access to the justice administered by the State and also a recognition of and respect for indigenous law. Both systems must be respectful of internationally recognized human rights. The IACHR has said that States need to institute and apply a judicial system that is responsive to the countries' cultural diversity. They also need to institute mechanisms that effectively recognize and promote indigenous law, mechanisms that fit their traditional norms and that are based on international human rights standards.²⁷⁷

201. In the report on the merits of the case of the *González Pérez Sisters*,²⁷⁸ the Commission developed the concept of rape as torture and a violation of women's right to a private life. It pointed out the specific obstacles that indigenous women encounter when seeking judicial protection. The Commission concluded that report by underscoring that the pain and humiliation that the women experienced was aggravated by the fact that they were indigenous women who did not know the language of their assailants and the authorities involved in the process, and by the fact that they were ostracized by their own community because of the crime committed against them.²⁷⁹

202. The State of Mexico acknowledged "the institutional violence, the indifference and discrimination suffered by indigenous women at the hands of personnel associated with health institutions and instances to impart justice, poorly trained and insensible to the poverty conditions and cultural diversity of these women".²⁸⁰

203. The Commission has expressed particular concern over the violence that indigenous women in Colombia and Guatemala have had to endure and the attendant impunity. The situation of indigenous women in Colombia is made all the worse by the armed conflict being fought on their ancestral lands and the difficulties they encounter when they report acts of violence and discrimination.²⁸¹ During a visit to Colombia, the Rapporteurship was able to establish that the protection of indigenous women's rights correlates directly with the possibility they have of living freely on their ancestral lands. For the indigenous peoples, the armed conflict has brought massacres, assassinations, especially of their traditional leaders and authorities, kidnappings and massive displacements from the ancestral lands.²⁸² The

²⁷⁷ IACHR, *Justice and Social Inclusion: the Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, December 29, 2003, Chapter IV, para. 236.

²⁷⁸ IACHR, Merits, Report N° 53/01, *Ana, Beatriz and Cecilia González Pérez* (Mexico), April 4, 2001.

²⁷⁹ IACHR, Merits, Report N° 53/01, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 4, 2001, para. 95.

²⁸⁰ Mexico's reply to the IACHR's questionnaire on the situation of women's access to justice in the Americas, November 2005, p. 20. [Secretariat's translation]

²⁸¹ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006.

²⁸² IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, paras. 123 and 124.

Rapporteurship has also received testimonies from Colombian indigenous women:

[d]enouncing sexual aggressions perpetrated by the armed actors participating in the conflict, to the detriment of indigenous women. The same women who offered these testimonies indicated that the discriminatory attitude of the aggressor worsens this type of aggression, already alarmingly serious. They explained that patrols of the different armed groups occupying indigenous lands kidnap indigenous women, collectively use them sexually, and then abandon them, protecting themselves by the impunity of their acts.²⁸³

204. These acts are frequently never reported, because the assailants are in control of the territory where these crimes occur. The victimized women are understandably mistrustful of the justice system because they believe that the crimes will never be investigated and the assailants will never be punished. Compounding the problem is the fact that the women do not know where to go to file their complaints.

205. Access to justice is still a major problem for the indigenous women of Guatemala, where the indigenous peoples' marginalization is undeniable.²⁸⁴ The Commission has observed that discriminatory acts prejudicial to indigenous women by virtue of their ethnic origin are deeply rooted in some quarters of the national life. The IACHR has examined the situation of indigenous women in Guatemala and the particular obstacles that these women confront when attempting to avail themselves of judicial remedies to redress acts of violence and discrimination perpetrated against them.²⁸⁵ The Commission has found that in many countries of the region, indigenous women have no way of making themselves understood in their own language, whether they are before the bar as victims or accused of committing a crime.

²⁸³ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, para. 144.

²⁸⁴ The figures continue to reflect the social exclusion that indigenous people in Guatemala endure. Their vulnerability and alienation is particularly acute and takes an especially heavy toll on indigenous children. The effects of the social exclusion are evident in the social, political and economic realms. Statistically, one of the most dramatic effects is in the area of child malnutrition, which is one of the chief mechanisms by which poverty and inequality are transmitted from one generation to the next. In Guatemala, 46.4% of children suffer from chronic malnutrition; most are indigenous children. See: "In Guatemala, the problem is not only that one sector of the population cannot exercise its *"cultural freedom"* by practicing its own culture; historically the problem in Guatemala has also been that because they are different, that one sector has not enjoyed and as yet does not enjoy the same social, economic and political rights that its compatriots enjoy. In other words, in the Guatemalan case, indigenous peoples' difference dictates their social exclusion. They are not officially recognized or even named in any piece of legislation." United Nations Development Program 2005, *Ethnic and Cultural Diversity: Citizenship in a Plural State*, Guatemala, 2005, p. 25. [Secretariat's translation] See also: "Chronic undernutrition, low height for age, reflect the cumulative results of the lack of adequate nutrition during the most critical years of a child's development –from the intrauterine stage through the first three years of life. The effects are to a large extent irreversible and closely linked to extreme poverty." ECLAC, UNICEF, *Child Malnutrition in Latin America and the Caribbean, Challenges*, Bulletin 2, April 2006.

²⁸⁵ Dr. Teresa Zapeta, Director of Guatemala's Office of the Ombudsperson for Indigenous Women, Meeting of Experts: *An Analysis of Access to Justice in Mexico and the Central American Countries*, August 11-12, 2005, San José, Costa Rica, organized in cooperation with the Inter-American Institute for Human Rights.

206. The information compiled by the IACHR indicates that acts of racism against indigenous women in Guatemala are a daily fact of life with which they have to contend. The ethnic discrimination is present everywhere in these women's lives: socially, politically, economically and culturally, in the treatment they receive on the street, at the workplace, in school, in the courts and elsewhere. The information received reveals conclusively that indigenous women are the constant targets of insult, called by demeaning labels like "Indias" or "Marias," the latter being a reference to the only work that the person making the offensive comment believes that indigenous women are able to perform, which is that of a domestic. The Commission was also told that Guatemalan indigenous women frequently are barred from entering public places merely because they are wearing their traditional garb. This constitutes segregation on ethnic grounds. The Commission has established that discrimination against indigenous peoples is so deeply rooted that indigenous women themselves have difficulty recognizing the acts of prejudice and discrimination committed against them.

207. As for investigation and punishment of acts of discrimination, in 2005 two convictions were handed down for the crime of discrimination against indigenous women. The number of complaints of such discrimination that have been filed with the courts has increased. In the case of investigation and punishment of acts of violence committed against indigenous women, impunity continues to be the general rule; most who work in the justice system are monolingual. Translations of judicial proceedings are incomplete. Evidence is difficult to obtain; the proceedings are long, costly and exhausting for the victims, most of whom live in dire poverty. Then, too, women often do not have identification papers. Geography, too, can become a factor limiting indigenous women's access to judicial protection. The Commission was told that among indigenous peoples themselves, the tendency is to deny indigenous women their rights, with the result that indigenous women frequently do not believe they can rely on their own justice systems to redress the crimes committed against them. The obstacles that indigenous women encounter in getting access to justice are compounded in the case of incarcerated indigenous women, who become the victims of violence perpetrated by other women prisoners or by state authorities. These indigenous women have no way of filing a complaint or of seeking redress for the wrongs committed against them.²⁸⁶

b. Afro-descendant women

208. Afro-descendant women may face unique challenges when seeking judicial protection. The history of Afro-Colombians has been one of discrimination, exclusion, invisibility and social disadvantage, a combination of problems compounded in the case of women. The IACHR has observed that in the particular case of Afro-Colombian women, they are victims of discrimination

²⁸⁶ Enders, Maren, *Diagnóstico Las Necesidades y Problemas de las Mujeres Indígenas Privadas de Libertad en Cumplimiento de su Condena [Diagnostic Study of the Needs and Problems of Indigenous Women Serving Judgments in Prison]*, Office of the Ombudsman for Indigenous Women, with the support of the PCON-GTZ, September 2004. [Secretariat's translation]

within and outside their communities, not just because they are Afro-Colombian but also because they are women.²⁸⁷ Public authorities discriminate against these women because of their gender, their race and their poverty, a situation described as follows:

Discrimination is a control device to keep disadvantaged groups in a position of subordination. It is a critical mechanism in controlling these groups... Violence is central to discrimination, since violence is one of the worst consequences of discrimination and also one of its key factors. All forms of discrimination have to be rejected in order to make headway in eradicating gender-based discrimination.²⁸⁸

209. Some studies put the Afro-descendant population in the region at over 150 million, which represents approximately 30% of the total.²⁸⁹ They, along with the indigenous peoples, are the poorest in the hemisphere.²⁹⁰ According to studies done by the World Bank, the census data and household surveys reveal that race and ethnicity are basic factors in determining the social exclusion and poverty with which indigenous peoples and Afro-descendants must contend. In many countries there is a strong correlation between race and ethnicity and access to such vital social services as education, health and social protection services.

210. The studies cited in this report concur that the vast majority of Afro-descendants are among the region's poorest people²⁹¹ even though data on the Afro-descendant population is in general lacking. As ECLAC wrote:

²⁸⁷ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, para. 112.

²⁸⁸ Presentation by Edna Santos Roland, Coordinator for Racial Affairs and Discrimination, UNESCO, *The Protection of Women's Rights in the Inter-American System: A Review of Access to Justice*, April 19 and 20, 2005, Washington, D.C., headquarters of the IACHR.

²⁸⁹ In the year 2000, it was noted that throughout the region there were between 80 to 90 million blacks, mulattos or other groups with traces of African ancestry. (ECLAC, 2000) cited in: Inter-American Development Bank, Peter Oakley, *Toward a Shared Vision of Development: High-level Dialogue on Race, Ethnicity and Inclusion in Latin America and the Caribbean*, Washington, D.C., June 18, 2001, p. 4. According to the mentioned study, at the time there were said to be some 150 million Afro-descendants; it pointed out that the figure would be considerably higher if it included the Caribbean population. However, the latest studies put the Afro-descendant population living in Latin America and the Caribbean at 150 million. According to the World Bank, of the 520 million people living in Latin America and the Caribbean, over 150 million are Afro-descendants. Thematic review available online at <http://www.bancomundial.org/afrolatin>. According to ECLAC, the region of Latin America and the Caribbean has around 150 million Afro-descendants. United Nations, ECLAC, Social Development Division, Social Policies Series, *Los pueblos indígenas y afrodescendientes ante el Nuevo milenio* [Indigenous Peoples, Afro-descendants and the New Millennium], Santiago de Chile, April 2006.

²⁹⁰ World Bank, Results of a pilot training program in Argentina, Peru, Honduras and Ecuador, *Mas allá de los promedios afrodescendientes en América Latina* [Beyond Average: Afro-descendants in Latin America], Washington, D.C., February 2006

²⁹¹ Inter-American Development Bank, Peter Oakley, *Toward a Shared Vision of Development: High-level Dialogue on Race, Ethnicity and Inclusion in Latin America and the Caribbean*, Washington DC, June 18, 2001, p. 4; Thematic review available online at <http://www.bancomundial.org/afrolatin>.

The data problem also touches the Afro-descendant population directly. Long ago the countries of the region that have an Afro-descendant population began to put together categories that had the effect of diluting this population into various groups or segments. For example, in some countries they have been classified under the heading of *ethnic group* or even directly as an *indigenous group*. In countries like Brazil, Costa Rica and Honduras, there is just one question about origin. While in Brazil the respondent identifies him or herself by "color or race," in Costa Rica self-identification is by the "culture" to which one belongs; in Honduras, self-identification is by "population group" (Garifuna and/or Black Carib). In Guatemala, self-identification is on the basis of the ethnic group that the respondent believes he or she belongs to, while in Ecuador the respondent is asked what does he or she consider himself or herself to be, and can choose from a number of options: indigenous, black, Afro-Ecuadorian, mestizo, mulatto and other. (Rangel, 2005)²⁹² ... Furthermore, when conducting demographic censuses not all countries of the region ask about this trait in the case of their Afro-descendant population. When the census does not examine the race or color variable, the respondent is pegged to other factors, such as income level, level of education, awareness of being black, the "none-of-the-above" tendency, all of which makes it difficult if not impossible to compare data between countries. Without reliable data, without indicators and periodic measurements, the kinds of political decisions calculated to deal with the discrimination problem cannot be taken. The figures also have an unmistakable political element, since for those affected it means that their invisibility is being reversed and they are being recognized along with everyone else.

For States and governments, the handling of the figures is often association with a denial of racism, discrimination and xenophobia. In recent years most countries in the region have added questions to the censuses and household surveys to ask about identification, group membership or language, which is a vast improvement over decades past.²⁹³

211. A bulletin published by the World Bank²⁹⁴ wrote that although the Afro-Latin community as a whole lives in the poorest regions and has the lowest paid jobs, the burden of discrimination is even heavier for Afro-descendant women because their multiple roles both inside and outside the home are not adequately reflected in their social status, employment and wages.

²⁹² Cited in: United Nations, ECLAC, Social Development Division. Social Policies Series. Indigenous and Afro-descendant women and the New Millennium, Santiago, Chile, April 2006, p. 25. [Secretariat's translation]

²⁹³ United Nations, ECLAC, Social Development Division. Social Policies Series. Indigenous and Afro-descendant women and the New Millennium, Santiago, Chile, April 2006, p. 25. [Secretariat's translation]

²⁹⁴ World Bank, *La Ventana*, Volume 3. Report of the Latin American and Caribbean Social Development Unit, Building a Voice for Afro-Latin Women, available online at: <http://www.worldbank.org/afrolatin>.

212. So discrimination exacts a heavier toll from Afro-descendant women than Afro-descendant men because the former combine the gender component and the race/ethnicity factor, which only serves to reinforce their segregation. When examining access to justice in the case of Afro-descendant women, the differences within this population group have to be considered. These differences range from their view of the natural order, traditions and culture, economic position, geography, and other factors.

213. The difficulties that Afro-descendant women will have in availing themselves of judicial remedies to redress acts of violence and discrimination committed against them will depend on some of the factors listed above. Afro-descendant women who live in marginalized, rural areas in small, tightly clustered social groups that still preserve their languages, traditions and customs and sometimes even their own systems of justice, will have to contend with problems of geographic accessibility, an inability to communicate with judicial authorities in their own languages, a knowledge of the process, and a lack of economic means. These are the very same problems that indigenous women face. And like indigenous women, Afro-descendant women will have to contend with discrimination on two levels: one based on their gender and the other based on their race.

214. Theirs is not unlike the situation of Afro-descendant women in urban areas, where the difficulties they will face in availing themselves of effective judicial remedies, have to do with their economic disadvantage and skin color. In those areas where the economic factor and social exclusion have been conquered, the difficulties are generally related to skin color.²⁹⁵

215. Among the challenges faced by Afro-descendant women, are the institutional violence perpetrated by judicial authorities who do not understand their vision of the natural order, and their traditions and culture. A judicial culture needs to be fostered that is tolerant of difference and diversity.²⁹⁶ Poverty is particularly prevalent among these women, which means that States must be ready to provide them with *pro bono* legal services to enable them to access the judicial protective bodies. They also need more

²⁹⁵ World Bank, Group of Analysis Toward Development (AGRADE), *Más allá de los promedios afrodescendientes en América Latina. Pobreza, Discriminación Social e Identidad. El caso de la población afrodescendiente en el Perú* [Beyond Average: Afro-descendants in Latin America. Poverty, Social Discrimination and Identity. The case of the Afro-descendent population in Peru]. Washington DC, February 2006. Interviews were conducted for this study in which the respondents concluded that discrimination is a function of skin color, not poverty. One of the respondents commented that he and his friends had once tried to go to an upscale restaurant, but they had problems because they were black; when they arrived, they were assigned the least visible table. This study observes that the places where Afro-descendants sense a greater degree of discrimination are the exclusive places where, "even if they had the money they wouldn't be allowed to enter because of being black." One of the participants noted that "if you go to Lima, they may not know you're poor, but they'll always know you're black and treat you differently."

²⁹⁶ Presentation by Nilza Iraci, GELEDES Brazil, Meeting of Experts, *A Review of Access to Justice in the Southern Cone Countries*, Argentine Senate, Arturo Illia Salon, Buenos Aires, Argentina, September 12 and 13, organized by the IACHR in cooperation with the *Equipo Latinoamericano de Justicia y Género* and the Centro de Estudios Legales y Sociales [Center for Legal and Social Studies].

information about the recourses available to them within the justice system and about their rights.

216. The recommendations that the experts made to the IACHR included circulation of information on the discrimination that these groups have historically suffered and that violates their rights; development of policies and programs that promote inclusion, so that these groups are able to exercise their legal guarantees and get effective judicial protection, and so that judicial authorities are respectful of their rights. The experts also recommended the development of affirmative action policies to conquer race- and gender-based structural inequalities.

B. Laws: problems with their design, interpretation and application

217. The IACHR has found two levels of obstacles in the civil and criminal laws that hinder the effective investigation of cases of violence against women. The first has to do with gaps and deficiencies in the laws, a lack of standardization and the presence of discriminatory concepts that place women at a decided disadvantage. The second kind of obstacle is with the judicial authorities' failure to enforce or properly apply the body of existing laws.

1. Gaps and deficiencies in the law

218. With regard to gaps in the law, the IACHR has found that many countries' civil laws do not yet make provision for the various manifestations of violence committed against women –physical, psychological and sexual-identified in the Convention of Belém do Pará. Nor do they make allowance for the contexts in which these forms of violence occur that are outside the family (social, urban, institutional, and job-related). The laws focus mainly on domestic and intra-family violence²⁹⁷ to the exclusion of the other contexts in which violence against women occurs. This leaves women defenseless against the other manifestations of violence that lie beyond the realm of family.

219. Nor do the laws appear to make provision for reparations for women victims of violence. Reparations have to be taken into consideration, so that women who have been victims of violence may be compensated for the harm caused. It is important to note here that the States still entertain a homogenous image of women as a group for whom public policy should be crafted. This carries over into the legal realm, with the result that the particular needs of various groups of women, like Afro-descendants and indigenous

²⁹⁷ A number of international organizations and civil society organizations have expressed concern over the priority that the States attach to the problem of intrafamily violence, disregarding other forms of violence and the contexts in which they occur. See, for example, *Model Law and Policies on Intra-family Violence against Women*, Pan American Health Organization (PAHO) in collaboration with the United Nations Population Fund (UNFPA), the United Nations Development Fund for Women (UNIFEM), the Inter-American Commission of Women of the Organization of American States (CIM/OAS), the Inter-American Parliamentary Group on Population and Development, the Center for Reproductive Rights (CRR), IPAS, ISIS International, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), Washington DC, April 2006.

women, are not addressed, especially when they try to avail themselves of judicial remedies with the proper attendant guarantees.

220. As for deficiencies, the IACHR has found that the principal objective of the laws continues to be preservation of the family unit rather than protection of its members' rights to live free from violence and discrimination. When instituting policies aimed at protecting the family, the particular needs that the members of the family have when it comes to prevention and protection are, by and large, ignored. The Latin American and Caribbean Committee for the Defense of Women's Rights (hereinafter "CLADEM") described this problem in an evaluation of the body of law in the Andean subregion:

The main approach taken in the laws and policies intended to address the problem of family violence is to protect the family more than the individual. This is very detrimental to women, who are the greatest victims in this problem, and happens because domestic violence is not viewed as a human rights issue and the gender perspective is not considered.²⁹⁸

221. The IACHR also observes the persistence of inadequate provisions and in some cases discriminatory content within some laws and criminal and civil codes, reflected in the following aspects: definitions of rape that require the use of force and violence rather than lack of consent; the treatment of rape as a crime against decency and not as a violation of a woman's right to bodily integrity; termination of criminal proceedings if the victim withdraws a complaint; and inadequate penalties for crimes involving violence against women.²⁹⁹ These provisions have not been adapted to conform to the object and purpose of certain international human rights instruments like the Convention of Belém do Pará. By way of specific examples, in some States like Nicaragua, Panama Uruguay and Venezuela, there are still legal provisions that allow perpetrators of sexual crimes to elude justice if they agree to marry the victim. The IACHR is deeply disturbed by this problem and has expressed the following:

In many criminal codes, values such as honor, social decency, virginity, chastity, and good morals prevail over values such as the mental and physical integrity of the woman and her sexual liberty, thereby impeding the due protection under the law of victims of such crimes, or compelling them to prove that they resisted in the case of the crime of rape, or subjecting them to interminable procedures that perpetuate victimization.³⁰⁰

²⁹⁸ CLADEM, Eda Aguilar Samanamud, *Balance Sobre la Situación de la Violencia Doméstica en la Región Andina* [Report on Domestic Violence in the Andean Region], done with support from UNIFEM, March 2004. [Secretariat's translation]

²⁹⁹ See for example, United Nations, Report of the Secretary-General, *In-depth Study on All Forms of Violence against Women*, A/61/122/Add.1, July 6, 2006, para. 277. Available online at: <http://www.un.org/womenwatch/daw/>.

³⁰⁰ IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/SER.L/V/II.98, doc. 17, October 13, 1998, Section IV, Conclusions.

222. Laws within the same national legal framework may contain conflicting provisions, thereby creating confusion. For example, in Paraguay there are contradictions between the provisions of the Penal Code and those of Law 1600 on domestic violence.³⁰¹ Whereas Law 1600 offers a number of alternatives for filing a complaint involving an act of violence –the police, health clinics or justices of the peace- the Penal Code provides that the public prosecutor’s office must have a direct hand in entering complaints, or that complaints may be filed with the public prosecutor’s office or the police. The variety of alternatives is confusing to victims, especially those who have had no prior experience with or knowledge of judicial procedure.

2. Flawed application and interpretation of the laws and implementation of government programs

223. The Commission has verified that in some American States, a variety of factors can prevent State officials from properly applying the laws that protect women. One of the most important is the lack of regulations to implement legislation, the absence of clear procedures and training programs to enable public officials to correctly interpret and apply the law when prosecuting cases involving violence against women, the excessive workload that law enforcement agencies are carrying and the general public’s unfamiliarity with the law and how to interpret it. A genuine commitment is needed from the States, backed up by sufficient financial and human resources, to ensure that the existing laws are properly applied and implemented.

224. During the working meeting that the Women’s Rapporteurship organized in the Southern Cone countries, the CLADEM representatives in Uruguay did a thorough analysis of Uruguay’s Domestic Violence Law³⁰² in order to illustrate the problems that attend the application of laws intended to combat violence against women in the Americas.³⁰³ Various significant aspects of the law were discussed, such as the possible judicial avenues that victims can use (both civil and criminal) and their right to mandatory legal counsel. However, a list of factors impairing application of the law was also discussed. Those factors included: a) the excessive caseload of the courts everywhere in the country; b) the fact that social and judicial operators (police, magistrates, defense lawyers and prosecutors) are not adequately trained in the problem of violence against women and are unfamiliar with the international legal

³⁰¹ Presentation by Mirna Arrúa de Sosa, Attorney, CLADEM Paraguay, Meeting of Experts, *A Review of Access to Justice in the Southern Cone Countries*, Argentine Senate, Arturo Illia Salon, Buenos Aires, Argentina, September 12 and 13, organized by the IACHR in cooperation with the *Equipo Latinoamericano de Justicia y Género* and the Centro de Estudios Legales y Sociales [Center for Legal and Social Studies].

³⁰² Law 17.514, enacted June 18, 2002.

³⁰³ Presentation by Flor de Maria Meza Tananta and Marta Scarpitta Garrido, Work Meeting, *A Review of Access to Justice in the Southern Cone Countries*, Argentine Senate, Arturo Illia Salon, Buenos Aires, Argentina, September 12 and 13, organized by the IACHR in cooperation with the *Equipo Latinoamericano de Justicia y Género* and the Centro de Estudios Legales y Sociales [Center for Legal and Social Studies]; see also the response to the questionnaire on women’s access to justice filed by Dr. Cecilia Anández, Dr. Flor de Maria Meza Tananta and Dr. Marta Scarpitta G, CLADEM, Uruguay.

obligations that the State has undertaken; and c) the fact that women do not know their human rights under domestic and international law.

225. As pointed out in previous sections of this report, the IACHR has found that public servants applying the law, especially public servants working in the administration of justice system, are still under the influence of discrimination against women and treat them as inferiors. By way of example, the following is a description of what can happen when cases of violence against women are prosecuted in Guatemalan criminal courts:

The penalties given in cases involving assaults against women tend to be lighter, based on the tendency in criminal law to give lesser sentences, to prosecute fewer crimes, to turn a blind eye to behaviors that violate constitutionally protected rights or to choose not to prosecute them, especially crimes that are violations of sexual freedom.³⁰⁴

226. This problem underscores the need to institutionalize training programs in gender issues and make them mandatory for public officials like police officers, prosecutors and judges, and the need to correctly apply the laws on this subject. The focus of these programs must be to provide instruction on the existing legal and administrative framework –laws, preventive protective measures and available judicial recourses- and their proper application, always from a gender perspective. Measures need to be taken to penalize public officials who violate women’s human rights.

227. The IACHR has learned that some judges are reluctant to apply and interpret international human rights treaties as part of domestic law, particularly those that apply to women’s cases. The problems with application of the body of law intended to combat violence against women are part of a more generalized problem with proper implementation and interpretation of international treaties. CLADEM has described these irregularities in the following terms:

The governments’ lack of commitment; political instability; at the national level, the prevalence of a juridical culture that is not friendly to international human rights law, especially in matters of gender-based discrimination; a lack of familiarity with the significance, content and importance of those treaties on the part of the parliamentarians who approved them; a resistance to substantive change, to budgetary investments in that area, and to acceptance of accountability mechanisms; the weakness of institutional mechanisms; the power of conservative and fundamentalist religious sectors like some quarters of

³⁰⁴ Hilda Morales Trujillo and Maria del Rosario Velásquez Juárez, *El Derecho Penal en Guatemala, Una Deuda Pendiente* [Criminal Law in Guatemala: An Outstanding Debt], in RED ALAS, Ed. Luisa Cabal and Cristina Motta, *Mas Allá del Derecho, Justicia y Género en América Latina*, 2006 [Beyond Law, Justice and Gender in Latin America, 2006]; Center for Reproductive Rights and Law School of the Universidad de los Andes, *Cuerpo y Derecho: Legislación y Jurisprudencia en América Latina* [Body and Law: Legislation and Jurisprudence in Latin America], 2001, p. 316. [Secretariat’s translation]

the Catholic Church; too little lobbying and pressure from organized sectors of society.³⁰⁵

228. In this sense, it is indispensable that judges interpret international human rights treaties in accordance with international standards. Yet a considerable number of countries have not yet ratified or taken steps to ratify such binding international human rights instruments as the Convention of Belém do Pará (United States, Canada and Cuba) and the Optional Protocol of the CEDAW (Chile, Cuba, El Salvador and the United States).³⁰⁶

229. On the other hand, it is also important to undertake an evaluation and periodic follow-up of State laws to guarantee that public servants apply them correctly, particularly members of public prosecutor's offices and the judicial branch. The IACHR observes that the implementation of evaluation mechanisms of laws to prevent violence against women is not very common. It is also uncommon to see an external review of the actions of prosecutors' offices and of justice officials, as well as a measurement of their actions in terms of indicators based on efficiency and results.

230. Women cannot possibly claim their rights unless they know what they are. Therefore, the IACHR emphasizes the importance of developing programs to educate the general public about human rights and the judicial recourses available to file complaints. Paraguay's General Secretariat for Women's Affairs described this problem to the IACHR in the following terms:

Although Paraguayan women now have a better understanding of their rights, are effectively participating and have access to information about their rights, the empowerment that those rights represent is one of the principal challenges for those who work for equality of opportunity and equal treatment for men and women.³⁰⁷

231. The lack of information about the judicial recourses available and the fact that violence and discrimination against women are still accepted in American societies, have kept down the number of complaints of acts of violence against women. ISIS International has described the problem as follows:

Women do not know what their rights are. Women in general, but particularly women of little means, do not understand their rights and

³⁰⁵ CLADEM, Valeria Pandjarian and Denise Hirao, *Balance Sobre la Situación de la Violencia Doméstica en la Subregión Brasil y Cono Sur, Argentina, Brasil, Chile, Paraguay y Uruguay* [Report on the Situation of Domestic Violence in Brazil and the Southern Cone, Argentina, Brazil, Chile, Paraguay and Uruguay], prepared with support from UNIFEM, São Paulo, June 2004. [Secretariat's translation]

³⁰⁶ The United States has not yet ratified the CEDAW either.

³⁰⁷ Presentation by Serenella Dinatale Filartiga, Director of International Relations, Secretariat for Women's Affairs, Meeting of Experts, *A Review of Access to Justice in the Southern Cone Countries*, Argentine Senate, Arturo Illia Salon, Buenos Aires, Argentina, September 12 and 13, organized by the IACHR in cooperation with the *Equipo Latinoamericano de Justicia y Género* and the *Centro de Estudios Legales y Sociales* [Center for Legal and Social Studies]. [Secretariat's translation]

are unfamiliar with the mechanisms available to them to assert those rights. Violence against women continues to be a widespread and culturally accepted practice. Laws are a means of regulation but cannot by themselves effect the cultural change needed to eradicate violence against women.³⁰⁸

232. Yet despite their persistence and severity, violence and discrimination against women continue to be low-priority issues in national programs. The IACHR is understandably concerned by the States' apparent lack of commitment, the kind of commitment that is backed up with the financial and human resources needed to correctly apply and implement existing legislation. Because of that lack of commitment, the budgets assigned to implement the law and launch the government programs that will drive the process forward are inadequate. In its response to the questionnaire, the Mexican State described the problem of inadequate funding and the lack of political commitment to implement public policies:

One challenge is that local governments and various officials in the federal government do not have a real political commitment to women's rights. One hears complaints, for example, about activities being cut and about the diminishing relevance of efforts made to create gender equity units in the secretariats and institutions of the federal government in order to introduce the gender perspective everywhere The headway made with health, education and employment policies collides with institutional structures and cultural resistance on the part of the bureaucracies charged with applying these policies. Therefore, in-depth change needs to be fostered in the predominant institutional cultures within public institutions.³⁰⁹

233. The States provided the IACHR with figures on the budgets assigned to conduct programs geared specifically to improving the situation of women. Almost without exception, the figures the States provided were for the budgets of government agencies dedicated to women's affairs, and not the other areas of government. This reveals that women's issues are still perceived as isolated problems that do not need to be addressed in a coordinate fashion by different state sectors.

234. From the information supplied, it is evident that the States do not yet appreciate the economic and social costs that the problem of violence against women can have. As the United Nations put it, the costs of violence against women, apart from the human costs, go "beyond lowered economic production and reduced human capital formation but also include the costs associated with political and social instability through intergenerational transmission of violence, as well as the funds required for programmes for

³⁰⁸ Elizabeth Guerrero, *Violencia Contra la Mujeres en América Latina y el Caribe: Balance de Una Década 1990-2000* [Violence against Women in Latin America and the Caribbean 1990-2000: An Assessment of a Decade], Isis Internacional, Santiago, Chile, April 2002, p. 21. [Secretariat's translation]

³⁰⁹ Mexico's reply to the IACHR questionnaire on the situation of access to justice for women in the Americas, November 2005, pp. 18-19. [Secretariat's translation].

victims/survivors of violence."³¹⁰ In 1993, the World Bank concluded that in developed and developing countries alike, rape and domestic violence accounted for one out of every five healthy days of life lost to women between the ages of 15 and 44.³¹¹ This reduces women's ability to earn a living and participate in public life. Furthermore, the children of such women are at a significantly greater risk of health problems, poor school performance and behavioral problems.³¹²

235. The IACHR has been told of government programs whose purpose is to provide support services to women victims of violence and help them secure court protection of their rights. It is an internationally accepted fact that specialized and multidisciplinary support is essential when women become the victims of violence, to help them cope with the physical and psychological injuries sustained.³¹³ The Pan American Health Organization, working in partnership with other international organizations, has identified the following services that women victims of violence –regardless of its form- will require:

Providing basic and interdisciplinary care: this includes medical care, psychological counseling and assistance through support or self-help groups. Providers must also be familiar with the other services and resources available in their community, in order to be able to refer the survivor to services not provided at the health or other service center, such as legal services, economic assistance and protection, among others ... Having a guide to the resources available in the public and private sectors that provide assistance and *pro bono* legal services to women who want to file complaints in court.³¹⁴

236. However, government programs that provide multidisciplinary services to victims of violence do not necessarily function smoothly. Problems include the programs' failure to coordinate and collaborate; deficiencies in the delivery of the interdisciplinary services that the victims need; the programs do

³¹⁰ United Nations, Report of the Secretary-General, *In Depth Study on All Forms of Violence against Women*, A/61/122/Add.1, July 6, 2006, para. 107. Available online at: <http://www.un.org/womenwatch/daw/>.

³¹¹ The World Bank, *World Report on Development* (1993); *Violence against Women: The Hidden Health Burden*. World Bank Discussion Paper 255. In this connection, see the papers presented by Teresa Genta-Fons, and Gabriela Vega, Meeting of Experts: *The Protection of Women's Rights in the Inter-American System: An Analysis of the Access to Justice*, April 19-20 2005, Washington DC, IACHR headquarters.

³¹² United Nations, Report of the Secretary-General, *In Depth Study on All Forms of Violence against Women*, A/61/122/Add.1, July 6, 2006, para. 106. Available online at: <http://www.un.org/womenwatch/daw/>.

³¹³ Pan American Health Organization, *World Report on Violence and Health*, Chapter 6, Sexual Violence, 2003, pp. 176-179.

³¹⁴ Pan American Health Organization (PAHO) in collaboration with the United Nations Population Fund (UNFPA), the United Nations Development Fund for Women (UNIFEM), the Inter-American Commission of Women of the Organization of American States (CIM/OAS), the Inter-American Parliamentary Group on Population and Development, the Center for Reproductive Rights (CRR), IPAS, ISIS International, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), *Model Law and Policies on Intra-family Violence against Women*, Washington, D.C., April 2004, p. 27.

not have the resources to guarantee that they will remain in operation; and their geographic coverage is limited. The latter poses a particular difficulty for women who live in marginalized, rural and poor areas. The Inter-American Commission of Women has described this problem as follows:

Some progress has obviously been achieved in recent years in the provision of services for abused women and children; hotlines; emergency assistance, including legal services; shelters; special health services; and counseling. However, in most countries, the amount of services available bears no relationship to the demand for these services.³¹⁵

237. The Commission has also learned of a number of programs designed to provide care to women victims of violence. They are run by nongovernmental networks and organizations that specialize in violence against women. The majority are receiving support from international organizations. A variety of organizations provide psycho-social care to victims and information on judicial proceedings and legal advocacy. They also play a key role in training state employees at all levels and provided needed information and services in the area of gender and reproductive rights. The ISIS network has described these initiatives as follows:

Methods have been devised and tested using the experiences that women's organizations have found at centers administering basic care to women victims of violence. A number of non-governmental organizations have become active in services of this type, mainly with international cooperation. These centers offer counseling and/or medical, psychological, legal and social assistance, and their coverage depends on how well funded they are. Support or self-help groups are also being created.³¹⁶

238. During its visit to Colombia, the Rapporteurship observed that the organizations working to defend women's rights play a vital role in providing the services required by women victims of violence in areas occupied by armed elements, areas in which the State and its services have a limited presence that is not commensurate with current demand:

In addition to working to protect the civil, political, economic, social and cultural rights of women, these organizations play a vital role in the services area and in documenting cases. In areas where armed elements are present, these organizations tend to victims of violence and provide reproductive health services. The organizations engaging in activities of this type include the *Iniciativa de las Mujeres por la Paz*, the *Liga de Mujeres Desplazadas*, the *OFP*, the *Asociación*

³¹⁵ Inter-American Commission of Women of the Organization of American States, *Violence in the Americas – A Regional Analysis, Including a Review of the Implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Convention of Belém do Pará*, October 2000, p. 57.

³¹⁶ Elizabeth Guerrero, *Violencia Contra la Mujer en América Latina y el Caribe: Balance de Una Década 1990-2000* [Violence against Women in Latin America and the Caribbean 1990-2000: An Assessment of a Decade], Isis Internacional, Santiago de Chile, April 2002, p. 32. [Secretariat's translation]

Nacional de Mujeres Campesinas, Negras e Indígenas (hereinafter “ANMUCIC”) and PROFAMILIA, and others. The United Nations Development Programme (hereinafter the “UNDP”) told the Rapporteur during the visit that the important work being done does not receive the public recognition it deserves.³¹⁷

239. The IACHR underscores the need to legitimize, protect and support the work of nongovernmental organizations that provide interdisciplinary services to victims of violence by providing information on how to file complaints when women become the victims of violence and how to seek and obtain effective judicial protection.

III. PUBLIC EFFORTS TO COMPLY WITH THE DUE DILIGENCE OBLIGATION IN RESPONSE TO ACTS OF VIOLENCE AGAINST WOMEN

240. While the project was underway, the Rapporteurship received information from the States, members of the administration of justice, civil society and the academic sector, who reported on the public efforts aimed at preventing, investigating and punishing acts of violence against women and providing redress for them. The Commission has recognized in the past that the adoption of international instruments like the Convention of Belém do Pará and the CEDAW has promoted a series of changes on the workings of the administration of justice regarding discrimination and violence against women, in the legislation and in state programs, in civil and common law countries.³¹⁸ These efforts put into evidence the responsibility that the States have undertaken to deal with violence against women as a public problem, and to amend and implement, in an effective and practical way, a body of law that conforms to international parameters.

241. As it compiled its information, the IACHR could see that practically every State in the Americas has adopted legislation, public policies and government programs in the areas of civil and criminal law, to deal with some forms of violence against women, which includes the treatment their cases receive. They have taken a number of initiatives in the justice sector to better prosecute cases of violence against women and the treatment that victims receive when they turn to judicial institutions of protection. This section describes a number of the efforts undertaken.

A. Efforts in the administration of justice sector

242. The Rapporteurship received information on the efforts made within the administration of justice system to improve the prosecution of cases involving violence against women and the treatment of victims when they turn to judicial institutions of protection. Salient here is the preparation of national

³¹⁷ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, para. 229.

³¹⁸ IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/SER.L/V/II.98, doc. 17, October 13, 1998, Section III.

diagnostic studies examining how the domestic administration of justice systems deal with cases of violence against women, creation of special courts and units within the public prosecutor's office and the police to deal specifically with gender issues and equipped with special expertise, creation of training programs for those in the justice system and the police, and programs to provide advocate services to victims who have turned to the judicial system. A number of court rulings have been delivered underscoring the necessity of protecting the rights of women victims of violence, and the appointment of a number of women to the benches of the Supreme Courts in the region.

243. With international cooperation, research, studies and analyses have been conducted in a number of countries on how the justice systems and other state institutions respond to and treat cases involving violence and discrimination of women, the purpose being to discover ways to improve the judicial response. In Bolivia, for example, the Constitutional Tribunal ordered a study, which was conducted with support from the Spanish Government, to identify the kinds of discrimination that women suffer in the administration of justice system.³¹⁹ In Honduras, the State commissioned a study on the obstacles that women encounter when they file domestic violence complaints with the various institutions in the justice system charged with applying the existing laws to address cases of domestic violence. A number of research papers have also been conducted in Guatemala, such as the *National Diagnostic Study on the Institutional Response to the Problem of Intrafamily Violence and Violence against Women*, which CONAPREVI did in 2003. Paraguay's Supreme Court commissioned research into the obstacles that women victims of violence and discrimination encounter when they seek to avail themselves of their judicial guarantees and protections.³²⁰

244. The Rapporteurship has also learned that a number of specialized units and courts have been created to deal exclusively with cases of domestic violence. A number of courts of first instance have been established in Uruguay; in the United States, specialized courts have been established at the state level; and Costa Rica has special domestic violence courts –four in San José and one in each of the remaining provincial capitals. In countries like Belize, Bolivia, Chile, El Salvador, Guatemala and Peru, family courts are being established at the national and local levels to deal exclusively with crimes of violence against women, while in other countries like Paraguay and Guatemala, the justices of the peace are competent to hear such cases. In a number of countries of the English-speaking Caribbean, family courts have been created, the idea being to better integrate social services into the administration of justice.³²¹ In countries like Argentina and Saint Lucia, multidisciplinary teams,

³¹⁹ Supreme Court of Justice, Bolivia's Constitutional Tribunal, *Gender Bias in the Administration of Justice*, Dr. Emilse Ardaya, Supreme Court Justice, Dr. Elisabeth Iñiguez, Justice on the Constitutional Bench, the Centro Juana Azurduy and the Spanish International Cooperation Agency.

³²⁰ Supreme Court of Justice of Paraguay, Myrna Arrúa de Sosa, *Obstáculos para el Acceso a la Justicia de la Mujer Víctima de Violencia en Paraguay* [Obstacles Impairing Access to Justice in the Case of Women Victims of Violence in Paraguay], 2005.

³²¹ Presentation by Tracy Robinson, *Access to Justice for Women Who Are Victims of Violence in the Caribbean*, Meeting of Experts: Protection of Women's Rights in the Inter-American
Continued...

with special training in intrafamily violence, have been set up within the courts to provide technical support in domestic violence cases.

245. Units specializing in intrafamily violence and sex offenses have been set up within the judicial branch, public prosecutor's offices, and the police. Costa Rica has established the Secretariat for Gender Affairs within the judicial branch of government, and the Women and Child Protective Services Program within the police. In Mexico, an order was issued for creation of a sex-offenses unit within the public prosecutor's office, while in Guatemala an office of the Special Prosecutor for Women's Affairs was created, as was a homicide unit in the national police specializing in murders where the victims are female. In Colombia, Law 360, enacted in 1997, orders that specialized units be created in public prosecutor's offices nationwide to devote special treatment to crimes against sexual freedom and human dignity. In Belize, too, domestic violence units have been set up in a number of police stations nationwide, and domestic violence has been added to the curriculum at the Police Training Academy.

246. Similarly, Jamaica has established a sex crimes unit within the police force, with several objectives: to create an environment that encourages women victims to report incidents of sexual assault and child abuse; to effectively investigate complaints of abuse; to offer the needed counseling and therapy services; and to conduct programs in public schools to educate children about sex crimes and abuse. El Salvador's Attorney General's Office has created a specialized team to deal with intrafamily violence; nine self-help groups have been set up for women victims of violence, which operate out of various deputy attorney offices nationwide. In Panama a Gender Affairs Office has been created within the national police force, as have police units trained in responding to, preventing and repressing domestic violence in all its forms. In the Dominican Republic, five police stations called "Women's Friends" have been created and specialize in protecting women who have been raped. These stations are in San Francisco de Macoris, Santiago, Villa Altagracia and Baní.

247. A number of programs have been set up to improve the way in which women victims are treated when they attempt to avail themselves of the institutions of judicial protection. For example, in Antigua and Barbuda, the Directorate of Gender Affairs is conducting the *Court Advocacy Program* under which women seeking a protective order under the new domestic violence law are provided access to an advocate to assist them in the proceedings.³²² Advocates help women complete the required paperwork and may also prepare the statement that accompanies the application. Since its establishment in

...Continuation

System: A Review of Access to Justice, April 19-20, 2005, Washington DC, headquarters of the IACHR; see also, ECLAC UNIFEM, *Eliminating Gender-Based Violence, Ensuring Equality: ECLAC/UNIFEM Regional Assessment of Actions to End Violence Against Women in the Caribbean* (ECLAC, 2003). Families and Children's Act 1998 (Belize); Child Protection Act 1998 (Grenada); Probation and Child Welfare Act (St. Kitts-Nevis); The Children Amendment Act (Trinidad and Tobago).

³²² ECLAC (2001). *An Evaluative Study of the Implementation of Domestic Violence Legislation: Antigua and Barbuda, St. Kitts-Nevis, St. Lucia and St. Vincent and the Grenadines.*

1994, Saint Lucia's Family Court has endeavored to create a respectful and non-contentious environment that is sensitive to women victims of violence. The latter are provided with social counseling services and assistance in preparing for the hearings. Social workers may be present for the proceedings as well.

248. From the reports the Rapporteurship has received, it is clear that training programs for civil servants in general, and particularly those destined for justice and police officials, are on the rise. State institutions devoted to protecting the rights of women play a prominent role in these programs, as do national nongovernmental organizations that promote women's rights, nongovernmental networks like CLADEM, the Caribbean Association for Feminist Research and Action (hereinafter "CAFRA"), the International Association of Women Judges (IAWJ), and international organizations like the Gender Unit of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (hereinafter "ILANUD"), UNIFEM, and the Inter-American Development Bank (hereinafter "IADB").

249. As previously observed, the structure of the training programs has varied greatly among the various countries of the Americas. In the English-speaking Caribbean, the Association of Caribbean Commissioners of Police has partnered with CAFRA, a nongovernmental network, to train some 5,000 police officers from the region in how to respond to incidents involving gender-based violence.³²³ In countries like Brazil, Jamaica and Venezuela, the state institutions that deal with women's affairs have devised training programs for members of the justice system, to make them aware of cultural stereotypes that discriminate against women and how to be more respectful of and sensitive to women when they turn to the courts for protection of their rights. Argentina's National Women's Council has developed a national program to educate, provide technical assistance and raise awareness of violence against women. In this program the federal government partners with women at the provincial and municipal levels and civil society organizations to strengthen services, the end goal being to stop violence against women.

250. Mexico's National Women's Institute (hereinafter "INMUJERES") has launched several training programs for staff and officials in the public prosecutors offices, of the Supreme Court of Justice and general procurator offices in a number of states³²⁴ and a police training program that features workshops to educate police about human rights and violence against women. Some 700 police participated. In Paraguay, 350 judges and justices of the peace and 300 police officers of differing ranks were trained in 2005. In Panama, 'gender' has been added to the training programs at the public prosecutor's office and the judicial school which trains personnel from the judicial branch. The following topics are now being taught: gender and law,

³²³ ECLAC/CDCC/CIDA, Regional Conference on gender-based violence and the administration of justice, February 2003, Port-of-Spain, available online at: <http://www.eclac.cl/publicaciones/PortOfSpain/4/LCCARG744/lcarg744.pdf>.

³²⁴ Aguascalientes, Baja California, Baja California Sur, Coahuila, the Federal District, Michoacán, Morelos, Veracruz and Zacatecas.

domestic violence and human rights. In Peru, the judicial branch conducts training programs and workshops for magistrates and auxiliary personnel. In Colombia, efforts are being made to train personnel in the judicial branch of government. For example, the Superior Council of the Judiciary and the Rodrigo Lara Bonilla Judicial School are working to put together a Basic and Advanced Training Program with the emphasis on gender and targeted at officials and personnel in the judicial branch. The goal is to train 15,000 between 2002 and 2006.³²⁵

251. Guatemala boasts a number of State-sponsored training programs for civil servants and in recent years has developed a fellowship program for judges and attorneys to enable them to pursue master's degrees and take courses in women's rights at the Universidad Privada Rafael Landívar, with financial support from the Government of Finland. In the United States, many states have enacted laws making training in the federal Violence against Women Act mandatory for police, prosecutors and judges. States receive grants to enable them to conduct these programs. Also, the Office on Violence against Women, which is part of the Department of Justice, has, through the National Judicial Institute and the Family Violence Prevention Fund, trained 1,100 judges from all 50 states since the year 2000. In El Salvador, the Supreme Court has made a great effort, through the National Council of the Judiciary and the Judicial Training School, to educate judges and servants of the justice system about intrafamily violence. Working in partnership with various nongovernmental organizations, it has also helped put together a manual on the application of the intrafamily violence law. Staff of the Attorney General's Office have received instruction on gender-based and intrafamily violence.

252. The judicial branch in Costa Rica has had a Violence Commission since 1996. Working in coordination with the National Judicial School, the Commission conducts an established training and awareness program for judges, prosecutors, attorneys, public defenders, court assistants and staff of the departments of legal medicine, psychology and social work. Additionally, the Judicial School in Costa Rica has also developed a number of training programs for justice officials.³²⁶ These include a specialized program on the subject of domestic violence, conducted by ILANUD with funding from the United States Agency for International Development (USAID). This program was geared to judges, magistrates, mayors, public defenders, prosecutors, forensic physicians and psychologists, and examines the dynamics of violence against women and children from a gender perspective. In 1993, a parallel program was conducted under the title "Women and Human Rights" which targeted support (nonprofessional) staff and judges from the various offices. It featured forensic physicians and social workers and professionals from other institutions that in some way deal with this problem. Between 1994 and 1996, the institution organized a program of training workshops led by the Women's

³²⁵ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, para. 218.

³²⁶ Response from Zarella Villanueva Monge, Magistrate of the Supreme Court of Costa Rica to the IACHR questionnaire on Access to Justice of Women in the Americas, May 30, 2005.

Institute at the Universidad Nacional, for the general purpose of informing participants from the judicial system about the causes and consequences of domestic violence against women in all age groups and child abuse, and to make them more sensitive to these problems and their victims' plight.

253. In Chile, a series of training programs and plans have been developed for institutional personnel, including, among others, the Chilean national police and educators. In the Bahamas, the National Police Force has a permanent program that trains police officers in urban and rural areas about domestic violence. In Ecuador, under an agreement concluded with the National Women's Council, the public prosecutor's office has embarked on a process of mainstreaming the gender perspective into policies, programs and projects. An important part of this process is the training provided to the prosecutors and administrative personnel of that office.

254. The Rapporteurship has also learned of a number of court rulings aimed at protecting the rights of women. Prominent here are the rulings of Colombia's Constitutional Court, which civil society has recognized as being vital to defending, ensuring and development the rights of women recognized in the Colombian Constitution and in the international human rights instruments the Colombian State has ratified.³²⁷ The Court has issued a number of judgments in which it found that civil, family, and labor laws and public policies that discriminated against women were unconstitutional.³²⁸

255. One of its more recent rulings is Judgment 453 from 2005, in which the Court protected the rights of a woman who was a rape victim. In the decision the Court held that rape victims have a constitutional right to be protected from evidentiary measures that represent an unreasonable, unnecessary and disproportionate invasion of their privacy. In May of 2006, the Constitutional Court of Colombia also held in its Judgment C-355/06 that abortion will not constitute a crime when the interruption of a pregnancy with a woman's consent is produced (i) when continuing the pregnancy constituted danger to the life or health of the woman and is certified by a doctor, 2) when there is a malformation of the fetus that threatens its life and this is certified by a doctor; and 3) when the pregnancy has resulted from an act of sexual violence or forced artificial insemination without consent or incest.

256. More women have been appointed to the bench in courts of first, second and third instance and to administrative positions as well. However, progress here is still very slow and uneven. Women are still a much greater presence in administrative positions and in courts of first instance than they are in courts of second and third instance. The IACHR is pleased that

³²⁷ Corporación Sisma Mujer, *Informe Justicia de Género: Entre el Conflicto Armado y las Reformas a la Justicia*, Colombia 2001-2004 [Justice and Gender: Between Armed Conflict and Justice Reforms, Colombia 2001-2004], p. 16.

³²⁸ See, for example, the Constitutional Court judgments C 588 of 1992, C 622 of 1997, C710/96 – C470/97, C372 of 1998, C 098 of 1996, C 285 of 1997 and C 410 of 1994; C 481 of 1998, C 623 of 1998, C 507 of 1999, C 477 of 1997, C 112 of 2000, C 011 of 2002, C 092 of 2002, C 154 of 2002, C 157 of 2002, C 198 of 2002, C 578 of 2002, C 1033 of 2002, C 016 of 2004, C 102 of 2004, and others.

women have been appointed magistrates and justices on the Supreme Courts of a number of countries of the region, such as Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Panama, Nicaragua and Paraguay, and to regional courts like the Caribbean Court of Justice and the Inter-American Court of Human Rights, which now boast three women judges.

257. On a related point, the IACHR has repeatedly expressed its concern over the fact that discrimination against women has for so long curtailed their capacity to participate in government and public life, both at the national and international levels.³²⁹ And while important progress has been made, women continue to be grossly underrepresented here and everywhere else in the world. At the domestic level, the Commission is urging the OAS member States to open up opportunities to facilitate women's participation in public life in their countries, particularly in the political and justice systems. The IACHR considers necessary to create proper mechanisms to ensure the nomination of women for the countries' superior and constitutional courts to overcome gender prejudices still rooted in the countries' judicial structures. At the international level, the IACHR is also urging the OAS member States to nominate women to positions in the agencies of the inter-American system like the IACHR and the Inter-American Court, so that men and women are more evenly represented in these bodies.³³⁰

B. The adoption of criminal and civil laws about violence and discrimination against women

258. Most countries of the Americas have adopted a framework of laws to address various types of violence and discrimination, particularly in the area of domestic violence. The development of this legal framework has been influenced both by human rights instruments and by models crafted by intergovernmental organizations such as CARICOM in the English-speaking Caribbean.³³¹ The structure of this body of laws, the pace of its development and its reach have varied among the countries of the hemisphere.

³²⁹ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. 124/Doc.6, October 18, 2006; IACHR, *Annual Report for 1999*, chapter on "Considerations Regarding the Compatibility of Affirmative Action Measures Designed to Promote the Political Participation of Women with the Principles of Equality and Non-discrimination," Chapter VI; IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/SER.L/V/II.98, doc. 17, October 13, 1998.

³³⁰ This year the United Nations General Assembly urged the States to nominate women for membership on the United Nations Human Rights Committee and the U.N. Committee on Economic, Social and Cultural Rights to ensure equal representation to each sex. United Nations, General Assembly, A/RES/60/149, February 21, 2006.

³³¹ The Rapporteurship received information highlighting the success of the CARICOM model in promoting the adoption of different types of legislation in the region, including domestic violence, amendment of sexual offenses laws, sexual harassment and creation of family courts. See information available online at: <http://www.caricom.org>.

259. Most countries have incorporated women's right to live free from violence into their national constitutions, and have amended their penal codes and/or adopted special laws to echo this right, particularly in the case of domestic violence. The States' answers to the questionnaire and the information compiled by the IACHR confirm the fact that on the whole, a great many of the countries have by now amended their laws, adopted new laws, and/or amended their Penal Code to make provision for domestic or intrafamily violence. These countries include: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bermuda, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, St. Kitts and Nevis, Trinidad and Tobago, the United States, Uruguay and Venezuela.³³²

260. The elements of this legal framework for addressing domestic or intrafamily violence vary in nature and content. In the area of civil law, the laws mainly provide for protective measures for the victim or the family unit, or precautionary measures in advance of oral proceedings, services for the victims and economic reparations. In the area of criminal law, the laws and codes establish a variety of penalties for the aggressor.

³³² Among the laws adopted are *Antigua and Barbuda*: Domestic Violence (Summary Proceedings) Act (1999); *Argentina*: Law No. 25.087 amending the Penal Code (1999); Law No. 24.417, "Protection against Family Violence" (1994); *Bahamas*: Sexual Offenses and Domestic Violence Act (1991); *Barbados*: Domestic Violence (Protection Orders) Act (1992), Sexual Offenses Act (1992); *Belize*: Domestic Violence Act (1992); *Bolivia*: Law No. 1674, "Law against Domestic and Family Violence" (1995); Law 2033 of Protection to Victims from Crimes against Sexual Liberty (1999); modifies the Penal Code about crimes of sexual violence (1997); *Brazil*: Law 11.340 on domestic or intrafamily violence (August 7, 2006); *Canada*: Law 4635 related to equal opportunity for men and women; although the Penal Code contains no provision for a specific crime classified as intrafamily violence, the batterer or abuser can face a variety of criminal charges for violation of laws criminalizing various behaviors, such as sexual abuse; *Chile*: Law No. 20.066, Law of Intrafamily Violence (2005); *Colombia*: Law 294 to Prevent, Remedy and Punish Intrafamily Violence (1996); Law 360 on Crimes against Sexual Freedom and Human Dignity (1997); Law 575, partially amending Law 294 (2000); *Costa Rica*: Law 7142 on Promotion of Women's Social Equality, Chapter 4, 1990; Law 7586 against Domestic Violence (1996); *Dominica*: Sexual Offenses Act (1992); *Dominican Republic*: Law 24-97 criminalizing domestic violence, sexual harassment and incest (1997); *Ecuador*: Law prohibiting Violence Against Women and Family (1995); *El Salvador*: Decree Law 902 against Intrafamily Violence (1996); *Guatemala*: Law 97-96 to Prevent, Punish and Eradicate Intrafamily Violence, Congressional Decree 7-99 "Law for the Dignity and Advancement of Women" (1999); *Guyana*: Domestic Violence Act (1996); *Honduras*: Law for the Prevention, Punishment and Eradication of Violence Against Women, Decree 132-97; *Jamaica*: Law on Domestic Violence (1995); *Mexico*: Law on Prevention of Family Violence and Provision of Related Assistance for Distrito Federal (1996); Decree to reform the Civil Code and Penal Code on the matter of intrafamily violence and rape (1997); *Nicaragua*: Law containing amendments and additions to the Penal Code (1996); *Panama*: Law 38 on Domestic Violence (2001); Law No. 27 on Intrafamily Violence Offenses and Child Abuse (1995); Law No. 4 "Equal Opportunity for Women" (1999); *Paraguay*: Law 1600/00 on Intrafamily Violence (2000); *Peru*: Law 26260, establishing the policy of the State and society vis-à-vis domestic violence (1993); *Saint Vincent and the Grenadines*: Domestic Violence/Matrimonial Proceedings Act (1984) and the Domestic Violence Summary Proceedings Act; *Saint Lucia*: Domestic Violence Summary Proceedings Act (1995); *Trinidad and Tobago*: Act No. 10 Domestic Violence Act (1999); *United States*: Public Law 103-322 - Title IV, Violence Against Women Act (1994); *Uruguay*: Law 16707 on Citizen Safety, which adds the legal figure of domestic violence and amends the Penal Code regarding violence (1995); Law 17514 on Domestic Violence (2002); *Venezuela*: Law on Violence against Women and the Family (2000).

261. The main purpose of some laws is to prevent the occurrence of the crime, such as El Salvador's Law against Intrafamily Violence, which includes such prevention strategies as the following: inclusion of various types of school instruction on aspects of women's rights; the need to respect human rights; implementation of outreach campaigns to heighten the public's awareness of intrafamily violence; promoting study of and research into the causes and consequences of violence against women; promoting active involvement on the part of public agencies and civil society entities to ensure that precautionary measures are enforced and the victims protected; and more training of civil servants involved in cases of this type, as well as other areas of intervention.³³³

262. Most laws dealing with domestic violence concern physical and psychological violence, while others deal with sexual violence, as in the case of the laws of the Bahamas, Bolivia, Canada, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Paraguay and the United States. Other countries also include various types of economic violence, such as measures taken by the aggressor to wipe out the victim's economic means of subsistence and/or damage property that may belong to both or just to the victim, as in the cases of Costa Rica, Honduras, Uruguay and Brazil. Protecting the victim's economic interests is vital, since some investigations have revealed that one of the greatest needs expressed by women living in violent relationships is assistance with matters related to the divorce, property and custody of the children.³³⁴

263. Some laws on domestic violence in the countries of the English-speaking Caribbean contain clauses that protect the victim's privacy and the integrity of her person during criminal proceedings. For example, Jamaica's domestic violence law provides that the arguments can be heard *ex parte*, and that provisional orders can be issued before the respondent is notified. This in itself can be an important preventive measure that affords the victim swift protection. By law, all matters must be heard in camera³³⁵ to protect the privacy of victims during the proceedings. The Rapporteurship considers such measures essential given that many women wish to protect their privacy during the process. The law also prohibits publication of any proceedings without the court's permission. In the case of Saint Lucia, the domestic violence law provides that applications can be heard *ex parte* and immediately.

264. The laws differ in terms of which possible relationships between the victim and the aggressor they cover, factoring in a variety of models of what constitutes a family and a relationship. They also feature a catalogue of protective and precautionary measures that a judge can issue prior to the oral

³³³ Law 902 against intrafamily violence, 1996, Article 6.

³³⁴ World Bank, *Addressing Gender-Based Violence in the Latin America and Caribbean Region: A Critical Review of Interventions*, Andrew Morrison, Mary Ellsberg, Sarah Bott, World Bank Policy Research Working Paper 3438, October 2004, p. 16, citing Guedes, Alessandra, et al. 2002, *Gender-Based Violence, Human Rights, and the Health Sector: Lessons from Latin America*, Health and Human Rights. 6(1), pp. 177-194.

³³⁵ Hearings held before the judge in his or her private chambers or when the public is excluded from the courtroom.

proceedings in order to guarantee the victim's safety. They include such measures as finding a safe house for the victim,³³⁶ restoring the victim's residence to her in the event she has had to flee to escape abuse,³³⁷ ordering the aggressor to leave the shared domicile³³⁸ and protective orders in general, as well as notifying the country's authorities of the seriousness of the situation. In the countries of the English-speaking Caribbean, the laws on domestic violence provide that women have a right to request protection orders and the measures associated with those orders.

265. The laws also include a variety of sanctions against the aggressor, some temporary, others permanent. These include emergency arrests, fines, alimony, and prison time, depending on what the Penal Code stipulates. The law can also order the creation of various social services that victims require, among them health services, education, and legal services, and the keeping of records and statistics. Some laws make provision for alternative mechanisms for settling differences during the legal case, especially mediation and conciliation between the parties, whether mandatory and/or voluntary, as in the cases of Argentina, Bolivia, Colombia, Chile, Ecuador, El Salvador, Mexico and Peru.

266. In some countries, the adoption of domestic violence laws has been matched by detailed regulations regarding their enforcement. For example, in Ecuador a regulation approved for implementation of Law 103 of August 18, 2004³³⁹ includes provisions to improve implementation. Under this law, *amparo* measures may remain in effect until the authority that granted *amparo* relief revokes it. It also prohibits conciliation/mediation of intrafamily violence issues. Procedural manuals have been put together for the purpose of providing guidance on the laws' application. In Ecuador, for example, the procedural manual for application of Law 103 was designed to be implemented in the intendments, women and family police stations, and the National Police Commissions.

267. Many States have adopted laws to address sexual violence, especially criminal laws. Some have amended their criminal codes to make sexual violence a criminal offense that carries harsher penalties.³⁴⁰ Some

³³⁶ See, for example, Article 39.2 (Venezuela); Article 309-6 (Dominican Republic).

³³⁷ See, for example, Article 39.4 (Venezuela); Article 6 (d) (Paraguay); Article 10.2 (Uruguay).

³³⁸ See, for example, Article 39 (Venezuela); Article 6 (Paraguay); Article 3(a) (Argentina); Article 3(h) (Chile); Article 5(a) (Colombia); Article 309-6 (Dominican Republic); and Article 10 (Uruguay).

³³⁹ Executive Decree No. 1982 (August 18, 2004).

³⁴⁰ See, as examples, Law 25.087 (1999), amending the Penal Code to include crimes of sexual violence (Argentina); Law 1674, amending the Penal Code on the matter of sex offenses (1997) and Law 2033, which protects victims of this crime (Bolivia); Law 360 on Crimes against Sexual Freedom and Human Dignity (1997) (Colombia); Law 19.617, which amends the Penal Code on the subject of sex offenses (1999) (Chile); Law 105, which amends the Penal Code on the subject of sex offenses (Ecuador); a 1998 amendment of the Penal Code to include crimes involving sexual violence (El Salvador); 1997 amendment of the Penal Code where sexual violence is defined as a "public order crime" (Honduras); a 1989 reform of the Penal Code, which

examples include Bolivia, Ecuador, El Salvador, Canada, Chile, the Dominican Republic, Honduras, Peru and the United States. The main result of these reforms has been the partial elimination of cultural stereotypes that are discriminatory, as well as the prohibition to make inappropriate considerations, such as the honor of victims, their previous sexual history, and their conduct during the judicial process. Some sexual aggressions have also been characterized as a crime, including rape within marriage in several countries.³⁴¹ Because of these changes in the law, such behaviors are now more likely to be viewed as crimes, instead of threats to the victim's "honor" and "morality."³⁴² Some examples of recent changes to the language of Penal Codes are in Bolivia,³⁴³ Brazil,³⁴⁴ Ecuador³⁴⁵ and Argentina.³⁴⁶

268. Similarly, of late a number of States -like Argentina, Brazil, Guatemala, Peru and Uruguay- have amended or repealed the provisions that allow rapists to avoid criminal punishment if they marry their victim. Mexico has recently established that forced sexual relations within marriage constitute rape and, as such, a crime. There is also a general increase in the criminalization of sexual crimes and rape within marriage, as well as an expansion of the definition and sanction of rape, as in the case of Belize, Costa Rica, Honduras, Nicaragua and Panama.

269. Since the early 1990s, around half the countries of the English-speaking Caribbean have introduced a series of amendments to their laws on

...Continuation

introduced a more severe penalty for the crime of rape (Mexico); Law 27.115 which requires public criminal prosecution of offenses against sexual freedom (Peru); Law 24-97, criminalizing domestic violence, violence against women, sexual harassment and incest in 1997 (Dominican Republic).

³⁴¹ Elizabeth Guerrero, *Violence against Women in Latin America and the Caribbean 1990-2000: An Assessment of a Decade*, Isis Internacional, Santiago, Chile, April 2002, p. 18; Tamayo, Giulia, (2000) *Derechos humanos de las mujeres, violencia contra la mujeres y la paz en la región* [Women's human rights, violence against women and peace in the region]. A review of the progress and challenges in the five years since the Fourth World Conference on Women. Report prepared by CLADEM for "Something more than words... mechanisms, resources and gender justice in the XXI century." Regional Meeting of Latin American and Caribbean NGOs in preparation for Beijing + 5. Lima, February 5-7, 2000.

³⁴² Elizabeth Guerrero, *Violence against Women in Latin America and the Caribbean 1990-2000: An Assessment of a Decade*, Isis Internacional, Santiago, Chile, April 2002, p. 18.

³⁴³ In Bolivia, Law 2033 of October 29, 1999, *Ley de Protección a las Víctimas de Delitos Contra la Libertad Sexual* [Law to Protect Victims of Crimes against Sexual Freedom] increased the Judgment for rape to 5 to 15 years, whereas it had been 4 to 10 years. The law also eliminated the phrase "decent women."

³⁴⁴ In February 2005, Brazil's Penal Code was amended to remove the expression "decent women."

³⁴⁵ The Ecuadorian Penal Code was amended on June 1, 2005, to remove the expression "decent women" and replace it with the word "victim"; in the case of sexual crimes, the language "attack on decency" was replaced with the expression "sexual abuse"; no exceptional circumstances will be considered to reduce Judgments in sexual crimes, such as the accused turning himself in voluntarily or cooperating with the authorities in the investigation of the crime.

³⁴⁶ Language like "purity," "chastity," "decency" of the victims and "decent women" has been struck from the Argentine law on sexual violence.

sexual assault.³⁴⁷ The new laws have toughened the penalties for sexual assaults and have made various types of sexual assault more serious criminal offenses, including new crimes as *grievous sexual assault* and *unlawful sexual connection*.³⁴⁸ Laws are also including measures to protect victims such as the law on sexual offenses of Trinidad and Tobago, amended in 2000, which requires a medical examination of anyone accused of certain sexual offenses. A number of changes were also made to the way in which the courts conduct hearings in cases involving violence against women, to improve the manner in which victims are treated in court. Provisions were included to protect the victim's privacy and, in some cases, the privacy of the accused.

270. Sexual harassment is one of various forms of sexual violence outlawed in a number of countries,³⁴⁹ including Argentina, Brazil, Canada, Chile, the Dominican Republic, Honduras, Ecuador, El Salvador, Paraguay, Peru and the United States. In a number of countries of the English-speaking Caribbean, sexual harassment laws have been passed, although it is not always treated the same. In the Bahamas and Saint Lucia, sexual harassment is a criminal offense, whereas in Belize it is subject to a specific law.

271. Some States' laws draw the link between discrimination and violence against women. For example, in the case of Ecuador, the June 2005 amendment of the Penal Code stipulates that discrimination on certain grounds may constitute aggravating factors in the commission of sexual offenses, such as: place of birth, age, sex, ethnicity, color, social origin, language, religion, political affiliation, economic status, sexual orientation, sexual health, disability and other differences. The laws are also beginning to consider the danger of violence that certain groups of women face. For example, the Chilean law on intrafamily violence requires that the courts order precautionary measures when the victims are pregnant, suffer from some disability or another risk factor.³⁵⁰

³⁴⁷ *Sexual Offences Act 1995 (Antigua and Barbuda); Sexual Offences and Domestic Violence Act 1991 (Bahamas); Sexual Offences Act 1992, Cap 154 (Barbados), Criminal Code (Amendment) Act 1999 (Belize); Sexual Offences Act 1998 (Dominica); Sexual Offence and Domestic Violence Act 1991 (Bahamas); Sexual Offences Act 1998 (Dominica); Sexual Offences Act 1986, Amendment Act 2000 (Trinidad and Tobago).*

³⁴⁸ Presentation by Tracy Robinson, Professor of Law, University of the West Indies, Barbados, *Access to Justice for Women Who Are Victims of Violence in the Caribbean*, Meeting of Experts: *Protection of Women's Rights in the Inter-American System: A Review of Access to Justice*, April 19-20, 2005, Washington DC, IACHR headquarters.

³⁴⁹ See, for example, Law 10.224, which amends Brazil's Penal Code to add sexual harassment (Brazil); Law 105 which amended the Penal Code to include sexual harassment in the workplace (Ecuador); in 1998, the Penal Code was amended to include sexual harassment (El Salvador); in 1997 the Penal Code was amended to include sexual harassment (Honduras); Law 1.160 amended the Penal Code to criminalize sexual harassment (1997) (Paraguay); Law 27.942 on Sexual Harassment Prevention (2003) (Peru); Law 24-97 which criminalizes sexual harassment (Dominican Republic); in the United States, sexual harassment is a form of discrimination based on sex, and a violation of Section VII of the *Civil Rights Act* (1964). Section VII applies to employers with 15 or more employees, including state or local government. It also applies to state agencies and labor organizations, and to the federal government; Decree 2385/93 prohibits sexual harassment in the public sector (Argentina); Law 20.005 that includes and sanctions sexual harassment (Chile).

³⁵⁰ Guatemala, for its part, has made discrimination a criminal offense. See Decree 57 (2002).

272. In the majority of the countries, the law is applied throughout the national territory, although in some countries, the local level also has its own specific laws. For example, in Mexico's response to the questionnaire, the State reported that 28 of the 32 federal units have adopted their own laws to prevent and punish domestic violence. The Civil Code in 21 federal units lists domestic violence as one of the grounds for divorce, and 27 criminalize domestic violence. In 13 Penal Codes, rape of within marriage is classified as a crime. In Argentina, the promotion of the law to protect women from domestic violence has led to the enactment of laws of this type in a number of jurisdictions throughout the country.

273. Within the legislative branch of government, a number of committees have been created to address issues on violence against women and thus influence the legislative process. These committees include the Commission of Women and Human Development in Peru's Congress, the Equity and Gender Committees in Mexico's legislative branch, the Equity and Gender Committee and women's caucus in Uruguay, and the Legislative Committee for the Family, Women, Children and Adolescents in El Salvador.

274. The States' replies to the questionnaire reveal that a number of public policies have been adopted at the national level to address violence against women and its causes, as one means to implement the existing body of laws. For example, Argentina now has a *National Program for Training, Technical Assistance and Awareness of Violence against Women*. This program helps to create and strengthen interdisciplinary teams throughout the country, so as to be able to prevent and/or treat family violence and form inter-institutional and social networks. This program features a Central Record of Cases of Violence against Women in the context of family relations, with services to prevent and treat violence. In September 2005, the government of Belize introduced a new *Plan of Action to Address Gender-based Violence*; the plan for the 2006-2009 period is now being drawn up.

275. Bolivia has enacted the *National Plan of Public Policies to Ensure Full Exercise of Women's Rights* (2004-2007), which includes prevention mechanisms and quality services to treat intrafamily and sexual violence. In December 2004, the Brazilian Government adopted the *National Policy Plan for Women* (PNPM), which was the result of the National Conference of Policies for Women, held in June 2004. This plan takes a comprehensive approach to the problem of gender-based violence to lower the rate of violence and amend Brazilian laws on the subject. The plan features 31 measures to address violence against women, which include training for professionals, creation of a network of services, distribution of specific laws, research on this issues, and creation of public defender's offices serving women. The plan is being analyzed with the municipalities to ensure that it is correctly implemented at the local level.

276. A number of national programs have been adopted in Chile to prevent the problem of intrafamily violence, such as the *National Program and Plan for the Prevention of Intrafamily Violence and the National Plan for Intrafamily Violence Intervention for the 2001-2006 period*, which proposes work in six areas: legislation; communications; promotion and prevention;

basic and advanced training; treatment or public services, and research. In Colombia, the State has adopted a national policy called *Women Architects of Peace and Development*, the main purpose of which is to gradually achieve equality between men and women in terms of their participation in the social, economic, political and cultural life of the country. The policy also features a series of target areas, such as employment and entrepreneurial development for women, education and culture, sexual and reproductive health, violence against women and institution-building.

277. Costa Rica developed its *National Plan for Treatment and Prevention of Intrafamily Violence (PLANOVI)*, which features measures to prevent, raise awareness of, detect and treat intrafamily violence. It also enlists a variety of public institutions and civil society in this endeavor. In El Salvador, the Salvadoran Institute for Women's Development ("ISDEMU"), created in March 1996, is implementing the program called *Saneamiento de la Relación Familiar* [Making Families Healthy] to provide services to those who are victims of social aggression. It addresses their needs in the area of physical and mental health, social assistance and legal counsel.

278. Guatemala has adopted *The National Policy for the Promotion and Development of Guatemalan Women, Opportunity Equity Plan*, which addresses violence against women and puts into practice the Convention of Belém do Pará and the Beijing Platform for Action. Its purpose is to transform social and cultural behavioral models that are detrimental to women. Guatemala also has its *National Plan for the Prevention of Intrafamily Violence and Violence against Women (PLANOVI 2004-2014)*. Mexico has a national program to prevent, punish and/or eradicate violence and discrimination against women, titled *National Program for Equal Opportunity and Nondiscrimination for Women* (hereinafter the "Plan Proequidad"). Created by INMUJERES, the goal of the Proequidad Plan is to make the gender perspective part of all regular policies and programs in every sector of the federal government and to encourage new policies and programs. INMUJERES has also crafted a *National Program for a Life Free of Violence*, which is an integral part of the Proequidad Plan.

279. Panama has a *National Plan against Domestic Violence and Citizen Coexistence Policies*, whose purpose is to reduce domestic violence and its social, economic and legal consequences. The plan focuses on promotion, prevention, treatment and rehabilitation. In 1994, Paraguay's Secretariat for Women's Affairs launched the *National Plan to Prevent and Punish Violence against Women*, which is being implemented in coordination with the *Second National Plan for Equal Opportunity for Men and Women (2003-2007)*, the purpose of which is to include gender considerations when crafting, coordinating, executing, monitoring and evaluating public policy.

280. Two plans have been adopted in Peru to further the advancement of women's rights: the *National Plan for Equal Opportunity for Men and Women (2006-2010)* and the *National Plan to Combat Violence against Women (2002-2007)*. The National Equal Opportunity Plan has a number of objectives: to institutionalize the gender perspective, introduce it across all sectors, and promote practices, attitudes and values that do not

discriminate against women. For its part, the goal of the National Plan to Combat Violence is to bring about changes in socio-cultural patterns that condone, legitimize or aggravate violence against women, establish mechanisms, instruments and procedures for preventing violence, protect women, treat women victims, aid their recovery and provide them with prompt and effective reparation.

281. Venezuela has a *National Plan for the Prevention of Violence against Women* (2000-2005), prepared by the National Institute of Women, which heads up an inter-institutional committee composed of the Ministry of Interior and Justice, the Ministry of Education, the Ministry of Science and Technology, the Ministry of Health and the Criminal Science and Criminological Investigations Commission (CICPC). Antigua and Barbuda and St. Kitts and Nevis advised the Rapporteurship that they, too, have adopted national plans for the prevention, punishment and eradication of violence against women.

C. The creation of government programs to address violence and discrimination against women

282. A variety of state programs and services are available to provide legal, psychological and social services to victims of gender-based violence. A number of public institutions specialize in delivering services to women victims of violence, including legal advice, psychological counseling, social services, and legal advocacy. Coverage is both nationwide and local.

283. One of the institutions created is the Women and Family Commissions.³⁵¹ The authority and capacity of these stations vary among the various countries of the Americas.³⁵² Other such institutions are the programs conducted by the state agencies charged with promoting women's rights.³⁵³ It is important to make the point that many of these services are being conducted in partnership with civil society, like nongovernmental organizations that specialize in providing services to victims of violence against women. Other services created in many countries include hotlines that victims can call for legal advice and psychological counseling,³⁵⁴ centers that provide information

³⁵¹ Good examples can be found in Ecuador, where 30 have been created in 17 provinces, and Honduras, where such police stations have been established across the country and staffed with multidisciplinary service teams.

³⁵² For an evaluation of the work of the women's police stations, *Violence against Women in Latin America and the Caribbean 1990-2000: An Assessment of a Decade*, Isis Internacional, Santiago, Chile, April 2002, p. 23.

³⁵³ The following are examples of these programs: in Jamaica a support unit for victims of violence against women has been created and operates under the Ministry of National Security; in Paraguay, the Office of the Presidential Secretary for Women's Affairs has set up services to assist women victims of intrafamily violence and a referral center for trafficking victims.

³⁵⁴ Some examples of these programs can be found in Antigua and Barbuda, Argentina, Brazil, Honduras, Mexico and Venezuela. In Mexico, for example, INMUJERES has created a telephone hotline program called "Life Without Violence" and in Buenos Aires, Argentina, a telephone hotline has also been established called "línea mujeres." In Venezuela, the State has created a nationwide, toll-free hotline worked by psychologists and attorneys who specialize in offering services to women victims of domestic violence. Since its establishment in November

and advisory services on physical and psychological violence, crisis centers, court advisory services, services provided through nongovernmental organizations, and intervention programs that target aggressors in cases of domestic violence. Good examples of such services can be found in the English-speaking Caribbean. In Brazil, a special prosecutor's office has been created within the Office of the Special Secretary for Women's Affairs. The function of that office is to respond to and prosecute complaints of violence against women and discrimination cases.

284. The Rapporteurship has also been informed of efforts taken by the States to provide judicial services to women victims of violence at the municipal, provincial and federal levels. In Bolivia, comprehensive legal services, family protection brigades, shelters and the intrafamily violence response and prevention networks have been created at the local level. According to the information reported by Bolivia's Office of the Vice Minister for Women's Affairs, nationwide there are 28 legal clinics, 24 family protection brigades and 53 violence response and prevention networks. In Brazil, the State has increased the number of *Delegacias Especializadas de Atendimento à Mulher* (comparable to the women's commissions), referral centers and shelters throughout the country. In Venezuela, prefect offices, county offices and civil police stations have been created nationwide to provide care and legal assistance to victims of violence at the municipal level. In Chile, SERNAM has set up 23 centers to address the problem of violence against women in 13 regions of the country; it planned to have another six centers up and running by March 2006. The project titled Institution-Building of Local Women's Rights Organizations has been underway in Ecuador since 2001. Its purpose is to provide legal counsel to women and youth who are victims of intrafamily violence, offering them guidance on how to exercise their human rights.

285. In Colombia, the State has made significant efforts to establish services nationwide for women victims of violence.³⁵⁵ Among the most notable are the Family Commissions, the Comprehensive Care Center for Victims of Sex Offenses, Inter-institutional Committees set up within the Ombudsman's Office to serve victims and survivors of sex offenses, the expanded geographic coverage of the *Instituto Colombiano de Bienestar Familiar* [Colombian Institute of Family Wellbeing] centers and the *Red de Solidaridad Social* [Social Solidarity Network]. In Saint Lucia, community response teams have been established. These teams instruct volunteer groups in how to provide assistance to victims, especially those living in remote areas, far from the national justice system's services. In Peru, 42 emergency centers have been created for women and are specialized public services provided free of charge, delivering comprehensive and multidisciplinary care to victims of family and sexual violence. Ten of these

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2004, a total of 14,563 calls have been taken: 100% of those who call in say they are the victims of psychological violence; 74.51% report being the victims of physical violence.

³⁵⁵ Report by the State of Colombia on Application of the Beijing Platform for Action (1995) and the results of the Twenty-third Special Session of the General Assembly (2000), Alvaro Uribe Vélez, President of the Republic, Carolina Barco Isackson, Minister of Foreign Affairs, Martha Lucía Vázquez Zawadsky, Office of the Presidential Advisor for Equity for Women, Bogotá, May 2004, p. 125.

centers are in Lima; the others are in the provinces. They provide legal advice and psychological counseling to victims.

286. Other state programs established focus on disseminating information on violence against women and on the existing judicial recourses. They do this mainly by heightening public awareness of the problem, emphasizing its severity as a human rights violation and triggering an increase in the number of complaints filed. Many of these campaigns are waged on two key dates: November 25 - International Day for the Elimination of Violence against Women- and March 8 -International Women's Day. In Jamaica, an inter-institutional campaign protesting violence against women and children has been organized with the Bureau of Women's Affairs and nongovernmental organizations like *Woman's Inc.*, *Crisis Center*, *SISTREN Theatre Collective*, *Fathers Incorporated*, and *Women's Media Watch* participating, with support from United Nations agencies and the Canadian International Development Agency (hereinafter "CIDA"). Brazil's Special Secretariat on Policies for Women supported a campaign called *Una Vida sin Violencia es un Derecho de las Mujeres* [A Life Free From Violence Is A Woman's Right], coordinated by *Agende*, a nongovernmental organization. It also spearheaded a campaign in the State of Santa Catarina to repudiate and prevent violence against *campesina* women, coordinated by the Association of *Campesina* Women of Santa Catarina. In the case of Paraguay, the Secretariat for Women's Affairs and the Ombudsman's Office have concluded an inter-institutional cooperation agreement to promote women's rights and circulate information about those rights, specifically related to the CEDAW and Law 1600 on Domestic Violence. That agreement will be implemented nationwide through the offices at the local level. In Honduras, the National Women's Institute has created a number of programs for circulating information on the existing laws and targeted at women in different sectors and population groups. A number of nationwide campaigns have been launched on the radio and in the press in the Dominican Republic, for the purpose of preventing violence against and trafficking of women.

287. Most States have created special national agencies for the protection of women's rights; some local-level agencies have also been established. These institutions and mechanisms vary in terms of their names, operation, composition, authorities, budgets and staff. Some of these institutions have been set up as subdivisions of the ministries of social development, health, and family affairs, while others function as advisory bodies within the executive branch. The operations of some of these agencies are decentralized, while other national agencies coordinate with their local counterparts. In addition to these central institutions, a variety of state agencies in the justice system, police, the health sector and international relations also address issues related to women's human rights.³⁵⁶

³⁵⁶ The Rapporteurship learned that the following specific agencies have been created: Antigua and Barbuda (Directorate of Gender Affairs); Argentina (National Women's Council); the Bahamas (Bureau of Women's Affairs); Belize (Department of Women's Affairs and the National Women's Commission); Bolivia (Office of the Vice Minister of Women); Brazil (Office of the Special Secretary for Women's Policies); Colombia (Office of the Presidential Advisor on Women's Affairs); Costa Rica (National Women's Institute); Dominican Republic (Office of the Secretary of State for Women's Affairs); Ecuador (National Council of Women); El Salvador (ISDEMU); Guatemala (Office

288. Apart from the state measures undertaken at the central level, the Rapporteurship has been informed that ombudsmen's offices in Latin American countries are making gender one of their focus areas of activity. In many countries, those offices are functioning as autonomous entities in order to better defend rights and promote and circulate information on human rights. The Rapporteurship has been informed that in many of these offices, gender has become an action area, particularly in cases of violence and discrimination. Some conduct their investigations on their own initiative or at the request of an affected part, and look into acts or omissions of the government that involve human rights violations. The IACHR has verified that these offices have played a very important educational role and have served as a bridge between the civil society, the different instances of the States, and State representatives.

289. The Rapporteurship received information on forms of inter-institutional cooperation that have been created in various countries to better coordinate state measures to prevent, punish and eradicate violence against women. Among these are roundtables and committees whose members include a number of ministries and representatives from various sectors of the government. They are looking at the issue of gender-based violence in a variety of realms, including education, the justice system and health. In the Bahamas, for example, the Ministry of Social Services and Community Development has formed a task force on violence against women to bring a coordinated and systematic approach to the areas of health, policy and services. Chile has a number of projects in progress for intersectoral coordination, among them the Inter-ministerial Commission to Prevent Intrafamily Violence. Chile's Ministry of Education, Ministry of Justice and its National Police have concluded cooperation agreements with SERNAM.

290. Then, too, state agencies charged with promoting and protecting women's rights are partnering with nongovernmental organizations to provide legal, psychological and social services to victims of violence against women. Indeed, a number of national and local networks to promote coordination and the exchange of statistical and qualitative information on the problem of gender-based violence and provide services to women victims of violence were created in Argentina, Costa Rica, Ecuador and the United States.

291. Finally, a number of States reported on their efforts to create centralized systems for compiling nationwide data on violence against women. For example, a pilot system has been established in the Dominican Republic for compiling information on intrafamily violence. The Secretariat of State for Women's Affairs and nongovernmental organizations are involved. In its

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of the Presidential Secretary for Women's Affairs, the Office of the First Lady's Secretary for Social Works, and the National Coordinator for the Prevention of Intrafamily Violence and Violence against Women); Honduras (National Women's Institute); Mexico (National Women's Institute); Panama (Office of the National Director of Women's Affairs of the Ministry for Social Development); Nicaragua (Nicaraguan Women's Institute); Paraguay (Office of the Presidential Secretary for Women's Affairs); Peru (Ministry of Women and Social Development); St. Kitts and Nevis (Bureau of Women's Affairs); Saint Lucia (Gender Relations Division within the Ministry of Health); United States (Office on Violence against Women, Department of Justice); Saint Vincent and the Grenadines (Gender Affairs Division); and Venezuela (National Institute of Women).

response to the questionnaire, the State observed that for now, the figures that the state institutions are providing do not fully capture the magnitude of the problem of violence against women, because many cases are never reported.³⁵⁷ Furthermore, variables like rape and a woman's mental health are not reflected in the figures.³⁵⁸ This challenges the task of designing and executing measures that are effective in helping to reduce these problems.³⁵⁹

292. Other commendable efforts include the creation of centralized data systems. With UNICEF's cooperation, Argentina's National Women's Council launched a National Training, Technical Assistance and Awareness Program on Violence against Women, one element of which is to create a centralized record of cases involving violence against women. Participating in the project are 50 services nationwide. The purpose of the register is to produce information that reveals, among other variables, the profile of the informant population, their history of intrafamily violence, the degree of danger they face at the time of the consultation, their fear of using the services and their socioeconomic profile. In Brazil, the Special Secretariat for Women's Policies is developing a National Gender Reporting System, which compiles information from a variety of sources on the issues that are the Secretariat's priorities in the areas of labor, economics, health, education and violence against women. In Mexico, INMUJERES is cooperating with the National Institute of Statistics to compile adequate data on incidents of violence against women. Two surveys have been conducted and have compiled significant figures on these incidents of violence in the country. These include the National Survey of Household Relations and the Survey on Intrafamily Violence.

293. Various States informed the Rapporteurship of their efforts standardize the forms used to compile data on incidents of violence against women, to ensure greater uniformity in the data compiled and to break down the data by variables like sex, race and ethnicity, variables that are glaringly absent in current efforts to compile official information. In Guatemala, for example, the State reported that a single form has been created for compiling data on intrafamily violence. Its purpose is to break down the information by sex, age, ethnicity, marital status, and so on. Governmental and nongovernmental organizations that defend and protect women's rights teamed up to develop and agree upon the form. The standardized form will be used by a variety of public institutions, among them the public prosecutor's office, the Attorney General's Office, the Office of the Director General of the National Civil Police, family courts, legal clinics, and the Office of the Prosecutor for Human Rights. These institutions currently keep records of all complaints of intrafamily violence, and send the information to the National Institute of Statistics. Belize also has a Gender-Based Violence Record Form, which a variety of sectors, health among them, are using.

³⁵⁷ Reply from the Dominican Republic to the IACHR questionnaire about the Situation of Access to Justice for Women in the Americas, October 31, 2005.

³⁵⁸ Reply from the Dominican Republic to the IACHR questionnaire about the Situation of Access to Justice for Women in the Americas, October 31, 2005.

³⁵⁹ Reply from the Dominican Republic to the IACHR questionnaire about the Situation of Access to Justice for Women in the Americas, October 31, 2005.

IV. CONCLUSIONS AND RECOMMENDATIONS

294. The IACHR is deeply disturbed by the fact that the majority of acts of violence against women are never punished, which perpetuates the social acceptance of such acts. The Commission is therefore reminding the States of the need to improve the judicial response in order to be fully compliant with their due diligence obligation. With matters as they now stand, women victims of violence are unable to fully exercise and enjoy their rights under the Convention of Belém do Pará, the American Convention, the American Declaration and other international instruments for the protection of human rights. Through this project, the IACHR and its Rapporteurship have confirmed that the next step on the ladder towards advancing the rights of women is to move beyond the realm of formal recognition into the sphere of creating guarantees for its real and effective practice.

295. The analysis and recommendations contained in this report are mainly based on the regional human rights obligations that the American States have voluntarily assumed in the American Convention, in the American Declaration and the Convention of Belém do Pará. Under international law, States have an obligation to practice due diligence to prevent, investigate, prosecute, punish and eradicate violence against women. Ensuring access to adequate and effective judicial remedies is an essential pre-requisite to the fulfillment of this obligation.

296. The recommendations contained in this report are calculated to help design State interventions and actions that will guarantee an appropriate, immediate, timely, exhaustive, serious and impartial judicial response to acts of violence against women. The recommendations have three specific objectives. First, they are oriented to help the States devise a comprehensive State policy, backed up by adequate public resources, to ensure that women victims of violence have prompt access to justice and that the acts of violence are adequately prevented, investigated, punished and redressed. The second purpose of the recommendations is to urge the States to create the conditions necessary so that women are able to use the administration of justice system to remedy acts of violence they suffer and are treated respectfully by the public authorities. The third purpose of the recommendations is to spur the States into adopting public policies calculated to reshape stereotyped concepts of women's place in society, and to promote the eradication of discriminatory socio-cultural patterns that impair their access to justice.

297. The recommendations are of two kinds: general recommendations and those urging attentiveness and response. The recommendations are geared to problems that arise from the actions of the justice sector, the laws and norms of the States, and state policies. In the recommendations, the IACHR has considered the special needs of groups and social sectors exposed to structural processes of discrimination and violence.

298. The IACHR reconfirms its commitment to work with the American States to find solutions to the problems identified in this report. Some of the measures adopted to deal with this situation evidence an appreciation and recognition of the severity of the existing problems and the

commitment on the part of those in the State and the civil society to effectively address the many obstacles that women encounter when reporting acts of violence and discrimination in order to avail themselves of effective judicial protection.

General recommendations

1. Devise a comprehensive, coordinated and properly-resourced state policy to ensure that victims of violence have full access to proper judicial protection so that they are able to remedy the violence suffered, to thereby guarantee that acts of violence are properly prevented, investigated, punished and redressed.
2. Guarantee due diligence so that cases of gender-based violence are promptly, fully and impartially investigated, those responsible are properly punished, and the victims redressed.
3. Build up the capacity of institutions to combat the pattern of impunity in cases involving violence against women, through effective criminal investigations that carry cases to trial, thereby ensuring that the crimes are properly punished and redressed.
4. Adopt public policies intended to reconfigure the stereotypes about the role of women in society and to promote the eradication of discriminatory social patterns that obstruct their full access to justice; these public policies should feature training programs and comprehensive prevention policies.
5. The legislative, executive and judicial branches of government must closely scrutinize all laws, norms, practices and public policies that create differences in treatment based on gender or that can have the kinds of discriminatory effects described in this report.
6. Duly apply the recommendations made by the Inter-American Commission on Human Rights, and those made by United Nations organizations and bodies like the United Nations Rapporteur on violence against women and the Committee that monitors State compliance with CEDAW, and those issued by other international organizations, all in order to clear away the many obstacles that women encounter in terms of access to justice.

Specific recommendations

Investigation, prosecution and punishment of acts of violence against women

1. Build up the capacity of judicial institutions, such as the public prosecutor's office, the police, the courts and forensic medicine services, by increasing the financial and human resources they

have to combat the pattern of impunity in cases involving violence against women by being able to conduct effective criminal investigations of cases so that they can then be taken to trial, thereby guaranteeing that the violence will be properly punished and redressed. This involves the procurement of the technical equipment needed to do chemical and forensic tests and to compile all the evidence needed to solve the case under investigation.

2. Take immediate steps to ensure that the public officials involved in prosecuting cases of violence and discrimination against women (including prosecutors, police, judges, court-appointed attorneys, administrative personnel and forensic medicine professionals) are properly educated about women's rights so that they apply the domestic and international laws to prosecute these crimes properly and so that the integrity and dignity of the victims and their relatives are respected when the complaints are filed and during their involvement in the judicial process.
3. Take measures to institutionalize collaboration and information sharing among the authorities in charge of investigating acts of violence and discrimination, particularly between the public prosecutor's office and the police.
4. Design protocols to facilitate and promote the effective, uniform and transparent investigation of acts of physical, sexual and psychological violence, which include a description of the detailing of the evidence and an itemization of the minimum evidence that needs to be gathered to properly substantiate a case: scientific, psychological, physical evidence and testimony. Multidisciplinary investigation of these crimes needs to be encouraged.
5. Systematically organize the decisions that regional and international agencies for the protection of women's human rights make on the investigation and prosecution of cases involving violence against women, and make this information accessible to public officials in the justice systems at the national and local levels.
6. Develop educational programs for the public, from a formative and early age, in order to cultivate a respect for women as equals, the recognition of their particular needs, and their right to live free from violence and discrimination.
7. Identify and institutionalize new types of training for civil servants in all sectors (justice, security, health and education) to fully address women's right to live free from violence and ensure that in performing their functions, public servants are fully respectful of women's physical and psychological integrity.

Precautionary and preventive protection

1. Devise and institutionalize training programs geared toward all state officials involved in monitoring and supervising protective measures and measures intended to prevent acts of violence against women -particularly in the case of the police-, to instruct them about the need to ensure proper enforcement of and compliance with these measures and the consequences of non-compliance and non-enforcement. Sanction state officials who do not properly monitor these measures.
2. Strengthen policies aimed at preventing acts of violence and discrimination against women through a comprehensive approach that includes the justice, education, and health sectors and that covers the various manifestations of violence and the contexts in which they occur.
3. Take measures and launch information campaigns targeting the general public to educate it about the duty to respect women's civil, political, economic, social, cultural, sexual and reproductive rights, the legal services and judicial remedies available to women whose rights have been violated and the legal consequences for offenders.
4. Design and implement judicial resources of a precautionary nature - simple, quick and accessible - that can function as an ideal and effective remedy, to prevent situations of violence against women.

Treatment of victims by judicial protection bodies

1. Provide effective guarantees so that women victims are able to report acts of violence; for example, take measures to effectively protect complainants, survivors and witnesses, and measures to protect their privacy, dignity and integrity when filing their reports and throughout the criminal proceedings.
2. Circulate information nationwide about the judicial resources available to women victims of violence, taking into consideration the diversity of the target public in terms of race, ethnicity and language.
3. Ensure that women victims of violence and members of their families are able to obtain complete and accurate information promptly and are treated respectfully when seeking information on the judicial process into the facts denounced.

Resources within the administration of justice system

1. Create adequate and effective judicial bodies and resources in rural, marginalized and economically disadvantaged areas so

that all women are guaranteed full access to effective judicial protection against acts of violence.

2. Increase the number of court-appointed attorneys available for women victims of violence and discrimination.
3. Create units specializing in women's rights within the public prosecutor's offices, the police and the courts, with specialized expertise and sufficient resources to ensure that the gender perspective is guaranteed when addressing cases brought by women who are seeking an effective remedy against acts of violence.
4. Create and improve systems for recording statistical and qualitative data on incidents of violence against women within the administration of justice systems. Strengthen data records on cases of violence against women to ensure that they are uniform, reliable and transparent.
5. Devise mechanisms to achieve uniformity among the national systems for reporting acts of violence against women.
6. Implement measures so that the data systems more adequately reflect the situation at the national and local levels, taking special care to include reports on violence in rural and marginal areas.
7. Take measures so that data systems are able to disaggregate the data by sex, age, race, ethnic origin, and other variables that make someone more vulnerable to acts of violence and discrimination.
8. Keep reliable, up-to-date statistics that include all the actors that perpetuate discrimination and violence against women.
9. When designing public policies, incorporate the problems mirrored in the official statistics on the various manifestations of violence and discrimination against women.
10. Use the gender perspective when processing the information that state agencies in all sectors compile on incidents of violence and discrimination.
11. Set in motion efforts to design a single format for compiling data on incidents of violence and discrimination, which can then be used by all sectors –government, administration of justice, health, international organizations, academia, and civil society, among others- and run pilot experiments to assess its effectiveness.

12. Institutionalize means and methods to share information within a diversity of sectors –centers and state entities that deal with this topic, the victims, their communities, the private sector, academia, international organizations and civil society organizations- and facilitate collaboration and circulation of information between producers and users.
13. Undertake efforts and initiatives to get the available information to the general public in a format that is responsive to the needs of a variety of audiences and populations of differing economic and educational levels, different cultures and different languages. The safety and privacy of the victims should be paramount in this reporting process.

Special needs of indigenous and Afro-descendant women

1. National policies intended to advance the rights of all women must make provision for the specific needs of indigenous and Afro-descendant women and have a full command of how their special needs are to be addressed in the workings of the administration of justice systems.
2. Design and adopt culturally relevant policies, with the participation of indigenous and afrodescendent women, aimed at preventing, investigating, and punishing acts of violence and discrimination committed against them and providing them with redress.
3. Adopt measures and communication campaigns targeted at these communities, the State and society in general, calculated to make them aware of the problems that these women face and thereby build a commitment to take action to correct their problems and ensure that their human rights are respected, which includes their right to adequate and effective judicial recourse when their human rights are violated.
4. Develop initiatives to compile information, statistics, research and other studies that reflect the specific situation of indigenous and afrodescendent women, to be used as the basis from which to craft public policies aimed at preventing, punishing and eradicating the acts of violence and discrimination committed against them.
5. Make respect for the cultural identity and ethnicity of peoples, their language and uniqueness an integral part of the legal framework and institutional policies.
6. Implement and strengthen measures intended to set up a multilingual state system in countries with multicultural and linguistically diverse populations. Create free, impartial and

culturally relevant translation services that are sensitive to the users' vision of the natural order.

7. Create systems and methods premised upon a culture of expertise to investigate and prosecute cases of violence and discrimination against women.

Laws, policies and government programs

1. Amend the content of the existing body of civil and criminal law that protects the rights of women, in order to ensure that it comports with the principles upheld in the American Convention, the Convention of Belém do Pará and the CEDAW, as well as other international human rights instruments.
2. Implement existing national legislation and public policies destined to protect women from acts of violence and discrimination and from their political, economic, and social consequences, and to earmark sufficient resources, and to enact the necessary regulations to ensure their effective implementation nationwide.
3. Create and/or bolster training programs for civil servants in the justice system and police force, to instruct them in the effective use of the existing laws and public policies, through measures intended to guarantee that those programs are able to sustain themselves and are institutionalized.
4. Identify and create benchmarks and inter-institutional systems to monitor implementation of the laws and policies designed to prevent and eradicate violence and discrimination against women.
5. Create inter-institutional mechanisms of coordination and dialogue among the national and local programs and services serving women victims of violence and discrimination. These mechanisms must enable coordination among all the national programs and between national programs and local programs.
6. Earmark greater State resources to the entities responsible for providing legal, psychological and social services to women victims of violence.
7. Implement public policies and create institutions that address the discrimination and violence that women in rural, marginalized and economically disadvantaged areas experience. Form multidisciplinary task forces to determine the scale of the problem of gender-based violence and discrimination in these areas and identify basic strategies to address it.

8. Take the necessary steps to complete ratification and implementation of the American Convention, the Convention of Belém do Pará, and the Optional Protocol to the CEDAW.
9. Create mechanisms to increase the participation of women in electoral systems, in public office, and especially, in the administration of justice systems. Guarantee, through adequate mechanisms, the nomination of women to trial level courts, to Supreme Courts and Constitutional Courts.
10. Nominate women to positions in the organs of the inter-American human rights system, such as the IACHR and the Inter-American Court, to achieve a more balanced representation of men and women.

ANNEX A

Project on access to justice for women in the Americas

1. During the last two years and thanks to the support from the government of Finland, the Rapporteurship of the Rights of Women of the IACHR undertook a series of activities to collect information, with the objective of obtaining an overview of the main challenges faced by women victims of violence when they attempt to access an ideal and effective judicial redress for the acts suffered. During this process, the activities organized were the circulation of a questionnaire to OAS Member States, experts from civil society, international agencies and the academic sector (included in Annex B). It also included the organization of five work meetings of experts during 2005 at the regional and subregional levels, celebrated in Washington, D.C. (April 19-20), Peru (August 1-2), Costa Rica (August 11-12), Argentina (September 11-12) and Jamaica (September 29-30). Additionally, the process was complemented by the findings of the work of the IACHR and the Rapporteurship in the sphere of human rights and the rights of women.

1. Questionnaire

2. The IACHR received responses to the questionnaire from 23 OAS Member States: Antigua and Barbuda, Argentina, Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, El Salvador, the United States, Guatemala, Jamaica, Mexico, Panama, Paraguay, Peru, the Dominican Republic, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia and Venezuela. This questionnaire has been the most answered in the history of the IACHR.

3. The Rapporteurship also received information and documentation related to the questionnaire, by a series of organizations and experts in the subject. Several units of the Inter-American system contributed to these efforts including the Inter-American Commission on Women (CIM) and the Justice Studies Center of the Americas (CEJA). Additionally, information was received from Zarella Villanueva Monge, magistrate of the Supreme Court of Justice in Costa Rica, Emilse Ardaya from the Supreme Court of Justice in Civil Matters in Bolivia and from Maria Cristina Hurtado, Delegate Defender for Children, Women and Youth in Colombia. Information was also received from the Criminal Justice and Gender Program of the *Instituto de Estudios Comparativos y Ciencias Penales* (Guatemala).

4. Additionally, representatives from civil society organizations presented information, among them the *American Civil Liberties Union* (United States); the Center for Reproductive Rights (United States); the *Centro para los Derechos Humanos "Miguel Agustín Pro Juárez"* (Mexico); *CLADEM – Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer* (Uruguay); *Corporación Sisma Mujer* (Colombia); the *Fundación Pro Bono* (Chile); *FEIM - Fundación para el Estudio Investigación de la Mujer* (Argentina); Human Rights Watch (United States) and the *Comisión Mexicana para la Defensa y Promoción de los Derechos Humanos* (Mexico). Experts on the

subject also presented their observations and/or documentation, including Verónica Undurraga, lawyer and academic from the University of Chile; Andrea Laura Gastrón, investigator in the themes of gender and justice in Argentina; and Nicole Silvestre. The Rapporteurship expresses its gratitude over the information submitted, which evidences the increasing commitment in the region to implement and promote actions to improve the judicial protection from acts of violence against women.

2. Work meetings of experts at the regional and subregional level

5. The dissemination and circulation of the questionnaire was complemented by the organization of five work meetings of experts at the regional and subregional level during 2005 that took place in: Washington, D.C. (April 19-20), Peru (August 1-2), Costa Rica (August 11-12), Argentina (September 11-12) and Jamaica (September 29-30). The subregional workshops were organized in collaboration with the following entities that work to protect the rights of women in the Americas and their right to live free from violence: the *Instituto de Defensa Legal* (Peru), the *Equipo Latinoamericano de Justicia y Género* and the *Centro de Estudios Legales y Sociales* (Argentina); the Interamerican Institute of Human Rights (Costa Rica) and the United Nations Development Fund for Women (Jamaica).

6. The main objectives of the meetings were to collect information about the main challenges faced by women when they seek judicial protection when victims of violence, as well as to identify recommendations that could be issued by the IACHR to the Member States of the OAS to improve the judicial response to these acts.

7. During the meetings, in which approximately 130 experts participated, the participants explored in-depth the subject of access to justice from different viewpoints, including violence against women and discrimination; the discrimination of women within the administration of justice; the findings and lessons learned from studies on the subject; the degree of impact of the legal instruments at the international and regional level; the need for a multisectoral approach to achieve a real and effective access; and the use of the inter-American system. The experts reviewed and identified the existing barriers to an adequate judicial protection including those institutional, budgetary, geographic, cultural, linguistic, and economic, as well as integral and multi-disciplinary strategies to eliminate them. The participants also identified specific recommendations that the IACHR and the Rapporteurship can make to the OAS Member States to address the persistent challenges.

8. The Women's Rapporteurship and the IACHR express their gratitude to the States, the organizations and individuals that participated in the regional and subregional meetings. Their collaboration represents the real commitment assumed by several sectors, including OAS Member States, to remedy the challenges that women still face when they report acts of violence and discrimination and to achieve an adequate sanction and redress of the acts suffered.

ANNEX B

QUESTIONNAIRE

REPORT ABOUT THE SITUATION OF ACCESS TO JUSTICE FOR WOMEN IN THE AMERICAS: QUESTIONNAIRE

INTRODUCTION

Objectives:

The present questionnaire has been prepared as part of the actual work plan of the Special Rapporteurship on the Rights of Women of the Inter-American Commission on Human Rights (IACHR). Its objective is to collect information about the main achievements and challenges women face to access justice in the Americas. The information provided will be analyzed and compiled in a report including concrete recommendations to OAS member States about measures that can be implemented to improve women's access to justice in accordance with their regional human rights obligations.

The IACHR and the Rapporteurship on the Rights of Women pay special attention to the rights of women, fairness, gender equality and equity. Since its establishment in 1994, the Rapporteurship has carried out the work of the IACHR to protect the rights of women by means of publishing thematic studies, assisting in the formulation of new jurisprudence through the individual case system, and supporting the investigation of different themes that affect the rights of women in specific countries of the region by means of on-site visits and country reports.

The current work program of the Rapporteurship is designed to address a priority challenge for the rights of women throughout the Hemisphere: how to ensure that women can effectively access justice, particularly when they have been subjected to violence and discrimination. Throughout the year, the Rapporteurship is undertaking a collection-gathering process, including this questionnaire and a series of consultations, with the following objectives:

- To identify and analyze the key obstacles women face in obtaining effective access to justice in the region, most particularly women that have been subjected to violence and discrimination;
- To collect information about new strategies and best practices within the region to confront these obstacles, as well as information as to why certain promising strategies have failed to produce the desired results;
- Prepare an analysis including specific recommendations designed to assist the member states in achieving enhanced compliance with their obligations under regional human rights instruments to guarantee that women have effective access to judicial protection and guarantees.

This consultation process includes a variety of sectors, including government, civil society, regional and international organizations and the academic sphere, among others.

Responses to this questionnaire should be mailed no later than October 31, 2005 to:

Inter-American Commission on Human Rights
Organization of American States
1889 F Street, NW
Washington, DC 20006
cidhoea@oas.org

Requested information:

The present questionnaire requests both quantitative and qualitative information. It is encouraged to submit reports and specific evaluations about the subject, graphs, statistical and budgetary information, among other types. As a matter of geography, we invite information applicable to the national, local, urban, and rural levels. In regards to federal countries, we request information about all States and Provinces. We invite you to present information specifically about the situation of women pertaining to groups particularly vulnerable to violence and discrimination such as afrodescendent, indigenous, young and elderly women, among others.

This questionnaire defines **violence against women** 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 in the private sphere. It is understood to include physical, sexual and psychological violence 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; 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 that is perpetrated or condoned by the state or its agents regardless of where it occurs.

Discrimination against women is defined as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The questionnaire consists of four parts:

- In the first part, it is encouraged to present a detailed panorama of the legislation, national plans, policies and programs designed to prevent, eradicate, and/or sanction discrimination and violence against women. The objective is to obtain a complete description of the judicial and legal system of each country including information about how international law is implemented at the national level.
- The second part is centered on the implementation and real application of the framework described in the first part. We encourage you to submit detailed information about practices, institutions, monitoring mechanisms, services and programs established to prevent, sanction, and/or eradicate discrimination and/or violence against women and to collect statistical information about those subjects. It is welcomed to submit information pertaining to different sectors such as justice, police, health, education, among others, and a description of coordination initiatives among these sectors, where applicable. The objective is to obtain information about the national budget and the percentage dedicated to gender issues in the areas of justice, health, education and safety, among other spheres.
- The third part requests detailed information about the administration of justice and the incorporation of gender issues in its functioning and actions. In this questionnaire, administration of justice is defined broadly, including the judicial branch (all of its instances, tribunals and administrative divisions), the police and forensic medicine services, located either in urban and/or rural zones, with national and/or local competency. You are welcomed to submit a detailed description of measures, plans, programs, evaluations, studies and specific divisions created to address violence against women and discrimination, including capacity-building initiatives for personnel.
- The fourth part requests recent statistical information, ideally received within the last 5 years, about the prevalence of violence against women and discrimination. In regards to violence, we invite you to present information about the different types of violence, including physical, psychological and sexual, within the family and in the public sphere. Regarding discrimination, we welcome statistics of incidents in the sphere of justice, labor, health and education, among others. It is encouraged to submit information about the complaints received by judicial instances, their procedural stage and the resolution of these cases.

Some of the indicators that will be used to measure advances are the following:

- Existence of system or registry of statistical, qualitative or quantitative information about incidents of violence against women or discrimination

- Percentage of the national budget assigned to implement programs and policies specifically oriented to improve the condition of women
- Participation of civil society organizations in the design of policies and programs to advance the rights of women
- Number of public officials with training and/or a specialty in violence against women and/or discrimination
- Statistics about different kinds of violence against women and/or discrimination
- Numbers of complaints received in the past 5 years about violations of the rights of women, above all in cases of violence and discrimination

QUESTIONNAIRE

I. LEGAL FRAMEWORK AND POLICIES TO PROTECT WOMEN AGAINST DISCRIMINATION AND VIOLENCE

1. What is the application process at the national level of binding Inter-American instruments such as the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, and international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women? Can they be directly applied or is legislation required to facilitate the implementation process?
2. What are the existing legal norms to prevent and sanction discrimination and violence against women of national and/or local application? In the case of federal countries, are there similar norms in all states and provinces?
3. What types of violence and discrimination are included in these norms?
4. Is there a plan and/or national program to prevent, sanction and/or eradicate discrimination and/or violence against women? Are there national plans or programs to prevent, sanction and/or eradicate discrimination and/or violence against women at the local level?
5. Does the legal framework offer special protection to women pertaining to ethnic minorities, such as indigenous and afrodescendent women? What type of protection do indigenous and afro-descendent women receive, among others, within these laws?
6. What type of advances have been made in the past 5 years in the reform of the content of laws to prevent, eradicate and sanction discrimination and violence against women? What type of advances have been made in the past 5 years in the repeal of discriminatory laws?

II. INSTITUTIONS AND MECHANISMS TO IMPLEMENT LAWS AND POLICIES THAT ADVANCE THE RIGHTS OF WOMEN TO LIVE FREE FROM DISCRIMINATION AND VIOLENCE

7. What have been the greatest achievements and challenges in the implementation of laws and public policies to prevent, sanction, and eradicate discrimination and violence against women?
8. Describe the best and most innovative government practices to advance the rights of women and to improve their access to justice or the state response they receive. The answer can include examples of legal measures, reforms, publicity campaigns, and pilot programs, among others.
9. What mechanisms have been implemented to guarantee that a gender perspective is incorporated in the design and implementation of laws and policies in all spheres?
10. What types of monitoring mechanisms have been established to measure the progress in implementing laws and policies to advance the rights of women?
11. Is there a specific State entity that is in charge of protecting the rights of women? If there is one, what is its title, mandate, composition, and budget? What competencies does it have?
12. What types of services exist where victims of discrimination and violence can seek help, either in urban or rural areas? To what extent can the use of these services be quantified?
13. Is there any kind of system or registry of statistical, quantitative or qualitative information of incidents of violence against women or discrimination? Does the system disaggregate information on the basis of sex, age, race, ethnicity, educational level, among other factors?
14. What type of collaboration exists between different sectors (justice, health, education and others) to promote the rights of women and to attend violence against women?
15. What percentage of the national budget has been assigned to implement programs and policies specifically oriented towards improving the condition of women?
16. Are there any programs to facilitate access to justice for women particularly vulnerable to acts of discrimination and violence, for example young girls and women belonging to marginalized ethnic and racial groups, or economically disadvantaged, among others? Are there programs to facilitate that women living in rural areas access to justice in urban areas?

III. ADMINISTRATION OF JUSTICE

17. Are there tribunals specialized to address incidents of violence against women and/or discrimination?
18. Are there translation services to other languages spoken in the country? Are there programs for free?
19. What measures have the State taken to prevent, identify and correct the discrimination in the judicial system? For example, what type of capacity-building, education and sensitization programs have been created for justice officials, employees of judicial organs and the police to eliminate socio-cultural patterns that discriminate against women?
20. What are the actual figures of all types of violence against women at the national and local levels? What type of statistics are actually available for the different types of cases, including intra-family, sexual and psychological violence, among others?
21. Can it be identified how many complaints have been received in the last 5 years of violations of the rights of women, above all in cases of discrimination and violence? How many of these cases have reached the Sentencing stage?
22. What is the percentage of women that hold positions in second and third instance tribunals? In first instance tribunals? In administrative positions within the judicial branch?
23. Have institutions within the judiciary and the police been created to address gender issues? If so, what is their mandate and composition? What is their budget?
24. Has there been any evaluation of the judicial system response to cases with gender-specific causes?
25. Are there programs that systematize or review case law by theme, either public or private? Do these programs include a gender perspective?
26. Are there public legal assistance programs? Are these programs free? In what measure are these programs used in cases of discrimination or violence based on gender?
27. What type of training, education, and awareness-raising programs have been created for forensic medicine personnel to work with cases of violence against women? Is there specialized personnel within the forensic medicine system to work with cases of violence against women?

ANNEX C

Statistics presented by the States on the Problem of Violence against Women

In their replies to the questionnaire, States provided data illustrating the high prevalence of violence against women nationwide. The information provided by States shows the variety of different formats used throughout the Americas to compile information on violence against women.

Among the most important figures provided:

- The Argentine State indicated that crimes of violence against women accounted for 78-83% of violent crimes in the 1999-2003 period.

- The Canadian State forwarded information indicating that between April 1, 2003 to March 31, 2004, 95,326 women and dependent children (58,486 women and 36,840 children) were admitted to 473 shelters across Canada, mainly for reasons of abuse. The Canadian State also reported that, according to the 2004 General Social Survey¹ estimates, 7% of Canadians aged 15 or above previously or now living in a common law relationship suffered partner-inflicted violence in the past five years.²

- In Chile, the new penal system received 67,873 reports of crimes against women in 2004, and during the 2001-2002 period, there were 84 gender-related murders of women, including murder by their partners. A study on the prevalence of violence against women in the country in 2001 also showed a greater incidence of severe physical violence than minor physical violence. Manifestations of severe violence reported by women who had suffered physical and/or sexual violence included: beatings with the fists (46.5%); kicking, dragging, or beating with other objects (25.3%); and the use of weapons (22.7%).³

- The Costa Rican State cited a 2003 survey conducted nationwide by the University of Costa Rica that found that 58% of women in the country had suffered at least one incident of sexual and physical violence since the age of 16.

- The Salvadoran State reported receiving in 2005 a number of reports of different forms of violence: 359 of physical and psychological violence, 77 of psychological and sexual violence, 67 of psychological and financial violence.

¹ Canada's General Social Surveys have been conducted each year by Statistics Canada (the State statistics center) since 1985. The surveys are designed to monitor changes in Canadians' health and evaluate social assistance programs.

² Statistics reported in *Family Violence in Canada: A Statistical Profile 2005*, a report prepared by the Canadian Centre for Justice Statistics, under the federal family violence initiative, which contains updated information on the nature and prevalence of family violence in Canada.

³ Metropolitan Area and IX Araucania region: Detection and analysis of intrafamily violence, based on the basic intrafamily research protocol of the World Health Organization, SERNAM, 2001.

- The State of the United States of America reported that in 2003, approximately half a million cases of domestic violence and some 200,000 rapes and cases of sexual aggression were reported to the national survey of victims of crime. Other Justice Department reports show that one third of homicides of women were perpetrated by their partners.

- The Jamaican State reported that for 2004, there were 141 homicides of women, 197 shootings, 916 cases of rape, and 409 cases of child abuse.

- The Mexican State reported that a survey with State support shows that in 2003, 46.6% of Mexican women aged 15 or above living with their partners reported having suffered some form of violence in the 12 months prior to the interview. The survey interviewed 34,184 women throughout the country, and represented women nationally, for the most part in 11 states: Baja California, Coahuila, Chiapas, Chihuahua, Hidalgo, Michoacan, Nuevo Leon, Quintana Roo, Sonora, Yucatan, and Zacatecas.

- In Paraguay, 1,227 cases of domestic violence were reported in the January-August 2005 period.

- The Peruvian State reported a total of 932 reports of sexual crimes in the 2003-2005 period registered in the Provincial Prosecutor's Office regarding Family Issues in Lima, but this figure is not disaggregated by gender.

- The Dominican Republic State provided the following statistics: 23.9% of Dominican women have suffered some form of violence since the age of 15, 9.5% in the past 12 months. By 2004, 7,118 cases of violence against women had been reported.

However, several States reported a decline in the number of incidents of violence against women. The Belize State reported that the total cases of violence against women in 2004 had declined compared to 2003, from 1,240 to 962. The State of the United States reported that since 1993, rates of violence against women have declined. Some States, such as Antigua and Barbuda and Bolivia, reported that figures or statistics on incidents of violence against women are not available. Others, such as The Bahamas, reported that information is available, but it is not being disaggregated by victims' gender. The Bahamas reported that national statistics reflect only some forms of violence against women, such as homicides.