

# IACHR

## Access to Justice for Women Victims of Sexual Violence: Education and Health

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS



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**ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE: EDUCATION  
AND HEALTH**

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# ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE: EDUCATION AND HEALTH<sup>1</sup>

## EXECUTIVE SUMMARY

1. Time and time again, the Inter-American Commission on Human Rights (hereinafter the “IACHR” or the “Commission”) has stressed how vital access to justice is to eradicating violence against women once and for all. On a number of occasions, the Commission has enumerated what duties are incumbent upon the States to accomplish that objective. However, the present report will illustrate how often –albeit in some places more than others- women victims of sexual violence are unable to avail themselves of any real, effective and timely judicial remedies when they become victims of sexual violence, which only serves to perpetuate this very serious human rights problem.

2. This report examines sexual violence in the education and health areas in the Americas; analyzes the human rights standards pertinent to addressing these issues; and discusses the principal barriers that women encounter in obtaining an access to justice when they fall victim to violence of this kind and in these settings. To prepare this preliminary assessment of the prevalence and extent of sexual violence in schools and health facilities, the IACHR has compiled and examined records and information from the States, international organizations, nongovernmental organizations, the press, and universities in the region. Taking a human rights perspective and bearing in mind the obligations undertaken by the States in this area, the report also looks at how sexual violence against women prevents them from exercising their rights to education and health. The purpose of this report is to set in motion a discussion of the principal barriers that women encounter in endeavoring to get access to effective judicial recourse, all with a view to finding a solution to this problem. This report was spearheaded by the current Rapporteur on the Rights of Women, Luz Patricia Mejía.

3. The report specifically examines the principal advances the States have made in this area, and the challenges that still lay ahead. It reviews the standards and obligations binding upon the States, and sets out a number of immediate recommendations with a view to enabling women to fully exercise their rights to education and health, free from any form of violence and discrimination. The report also draws up guidelines on how States can provide effective judicial protection to women victims of violence.

4. This report follows up on the recommendations contained in the hemispheric report titled *Access to Justice for Women Victims of Violence in the Americas*, which the IACHR adopted in 2007. In that report, the Commission concluded that the vast majority of cases involving violence against women in the region are never punished and that the victims and their next of kin have many obstacles and barriers to overcome in order to get effective judicial protection when they attempt to get some remedy for the violence they have suffered. The IACHR’s analysis of the States’ obligations, as contained in

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<sup>1</sup> The Inter-American Commission on Human Rights would like to thank the consultant Cristina Motta for her support in the preparation of this report.

this report, applies to cases of sexual violence and their investigation, prosecution and punishment by the justice systems in the Americas.

5. In following up on the hemispheric report, the IACHR must underscore the fact that sexual violence is an under-reported and under-recorded problem. As the reports prepared by the Inter-American Commission of Women (hereinafter “CIM”) and the Follow-up Mechanism to the Convention of Belém do Para (hereinafter “MESECVI”)<sup>2</sup> have found, violence against women is a widespread problem in every country of the region and, as this report will show, is the single most relevant factor in explaining the violence committed in the areas of education and health. Under-recording and the failure to file complaints make prevention that much more difficult and exacerbate the longstanding difficulties that women victims of sexual violence have had in getting access to justice.<sup>3</sup>

6. Through the mechanisms of the inter-American system, the IACHR has obtained information –from state and non-state actors alike- that point to the gravity of the problem of sexual violence in the areas of education and health. It has gained perspectives and insights into this subject through the individual cases that the IACHR admits<sup>4</sup>; working visits to specific countries; thematic hearings, and meetings of experts on the subject.<sup>5</sup> This report is an effort to expose a serious human rights problem that tends

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<sup>2</sup> See, for example, Inter-American Commission of Women, *Hemispheric Report*, OEA/Ser.L/II.7.10, MESECVI-II/doc.16/08.rev. 1, July 18, 2008. This is the first report of the Committee of Experts (CEVI) of the Mechanism to Follow up on the Implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (MESECVI). The report does an evaluation of the States Parties’ compliance with the obligations undertaken upon ratification of that Convention and makes recommendations with a view to its effective enforcement. The Report was adopted at the Second Conference of States Parties, held in Caracas, Venezuela, July 9-10, 2008. Elsewhere in this report it will be referenced as CIM, MESECVI, Hemispheric Report (2008).

<sup>3</sup> See, IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Session, *Sexual Violence in Educational Institutions in the Americas*, October 24, 2011, requested by the Center for Reproductive Rights, Women’s Link Worldwide, *Fundación para la Defensa y Restitución de los Derechos Humanos* (FUNDERES) and the *Instituto Tecnológico Autónomo de México* (ITAM).

<sup>4</sup> IACHR, Report No. 93/09, Admissibility, Petition 337-03, *Samanta Nunes da Silva* (Brazil), September 7, 2009; IACHR, Report No. 76/08, Admissibility, Petition 1055-06, *Paola del Rosario Guzmán Albarracín and next of kin* (Ecuador), October 17, 2008.

<sup>5</sup> For example, IACHR, Rapporteurship on the Rights of Women, Meeting of Experts and Workshop: *Access to Justice for Women Victims of Sexual Violence in the Area of Their Economic and Social Rights*, October 19, 2010. This second meeting of experts was attended by the current Rapporteur for the Rights of Women, Luz Patricia Mejía; the Deputy Executive Secretary of the IACHR, Elizabeth Abi-Mershed; three attorneys with the IACHR’s Executive Secretariat; and a number of distinguished experts on the subject. The latter included: Tracy Robinson, Senior Lecturer, Faculty of Law, University of West Indies; Viviana Krsticevic, Executive Director of CEJIL; Paola Buendía, a Colombian expert in economic, social and cultural rights; Ramiro Ávila, a law professor from Ecuador; Laura Pautassi, a law professor in Argentina; Flavia Piovesan, a law professor from Brazil; Marianne Mollmann, Director of Advocacy in the Division of Women’s Rights, Human Rights Watch; Soledad García Muñoz, Director of the Office of the Inter-American Institute of Human Rights of Mercosur; Ledi Alejandrina Moreno, Director of ORMUSA’s Program in Economic, Social and Cultural Rights in El Salvador; Altagracia Balcocer, a consultant on economic, social and cultural rights in the Dominican Republic; Elsa Ancona, a consultant from Mexico; Susana Chávez, Director of Promsex in Peru; Karima Wanuz, a consultant on economic, social and cultural rights in Peru; Angela Rosa Acevedo, from the Gender Secretariat in Nicaragua’s Supreme Court; Gaynel Curry, Office of the United Nations High Commissioner for Human Rights; Tara Jane Melish, professor of law at the University of Buffalo and Director of the Buffalo Human Rights Center; Eliana Cherubini, senior international consultant from Venezuela; Esther Major, Amnesty International; Faith Webster,

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to remain hidden, and to clarify and reiterate the human rights obligations of the States in this area.

7. Above all else, this report is an effort to combat the problem of impunity, which is especially acute with respect to the incidents of sexual violence that occur in the schools and health-care institutions.

8. The legal standards of the inter-American system provide that access to judicial protection is the first line of defense for eradicating the problem of violence against women. Another critical factor is the States' compliance with the international obligations they have undertaken to address the violation of women's human rights. Instruments for the protection of human rights, like the American Convention on Human Rights (hereinafter "American Convention"), the American Declaration of the Rights and Duties of Man (hereinafter "American Declaration"), and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter "the Convention of Belém do Pará) uphold women's right to have access to the kind of judicial protection that offers them proper guarantees against acts of violence.

9. The inter-American human rights system is itself based on the principle that access to suitable and effective judicial remedies, free from any form of discrimination, is essential if basic human rights are to be observed and fully guaranteed. The Commission insists that the obligation of the States to provide juridical remedies is not satisfied merely because they are available in law; instead, they must be available in practice and suitable for remedying the human rights violations denounced.

10. The Commission observes with concern that victims of sexual violence in educational and health-care institutions encounter serious barriers in terms of access to justice. And the States have not done any systematic, credible analysis of this problem commensurate with its severity. The lack of information, the lack of protection against threats by assailants, union loyalties that place a higher premium on the group's interests, the absence of administrative and disciplinary regulations with a gender perspective and special prevention and control procedures in educational institutions and hospitals are just some of the reasons why women victims of sexual violence perpetrated in educational and health services in this hemisphere find it so difficult to get justice.

11. The Commission commends the efforts the States have made to adopt a framework of laws and policies to address the problem of violence against women. And yet, it also observes that a considerable distance separates the availability of remedies in law and their implementation in practice. The justice systems in the hemisphere do not investigate, prosecute and punish the majority of cases of violence against women. The IACHR still verifies a pattern of systematic impunity in the investigations and judicial prosecution of these cases in a number of countries.

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Executive Director of Jamaica's Bureau of Women and Gender Affairs, and Patricia Provoste, consultant with ECLAC's Division for Gender Affairs.



12. Although a number of States have formally and legally acknowledged violence against women as being a priority challenge, sexual violence in educational and health-care institutions has not been examined as a problem of singular gravity that poses its own unique set of challenges. Although violations of the rights of women and girls are a common occurrence in educational and health care institutions in the region, effective procedures have not been put into place to prevent, investigate and punish those violations.

13. The IACHR has established that society tends to turn a blind eye to the violence and discrimination that women and girls experience in educational and health-care institutions. In the specific area of education, some research studies have shown that sexual violence tends to be regarded as a natural part of the discipline or punishment process. In the case of girls, the discrimination and sexual violence they suffer is even more acute as they are regarded as objects of protection and not subjects of rights. Then, too, society tends not to grasp the full dimensions of sexual violence and instead boils it down to rape; the result is that many educational institutions simply ignore incidents of other forms of sexual violence, and do not even enter them into the record. The IACHR has observed that the tolerance of sexual violence is reflected in the attitudes of parents and educators alike; ignorant of the various dimensions of sexual violence and functioning in a milieu in which sexual prejudices and gender biases are blatant and in which a culture of physical punishment and violence can be the norm, some parents, educators and authorities regard certain forms of sexual abuse as part of the learning process. States must act immediately to address these social problems by waging information and awareness campaigns. Effective mechanisms have to be established to ensure the right of women and girls to be heard, so that they can get access to the justice system. In the Commission's view, States must redouble their efforts to monitor and supervise the performance of public and private educational institutions by establishing records and developing statistics that reflect the true magnitude of the problem.

14. The problem of sexual violence committed by physicians and health-care professionals is, for all intents and purposes, virtually invisible. There are few laws regulating the physician-patient relationship, and too few statistics to ascertain how common or widespread this kind of abuse is. Procedures for filing complaints of violations of female patients' rights are as rare as disciplinary investigations in hospitals and health clinics. Women and girls do not know what their rights as patients are. The problem is even more concealed and the sexual violence more intense in the case of women and girls suffering from some physical or mental disability. Sexual violence is exacerbated when the States are not actively monitoring and supervising health-care institutions –both public and private-; the result can be that women and girls have no way to file complaints and thus get access to the justice system.

15. The Commission considers imperative that the States make it a priority to address the structural and circumstantial problems that prevent women and girls from getting access to justice when their rights are violated in educational and health-care institutions. Some of the existing priorities are the need to train public officials to recognize the problem; to inform women and girls about their rights; to enact laws and regulations for investigation; and to prosecute and punish –both under administrative law

and criminal law- health-care professionals and educators who use violence against women and girls in schools and health-care institutions.

16. The IACHR reiterates that these challenges are even more compelling in the case of those sectors of women who are at a heightened risk of having their human rights violated by virtue of their gender in combination with other factors such as age, race, ethnic origin, disability and economic disadvantage. The IACHR is troubled by the particularly serious situation of girls, indigenous women, and women who turn to these institutions amid armed conflict. The particular history of discrimination and exclusion that women in these groups have suffered makes the States' obligation to protect and safeguard them all the greater. Compliance with this obligation is essential to ensuring their rights to live free of discrimination and violence; but it is also a condition *sine qua non* to ensuring the basic exercise of their economic, social, and cultural rights.

17. The characteristics of sexual violence in educational and health-care institutions are such that special procedures are needed for filing complaints, and for the investigation and judicial prosecution of such cases. In addition to the problems typical of cases involving sexual violence, which the IACHR has already documented in the report titled *Access to Justice for Women Victims of Violence in the Americas*, the violence that occurs in educational and health care institutions poses its own set of unique problems. Because educational and health-care institutions are milieus in which the authority wielded by professors and physicians dictates the power relationships between professor and student and physician and patient, special regulations and procedures are needed to deal with violence in these settings; such regulations and procedures must take the gender perspective into account, as well as the particular needs of and dangers to the potential victims.

18. Sexual violence in educational institutions has certain distinctive features in common with sexual violence in health-care institutions. First, it occurs in the framework of power dynamics built upon age and/or gender differences amidst very hierarchical structures; elements that are features of many educational institutions and medical practice in general. Poverty, inequality, disability, and membership in ethnic minorities are factors that make the relationship even more lopsided and expose women who are members of these groups to even greater danger of having their rights violated. Similarly, sexual violence in these settings is concealed under a kind of "pact of silence" which in such cases acts as a deterrent to the filing of a complaint, as the female victim seeks to protect her privacy and sexual "reputation" and fears reprisals.

19. A variety of factors conspire to make it difficult to report, investigate, prosecute and punish cases of sexual violence committed against females in educational and health care institutions. First, even though some countries have established systems to detect and prevent sexual violence in schools, the competent agencies do not use those systems. Second, the absence of systems to protect victims and witnesses makes the question of filing a complaint problematic. Third, there are still discriminatory socio-cultural patterns at work that set little store by the victim's account of what happened and demand some means of corroboration before moving forward with an investigation.

Fourth, the conflict of competence between administrative law and criminal law is another obstacle to punishment of the crimes being investigated.

20. The IACHR is troubled by the fact that so few victims of sexual violence in educational institutions turn to the justice system because they have lost confidence in it. This is particularly true in rural communities where the justice system is riddled with problems on several fronts: sparse coverage, corruption and the mistrust it breeds, as well as stereotyping and little specialization. Then, too, age, race, ethnic origin, poverty and other factors make filing a complaint of this nature difficult. These are all issues that the States have to consider when devising policies to combat them. Girls, for example, will often not turn to the justice system in cases of this type, for fear of reprisals or simply because they assume that sexual violence is “normal”.

21. The IACHR is disturbed the scarcity of laws to protect patients of health care services from gender violence. It is true that some criminal codes make a victim’s inability to physically resist her assailant or her dependence upon him an aggravating circumstance in cases of sexual assault. Codes of medical ethics and education laws take a general approach to this issue, certainly not from the gender perspective. Indeed, few laws within the region are specifically intended to prevent the abuses committed against women in health-care institutions; special procedures for processing complaints of conduct of this type simply do not exist. The assumption seems to be that violence committed against patients, when it happens, is an isolated event.

22. In the area of education, the IACHR welcomes the approval of certain rules designed to prevent and punish not just sexual violence in the school, but also the gender biases introduced into the classroom. Policies have to be established that raise awareness of this problem and thus serve to break the vicious circle of silence that protects the aggressors; that instruct women about their rights and that encourage them to file complaints when their fundamental rights are violated. The Commission must insist on the need for girls to be able to exercise their right of access to justice. To that end, States must establish the mechanisms that enable them to be heard.

23. The recommendations contained in this report are intended to help devise State measures to ensure a proper assessment of how widespread the problem of sexual violence is among educational and health-care institutions, to plan public policies that are consistent with that assessment, to institute procedures so that the justice system’s response is immediate and impartial, and to instruct public servants in the areas of education and health about the human rights of women and girls. The recommendations also stress the importance of ensuring differentiated treatment for women who are especially at risk of having their human rights violated in education and health care, such as girls, indigenous women, and women living in zones affected by an armed conflict.

24. The Inter-American Commission reaffirms its commitment to cooperate with the American States in seeking solutions to the problems identified here. It is also grateful to the Government of Finland whose contribution made preparation of this report possible.

## ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE: EDUCATION AND HEALTH

### I. INTRODUCTION

1. Throughout the Americas, schools, universities and health-care facilities – both public and private- are places where women exercise their economic, social, and cultural rights. The sad irony is that these same institutions can also be dangerous places for women, as they can be the settings of physical, psychological and sexual violence that takes a devastating toll on the health and wellbeing of thousands of women, girls and teenage girls in the region.

2. Sexual violence is a violation of human rights and a clear manifestation of gender discrimination. Although the victim may be either male or female, women are far more likely to be victims of sexual violence. Sexual violence in educational and health-care institutions has an enormous impact on the exercise of the right to education, the right to health, and all human rights of women, girls and adolescent girls.

3. The majority of the victims of violations of the right to education and of the other rights whose exercise is contingent upon its observance are girls and adolescents. In the particular case of violence in schools, the risk it poses not only causes parents to keep their daughters at home and discourage them from pursuing their studies, but also increases the school dropout rate and exacerbates learning difficulties.<sup>6</sup> Sexual violence in schools accounts for a considerable percentage of teen pregnancies that, when combined with the family responsibilities that young girls carry, especially in rural areas, has a profound effect on the exercise of their basic right to an education.

4. Despite this fact, systematic recording of sexual violence in school is rare. Indeed, sexual violence in schools has yet to be acknowledged as one of the most compelling problems in today's world. As the organization *Action Aid* points out, the Millennium Development Goals, including Goal 2 (universal primary education) and Goal 3 (gender equality), make no explicit mention of violence against girls as a critical structural barrier to education.<sup>7</sup>

5. This report endeavors to provide an analysis of the major advances that the States have made in this area and the challenges they still face. It also examines the principal standards and obligations incumbent upon States and issues a number of recommendations of immediate steps that can be taken to ensure that women and girls

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<sup>6</sup> A study that Human Rights Watch did in South Africa illustrates the destabilizing effects of sexual violence in the schools. The victims of rape who were interviewed said that their performance in school had suffered; a number said that they had lost interest in their studies. Some switched schools, while others left school altogether. See, *Scared at School: Sexual Violence Against Girls in South African Schools*. Available at: [http://www.hrw.org/legacy/reports/2001/safrica/ZA-FINAL-01.htm#P302\\_20817](http://www.hrw.org/legacy/reports/2001/safrica/ZA-FINAL-01.htm#P302_20817).

<sup>7</sup> Action Aid UK. *Stop Violence Against Girls in Schools*. Available at: [http://www.actionaid.org.uk/doc/lib/125\\_1\\_stop\\_violence\\_against\\_girls.pdf](http://www.actionaid.org.uk/doc/lib/125_1_stop_violence_against_girls.pdf). *Millennium Development Goals*, available at: <http://www.un.org/millenniumgoals/>

are able to fully exercise their rights to education and health, free from any form of violence and discrimination. It also suggests guidelines to enable the States to guarantee that women victims of violence will have effective judicial protection.

6. The pattern of under-recording and the failure to file complaints makes prevention and punishment of sexual violence difficult and complicates the longstanding problems that women victims of sexual violence have had in getting access to justice. Reliable statistics are also lacking. Although the World Health Organization estimates that 150,000,000 girls and 73,000,000 boys have been raped or have suffered some other form(s) of sexual violence, there are no reliable figures showing how many of these abuses occurred in schools.<sup>8</sup>

7. The Commission highlights that one of the most devastating consequences of sexual violence on the exercise of the right to education are unwanted pregnancies. For example, Amnesty International has compiled figures on the numbers of students impregnated by their teachers globally.<sup>9</sup> It is important to note, however, that the courts are beginning to protect the rights of pregnant students. For example, the Constitutional Court of Colombia has held that “under no circumstance may a student’s pregnancy be invoked as grounds for limiting or restricting her right to an education (...) and the school conduct manuals of educational institutions shall not, either explicitly or implicitly, classify a student’s pregnancy as misconduct or grounds for misconduct; pregnancy is one of the main contributing factors to the school dropout rate.”<sup>10</sup> In Venezuela, the State has informed the Commission that article 2 of the Resolution 1762 of the Ministry of Education provides that “the entry and permanence of a student to an educational institution cannot be conditioned on his/her situation of repeating, pregnancy, conduct or discipline, faith, civil status of the parents, uniforms, school utilities, as well as any other legal limitation that is not established by law; all with the goal of authorizing the entry and permanence of a student to an education setting.”<sup>11</sup>

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<sup>8</sup> Nicola Jones and Jessica Espey. *Increasing Visibility and Promoting Policy Action to Tackle Sexual Exploitation in and Around Schools in Africa*, PLAN, September 2008. Available at: <http://plan-international.org/learnwithoutfear/files/sexual-exploitation-in-west-africa-english>.

A study done in the United States found that 83 percent of girls between the ages of 12 and 16 in public school had experienced some form of sexual harassment [“bullying” that targets the child’s sex or sexuality]. Cited in, Paulo Sergio Pinheiro, Independent Expert for the United Nations Secretary-General’s Study on Violence against Children, *World Report on Violence against Children*, p. 121. Available at: [http://www.crin.org/docs/UNVAC\\_World\\_Report\\_on\\_Violence\\_against\\_Children.pdf](http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf)

<sup>9</sup> Amnesty International. *Safe Schools, Every Girl’s Right* (March 6, 2008). Available at: <http://www.crin.org/docs/act770012008eng.pdf>. According to a survey done in Argentina, 58% of pregnant girls dropped out of school. The reasons cited ranged anywhere from the girl’s own decision, the fact that the school had expelled the girl (not officially, but indirectly), shame or because the girl had to quit school to find work. Survey done by the *Centro Latinoamericano de Salud y Mujer*, 2005. Available [in Spanish] at: <http://edant.clarin.com/diario/2005/09/28/sociedad/s-03401.htm>.

<sup>10</sup> Constitutional Court of Colombia, Judgment T-656 of 1998. Available [in Spanish] at: <http://www.corteconstitucional.gov.co/relatoria/1998/t-656-98.htm> [Translation ours].

<sup>11</sup> IACHR, *Response from State of Venezuela to the Questionnaire regarding the Principal Advances and Challenges women confront in the exercise of their Economic, Social, and Cultural Rights*, June 14, 2010. The resolution mentioned is dated September 9, 1996.

8. Few studies have been done on the violence practiced on female patients in health-care institutions. However, some research has found that violence against patients may happen when medical authority is questioned or perceived to be questioned, and violence is used in an attempt to restore hierarchy and ensure obedience.<sup>12</sup> Sexual violence which occurs in the context of health-care facilities has serious consequences for the exercise of human rights in general and a devastating impact on the right to health. The right to personal integrity in a health-care environment is critical to protecting the right to health, since proper and prompt treatment is one of the principal means of ensuring women's right to personal integrity. However, hospitals do not make records of incidents of sexual abuse and physical and psychological aggression, which means that these violations go unpunished.<sup>13</sup>

9. The Commission observes the existence of cultural factors that function as barriers to women's access to health care services. Health services, for example, tend to be offered without taking into account the expectations, traditions and beliefs of indigenous and/or Afro-descendant women. These cultural factors are combined to negatively influence a women's decision to seek medical assistance.<sup>14</sup> A perceived cultural insensitivity or disrespectful treatment on the part of medical personnel may stop women and their family members from seeking treatment, which may have significant consequences for their health and for the availability of health care services.<sup>15</sup>

10. One of the principal challenges for the human rights protection systems, both regionally and globally, is the issue of the observance and guarantee of the right of women and girls to live free of violence and discrimination. The majority of States have undertaken to adopt measures to ensure the prevention, investigation, punishment, prosecution and redress of acts of violence against women. In effect, the fact that 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 "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. Where girls are concerned, this finding is bolstered by the fact that the *corpus juris* on children includes the Convention on the Rights of the Child, an instrument used to interpret Article 19 of the American Convention and Article VII of the American Declaration. Under this body of treaty law, girls are

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<sup>12</sup> Ana Flávia Pires Lucas d'Oliveira, Simone Grilo Diniz, Lilia Blima Schraiber, *Violence against women in health-care institutions: an emerging problem*. The Lancet, Volume 359, May 11, 2002. Available at: [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(02\)08592-6/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(02)08592-6/fulltext)

<sup>13</sup> CLADEM, CRLP. *Silencio y Complicidad. Violencia contra las Mujeres en los Servicios Públicos en el Perú* [Silence and Complicity. Violence practiced against women in Peru's public services], August 1998, Available [in Spanish] at: <http://cvu.rediris.es/pub/bscw.cgi/d425599/Violencia%20Contra%20las%20Mujeres%20en%20los%20Servicios%20P%C3%BAblicos%20de%20Salud%20en%20el%20Per%C3%BA.pdf>

<sup>14</sup> IACHR, *Access to Maternal Health Care from a Human Rights Perspective*, OEA/Ser.L/V/II.Doc. 69, June 7, 2010, (hereinafter "*Access to Maternal Health Care from a Human Rights Perspective*"), para. 34.

<sup>15</sup> IACHR, *Access to Maternal Health Care from a Human Rights Perspective*, para. 35.

regarded as persons with rights and not merely objects of protection. Thus, States have an obligation to protect them against any form of sexual violence and to ensure their right to be heard so that they can obtain effective access to justice when they fall victim to sexual violence.<sup>16</sup>

11. The inter-American human rights system is premised on the principle that access to suitable and effective judicial recourse is the basis for defending the individual's fundamental rights. The American Convention on Human Rights, the American Declaration of the Rights and Duties of Man and the Convention of Belém do Pará recognize women's right to judicial protection vis-à-vis acts of violence, with all the necessary guarantees. Hence the obligation of States to act with the necessary due diligence to prevent, investigate, punish and redress such acts. The States' obligation to provide judicial remedies is not satisfied merely by the *de jure* existence of such remedies; instead, such remedies must be adequate and effective in practice in remedying violations of human rights. Sexual violence is an extreme form of discrimination, which creates human rights obligations for the States on several levels.

12. To prepare this report, the IACHR conducted an investigation compiling information from the States, international agencies, the academic sector and civil society organizations about the problem of sexual violence in schools and in health care institutions. That information was coupled with a meeting of experts on the subject organized by the IACHR and held in Washington, D.C. on October 19, 2011. Information was also obtained through individual cases decided by the IACHR, the judgments of the Inter-American Court, and the thematic and country reports published by the IACHR.

13. In its General Comment No. 13,<sup>17</sup> the United Nations Committee on Economic, Social and Cultural Rights defines the right to education as follows: "Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence."

14. For its part, Article 10 of the Protocol of San Salvador establishes the scope of the right to health by providing that: "Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. In order to ensure the exercise of the right to health, the States Parties agree to

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<sup>16</sup> Article 12(2) of the Convention on the Rights of the Child. See United Nations, Committee on the Rights of the Child, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12, July 20, 2009.

<sup>17</sup> United Nations, Committee on Economic, Social and Cultural Rights, *General Comment 13, The Right to Education*, E/C.12/1999/10, December 8, 1999.

recognize health as a public good and, particularly, to adopt the following measures to ensure that right: a. Primary health care, that is, essential health care made available to all individuals and families in the community; b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction; c. Universal immunization against the principal infectious diseases; d. Prevention and treatment of endemic, occupational and other diseases; e. Education of the population on the prevention and treatment of health problems, and f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.”

15. From the information the IACHR has compiled, it is apparent that far too little has been done to analyze, prevent, investigate and punish sexual violence against women in the areas of health and education. The Commission has observed multiple gaps in the law, irregularities in the enforcement of existing laws, problems in getting victims to file complaints and the courts to convict, and a deeply-rooted cultural resistance that makes it difficult to address the problem of sexual violence in schools and health-care facilities with the efficacy, swiftness and resolve that the problem requires.

16. The report concludes that although the States formally and legally recognize that violence against women is a priority challenge and many States in the hemisphere have amended their laws to address this problem, the pattern of impunity in criminal prosecution and in the proceedings on cases involving sexual violence against women is still intact. Indeed, the vast majority of cases of violence against women are never investigated, much less prosecuted and punished by the courts. Furthermore, a number of factors contribute to the under-reporting and under-recording of incidents of sexual violence in schools and health-care facilities, and programs are needed to instruct public servants in how to prevent a recurrence of these episodes.

17. This report is divided into five parts. The first examines the human rights standards that are relevant to women's right to live free of violence and to have access to suitable and effective judicial remedies when they fall victim to sexual violence. The second part is an analysis of the dimensions of the problem of sexual violence against women and girls in educational and health-care institutions. The third part discusses how these problems impact groups that are at particular risk of having their human rights violated, such as girls, indigenous women, Afro-descendant women, and those who live in conflict areas. The fourth section discusses a number of omissions and irregularities in the investigations; errors in prosecution and punishment; and the absence of systems for protection and prevention. It also examines the obstacles created by the content and enforcement of the existing administrative and criminal laws; obstacles whose effect is to prevent effective punishment of acts of violence committed against women in educational and health-care institutions. In the fifth part, the report concludes with a series of recommendations intended to encourage the States to act with the due diligence required to prevent, investigate, punish and redress acts of sexual violence and to ensure adequate access to justice when such acts are committed in educational and health-care institutions.



## II. INTERNATIONAL NORMS AND STANDARDS APPLICABLE TO THE RIGHT OF WOMEN TO BE PROTECTED AGAINST ACTS OF SEXUAL VIOLENCE PERPETRATED IN SCHOOLS AND IN HEALTH INSTITUTIONS

### A. Access to justice

18. The American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter “Convention of Belém do Pará”) affirm the right of women to simple and effective judicial remedies, with all due guarantees, when they report acts of violence; they also establish the State’s obligation of acting with due diligence to prevent, investigate, punish, and provide redress for such acts.

19. The American Declaration and the American Convention enshrine the basic principles and obligations related to the right of access to appropriate judicial protection. Article XVIII of the American Declaration and Articles 8 and 25 of the American Convention provide that all persons have the right of access to judicial remedies and to be heard, with all due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal when they believe their rights have been infringed. The Inter-American Court of Human Rights has explained the scope of this right on several occasions: it has ruled that any human rights victim “is entitled to obtain, from the competent agencies of the State, the clarification of the events in question and to establish the responsibilities for the violation through the investigation and prosecution set forth in Articles 8 and 25 of the Convention.”<sup>18</sup> The Inter-American Court has also stated that this access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next-of-kin that everything possible be done to know the truth of what happened and that the responsible parties be properly punished.<sup>19</sup>

20. The Inter-American Court has also ruled that “when exercise of any of those rights is not yet guaranteed *de jure* and *de facto* by a State within the sphere of its jurisdiction, under Article 2 of the American Convention it is required to adopt such legislative or other measures as may be necessary to enforce them. Hence, the duty of states to provide judicial remedies is not limited to placing them formally at the disposal of the victims, but those remedies must be appropriate to redress the human rights violations that have given rise to complaints.”<sup>20</sup>

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<sup>18</sup>I/A Court H.R., *Case of Barrios Altos V. Peru*. Judgment of March 14, 2001. Series C No. 75, para. 48

<sup>19</sup>I/A Court H.R., *Case of Miguel Castro-Castro Prison V. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 382, citing: *Case of Vargas Areco V. Paraguay*. Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155; I/A Court H. R., I/A Court H. R., *Case of Ituango Massacres V. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 289; I/A Court H. R., *Case of Massacre of Pueblo Bello V. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 171.

<sup>20</sup>I/A Court H.R., *Case of Rosendo Cantú et al. V. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2010. Serie C No. 216.

21. Similarly, the IACHR has also spoken out on the scope of access to justice by indicating that the State's obligation in cases of violence against women includes a duty to prosecute and convict the guilty and "to prevent these degrading practices."<sup>21</sup> It has also ruled that general judicial ineffectiveness creates a climate that is conducive to domestic violence, since society sees no evidence of the willingness and effectiveness of the State, as the representative of society, to sanction such acts.<sup>22</sup>

22. In its decision in the case of *Raquel Martín de Mejía v. Peru*, the IACHR stated that the right to an effective judicial remedy contained in Article 25 of the American Convention, interpreted in conjunction with the obligations set out in Articles 1.1 and 25 of the American Convention, 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."<sup>23</sup>

23. The right of women to effective judicial protection is also enshrined in the Convention on the Elimination of All Forms of Discrimination against Women. The CEDAW is fundamental for women's access to justice in that it was designed with the goal of promoting *de jure* and *de facto* equality between women and men in the exercise of their human rights and fundamental freedoms.<sup>24</sup> The CEDAW defines discrimination against women in broad terms in its Article 1:

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.

24. That definition covers all differences in treatment based sex that either intentionally or in practice place women at a disadvantage, and prevent the full recognition of their human rights in the public and private arenas. As stated previously, the Committee that oversees compliance with the CEDAW has ruled that the definition of discrimination set out in the Convention includes violence against women.<sup>25</sup>

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<sup>21</sup> IACHR, Report No. 54/01, Case 12.051, Merits, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

<sup>22</sup> IACHR, Report No. 54/01, Case 12.051, Merits, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

<sup>23</sup> IACHR, Report No. 5/96, Case 10.970, Merits *Raquel Martín de Mejía* (Peru), March 1, 1996, p. 22.

<sup>24</sup> United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25, Temporary special measures*, U.N. Doc./CEDAW/C/2004/I/WP.1/Rev.1 (2004), section II.

<sup>25</sup> 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.

25. In its General Recommendation 28, the CEDAW Committee noted that the obligation of states parties to eliminate discrimination committed by any public or private agent includes measures to “ensure that women are able to make complaints about violations of their rights under the Convention and to have access to effective remedies,” the establishment of “legal protection of the rights of women on an equal basis with men,” and “to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.”<sup>26</sup> States parties are also obliged to ensure that women are protected against discrimination by public authorities and the judiciary; and that protection must be extended by the competent courts and other public institutions.<sup>27</sup>

26. In regards to access to justice, and following the precedent set by the Committee on Economic, Social and Cultural Rights, the IACHR has established that significant dimensions of social rights are immediately enforceable before the domestic courts.<sup>28</sup> Thus, States are required to remove any regulatory, social, or economic obstacles that prevent or hinder the possibility of access to justice in the area of economic, social, and cultural rights.<sup>29</sup>

27. The IACHR has identified four core issues related to the judicial protection of economic, social, and cultural rights: (1) the obligation to remove economic obstacles to ensure access to the courts; (2) the components of due process of law in administrative proceedings concerning social rights; (3) the components of due process of law in judicial proceedings concerning social rights; and (4) the components of effective judicial protection of individual and collective social rights.<sup>30</sup>

28. Some of the main obligations noted by the IACHR in this area that are of relevance to the rights of women include the following: the obligation of removing any obstacles to access to justice arising from an individual’s economic position, and the duty to establish clear rules for the actions of its agents, in order to avoid inappropriate margins of administrative discretion that could lead to arbitrary and discriminatory practices.

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<sup>26</sup> United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation 28, on Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, December 16, 2010, para. 36.

<sup>27</sup> United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation 28, on Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, December 16, 2010, para. 34.

<sup>28</sup> IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social, and Cultural Rights*, OEA/Ser.L/V/II.132, July 19, 2008, para. 67.

<sup>29</sup> IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*, OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, (hereinafter “*Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*”), Executive Summary, para. 1.

<sup>30</sup> IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*, Executive Summary, para. 3.

29. The inter-American human rights system has also begun to identify elements that make up the guarantee of due process at administrative venues, such as the guarantee of a hearing to determine the rights at stake, the right to legal counsel, to prepare a defense, to adequate time for preparing and formalizing claims and for dealing with the relevant evidence, and to prior notification regarding the existence of proceedings.<sup>31</sup> The components of due process at judicial venues include the right to a grounded decision on the merits of the matter; the right to reasonable dispatch in the proceedings; and the need to ensure prompt processing of *amparo* and other forms of relief, etc.

30. Regarding the right to effective judicial protection, the inter-American system has ruled that States are obliged to provide suitable and effective judicial mechanisms for protecting both individual and collective social rights, and it has established the need to implement mechanisms to ensure the effective enforcement of the judgments handed down by state judiciaries.<sup>32</sup>

#### **B. Due diligence obligation of States**

31. The Convention of Belém do Pará underscores the State's duty of ensuring due diligence in cases of violence against women and it addresses the hemisphere's grave concerns regarding this serious problem.<sup>33</sup> It states that appropriate judicial protection is essential in dealing with the problem of violence and discrimination against women. Article 7 establishes the immediate obligations in cases of violence against women, including procedures, judicial mechanisms, legislation to avoid impunity, and measures to protect women from imminent acts of violence. It stipulates the following as obligations of states:

- 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.
- Take all appropriate measures, including legislative initiatives, 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.
- 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.

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<sup>31</sup> See, in general, IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*.

<sup>32</sup> See, in general, IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*.

<sup>33</sup> See, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, "Convention of Belém do Pará," Article 8.

- 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.
- Adopt measures of judicial protection “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.”<sup>34</sup>

32. In interpreting Article 7 of the Convention of Belém do Pará, the IACHR has also recommended the production of statistical and qualitative data on incidents involving violence against women, to inform the design of legislation and public policies and programs for dealing with this problem. For example, the IACHR has stated that:

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.<sup>35</sup>

33. The Convention of Belém do Pará also provides that States must adopt measures to guarantee the right of women to adequate, effective, and timely access to justice in cases of violence, such as the following:

- Provide training 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.”
- Undertake educational efforts targeting the general public “with respect to the problems of and remedies for violence against women” and the corresponding redress.
- Adopt public actions to “modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational

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<sup>34</sup> See, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, “Convention of Belém do Pará,” Article 7.

<sup>35</sup> IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*, Executive Summary, para. 42.

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.”

- Provide victims of violence with “appropriate specialized 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.”
- Ensure “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.”<sup>36</sup>

34. The IACHR reviewed and applied the principles enshrined in the Convention of Belém do Pará in its report on the case of *Maria da Penha Maia Fernandes*,<sup>37</sup> a victim of domestic violence in Brazil. The case showcases several essential aspects of the state’s duty to act with due diligence, such as:

- The State’s 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. Similarly, the IACHR has ruled that the state duty of acting with due diligence encompasses the organization of the entire state structure – including the State’s legislative framework, public policies, law enforcement machinery and judicial system – to adequately and effectively prevent and respond to these problems.<sup>38</sup>

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<sup>36</sup> See: Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, “Convention of Belém do Pará,” Article 8.

<sup>37</sup> IACHR, Report No. 54/01, Case 12.051, Merits, *Maria Da Penha Fernandes* (Brazil), April 16, 2001.

<sup>38</sup> IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) and Others, United States*, July 21, 2011, para. 125.

35. In the same fashion, in its judgments in the cases of *the Cotton Field*,<sup>39</sup> *Inés Fernández Ortega*,<sup>40</sup> *Valentina Rosendo Cantú*,<sup>41</sup> *Castro Castro*,<sup>42</sup> and *The Dos Erres Massacre*,<sup>43</sup> the Inter-American Court analyzed the scope of the state's duty of due diligence in cases involving sexual violence against women. Among the most important issues developed in this group of judgments, the Court:

- Establishes the State's obligation to prevent, investigate, and punish sexual violence as a violation of the rights enshrined in the American Convention.
- Establishes the State's responsibility for violating the obligation of investigating and punishing set forth in Articles 8.1 and 25 of the Convention.
- Rules that the failure to investigate grave violations of humane treatment – such as torture and sexual violence during armed conflicts and/or as part of systematic patterns – constitutes a failure by the State to meet its obligations vis-à-vis serious human rights violations.
- Stipulates that acting with the necessary due diligence and guaranteeing adequate and effective access to judicial remedies are essential components in preventing and eradicating discrimination against women and its most extreme forms, such as violence.
- Emphasizes the multiple factors in addition to gender whereby women may be exposed to forms of discrimination – such as age, race, ethnic origin, poverty, etc. – and establishes the duty of the State to take those into account in designing its policies against violence and discrimination.
- Notes that in providing redress for human rights violations in contexts of discrimination or structural violence, the State must adopt measures with a view to transforming the situation, so that in addition to providing restitution, those steps are also corrective.

36. In its report on *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*,<sup>44</sup> the IACHR also presents important principles regarding the components of the State's duty to act with the

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<sup>39</sup> I/A Court H. R. *Case of González et al. ("Cotton Field") V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205.

<sup>40</sup> I/A Court H. R. *Case of Fernández Ortega et al. V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215. 44.

<sup>41</sup> IACHR. Application to the Inter-American Court of Human Rights in the case of *Valentina Rosendo Cantú et. al.* (Case 12.579) v. the United Mexican States.

<sup>42</sup> I/A Court H. R. *Case of the Miguel Castro Castro Prison V. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160.

<sup>43</sup> I/A Court H. R. *Case of the Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 24, 2009. Series C No. 211.

<sup>44</sup> IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, 2003, (hereinafter "*The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*"), para. 154.

necessary due diligence in dealing with violence against women. Thus, it noted the relationship that exists between access to justice, due diligence, and the duty of prevention; the duty of providing redress for human rights violations; the key importance of prevention in eradicating violence against women and all forms of discrimination;<sup>45</sup> the importance of training the people responsible for responding to crimes of violence against women;<sup>46</sup> along with other statements.

37. Similarly, in its *Report on the Rights of Women in Chile*, it stressed the obligation of adopting “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.”<sup>47</sup> In its report *Access to Justice and Social Inclusion: The Road toward Strengthening Democracy in Bolivia*, the IACHR also established the need “to give priority attention to designing a comprehensive and coordinated policy aimed at eliminating the *de jure* and *de facto* barriers that prevent women from having access to effective remedies and mechanisms for judicial protection, especially where violence against women is concerned.”<sup>48</sup>

38. The obligations contracted by states at the international level are also relevant to this report. The United Nations Declaration on the Elimination of All Forms of Violence against Women<sup>49</sup> stipulates the duty of acting with due diligence to prevent and investigate all acts of violence against women committed by the State and by private citizens, and of incorporating, into domestic law, “penal, civil, labor and administrative sanctions” to punish and redress the wrong caused. Paragraph 124.d of the Beijing Platform for Action,<sup>50</sup> adopted by the Fourth World Conference on Women in 1995, provides a vital regulatory reference point on this topic, stipulating that states must take steps to guarantee that women who are victims of violence can access just and effective remedies, including compensation and indemnification.

39. Similarly, General Recommendation 19 adopted by the Committee on the Elimination of Discrimination against Women calls on the states parties “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due

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<sup>45</sup> IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, para. 154.

<sup>46</sup> IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, para. 155.

<sup>47</sup> IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor, and Political Spheres*, 2009, para. 42.

<sup>48</sup> IACHR, *Access to Justice and Social Inclusion: The Road Toward Strengthening Democracy in Bolivia*, 2007.

<sup>49</sup> United Nations, General Assembly. *Declaration on the Elimination of Violence against Women*. Resolution 48/104 of December 20, 1993, A/RES/48/104, February 23, 1994, Arts. 4 (c) and (d).

<sup>50</sup> 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).



diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”<sup>51</sup>

### C. The problem of sexual violence

40. The Convention of Belém do Pará contains specific obligations for states regarding the problem of sexual violence in connection with access to justice and the duty of acting with due diligence. Article 2 of the Convention provides that violence against women includes physical, sexual, and psychological violence:

(a) that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery, and sexual abuse;

(b) that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping, and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and

(c) that is perpetrated or condoned by the State or its agents, regardless of where it occurs.

41. In its decisions in the cases of *Raquel Martín de Mejía*<sup>52</sup> and *Ana, Beatriz, and Celia González Pérez*,<sup>53</sup> for the first time the IACHR addressed the concept of sexual violence as torture and the victims’ access to justice in the context of the individual case system.

42. In the particular case of *Raquel Martín de Mejía*,<sup>54</sup> the Commission found the Peruvian State responsible for violations of the right to humane treatment under Article 5 of the American Convention and the Inter-American Convention to Prevent and

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<sup>51</sup> 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), para. 9, (11th session, 1992).

<sup>52</sup> IACHR, Report No. 5/96, Case 10.970, Merits, *Raquel Martín de Mejía* (Peru), March 1, 1996.

<sup>53</sup> IACHR, Report No. 53/01, Case 11.565, Merits, *Ana, Beatriz, and Celia González Pérez* (Mexico), April 4, 2001.

<sup>54</sup> In the petition of October 17, 1991, the petitioners alleged that on June 15, 1989, a group of armed individuals, wearing uniforms of the Peruvian Army, burst into the home of Raquel Martín and Fernando Mejía in Oxapampa and accused them of being subversives and members of the Túpac Amaru Revolutionary Movement (MRTA). After beating Fernando Mejía in front of his wife and bundling him into a government-owned van, the armed group left. Minutes later, the individual in command of the operation returned to the house on two different occasions, on both of which he raped Raquel Martín de Mejía. Raquel Martín de Mejía and her representative reported the incidents, but once the investigations ordered by the Oxapampa Provincial Prosecutor had been opened, the victim began to receive anonymous death threats if she continued with the proceedings.

Punish Torture.<sup>55</sup> In addressing her rape, the Commission found the combined presence of the three elements set out for establishing the existence of torture in the Inter-American Convention to Prevent and Punish Torture: (1) “an intentional act through which physical and mental pain and suffering is inflicted on a person,” (2) “committed with a purpose,” and (3) “committed by a public official or by a private person acting at the instigation of the former.” In analyzing these elements, the Commission took into account the physical and psychological suffering caused by the rape, the possibility of the victim being ostracized if she reported the incident, and the way in which the rape might have been committed with the intent of punishing and intimidating the victim.<sup>56</sup>

43. Similarly, in the case of *Ana, Beatriz, and Celia González Pérez*,<sup>57</sup> the Inter-American Commission found multiple violations of the American Convention and of the Inter-American Convention to Prevent and Punish Torture, and it concluded that the State had failed in its guarantee obligation under Article 1.1. of the American Convention, which stipulates the obligation of the states parties to ensure the exercise of the rights and freedoms recognized therein with respect to all people under their jurisdiction.<sup>58</sup> Citing the Inter-American Court’s judgment in the case of *Velázquez Rodríguez*, the Commission said that this obligation entails the duty of organizing 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. Because of this obligation, states parties have the legal duty to prevent, investigate, and punish all violations of rights protected by the American Convention.<sup>59</sup> Within this general framework, the Commission maintained that the rape of the sisters by the soldiers had also constituted torture,<sup>60</sup> and it noted that the case was surrounded by total impunity in that

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<sup>55</sup> Finally, the IACHR concluded that the Peruvian State was responsible for several violations of the American Convention with respect to Raquel Martín de Mejía, including a violation of the general obligation of respecting and ensuring the rights set out therein (Article 1.1), the right to humane treatment (Article 5), the right of honor and dignity (Article 11), the right of due legal process (Article 8), and the right to an effective remedy (Article 25). IACHR, Report No. 5/96, Case. 10.970, Merits, *Raquel Martín de Mejía* (Peru), Section VI. Conclusions.

<sup>56</sup> IACHR, Report No. 5/96, Case 10.970, Merits, *Raquel Martín de Mejía* (Peru), Section V. General Considerations, B. Considerations on the substance of the case. 3. Analysis.

In this case the Commission found several violations of the American Convention with respect to Raquel Martín de Mejía, including a violation of the general obligation of respecting and ensuring the rights set out therein (Article 1.1), the right to humane treatment (Article 5), the right of honor and dignity (Article 11), the right of due legal process (Article 8), and the right to an effective remedy (Article 25). See: Section IV. Conclusions.

<sup>57</sup> In this case, the petitioners informed the IACHR that on January 16, 1996, the sisters Ana, Beatriz, and Celia González Pérez, Tzeltal indigenous women from the Mexican state of Chiapas, were separated from their mother and illegally detained, raped, and tortured by a group of soldiers over a period of two hours. In addition, they reported that the offenses remained unpunished because the cases were transferred to the military justice system, which was clearly incompetent by reason of the nature of the violations and lacked the necessary impartiality for establishing the facts in accordance with due process. IACHR, Report on Merits No. 53/01, *Ana, Beatriz, and Celia González Pérez* (Mexico), April 2, 2001, paras. 2 and 86.

<sup>58</sup> IACHR, Report No. 53/01, Case 11.565, Merits, *Ana, Beatriz, and Celia González Pérez* (Mexico), April 4, 2001, para. 85.

<sup>59</sup> IACHR, Report No. 53/01, Case 11.565, Merits, *Ana, Beatriz, and Celia González Pérez* (Mexico), April 4, 2001, para. 166.

<sup>60</sup> IACHR, Report No. 53/01, Case 11.565, Merits, *Ana, Beatriz, and Celia González Pérez* (Mexico), April 4, 2001, paras. 47-49.

more than six years after the date on which those human rights violations were perpetrated and reported, the State had not met its obligation of prosecuting and punishing the persons responsible.<sup>61</sup>

44. The Inter-American Court of Human Rights first specifically addressed sexual violence against women in its judgment in the case of the *Castro Castro Prison v. Peru*.<sup>62</sup> In that judgment, the Court analyzed the scope and consequences of the crime of sexual violence against women held in state custody. Accordingly, the Court found a violation of Article 5 of the American Convention and interpreted its scope using the Convention de Belém de Pará as a reference in its interpretation.<sup>63</sup> In addition, it ruled for the first time that gender violence is a form of discrimination in accordance with the precedents set by the Committee on the Elimination of Discrimination against Women.<sup>64</sup> Significantly, in its judgment, the Court offered an expanded definition of the phenomenon of “sexual violence,” stating that: “sexual violence consists of actions with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever.”<sup>65</sup>

45. In its judgments in the cases of *Inés Fernández Ortega*<sup>66</sup> and *Valentina Rosendo Cantú*,<sup>67</sup> the Court affirmed several important principles related to the state obligation of acting with due diligence and of ensuring adequate access to justice in cases of sexual violence: (a) rape constitutes a paradigmatic form of violence against women, the

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<sup>61</sup> Impunity has been defined as ‘the failure by States to fulfill their obligation to investigate the violation of rights and to impose the appropriate measures on the perpetrators, in particular from a legal standpoint, so that they can be prosecuted and receive the appropriate penalties; to guarantee victims effective resources and remedy for prejudice suffered; and to take the measures necessary to avoid the repetition of these violations.’” IACHR, Report on Merits No. 53/01, *Ana, Beatriz, and Celia González Pérez* (Mexico), April 2, 2001, para. 86.

<sup>62</sup> On September 9, 2004, the Inter-American Commission lodged an application with the Court against the State of Peru in connection with several violations committed during “Operation Mudanza 1” in the Castro Castro Prison in Peru, during which the State allegedly caused the death of at least 42 inmates, injured 175, and subjected a further 322 to cruel, inhuman, and degrading treatment. The facts also refer to the purported cruel, inhuman, and degrading treatment suffered by the alleged victims following “Operation Mudanza 1.” In its judgment the Court found that the attacks specifically began in the wing of the prison where the female inmates were held, including pregnant women. I/A Court H. R. *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160.

<sup>63</sup> I/A Court H. R. *Case of the Miguel Castro Castro Prison V. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 276.

<sup>64</sup> I/A Court H. R. *Case of the Miguel Castro Castro Prison V. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 303.

<sup>65</sup> I/A Court H. R. *Case of the Miguel Castro Castro Prison V. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, para. 306. See: ICTR, *Case of Prosecutor v. Jean-Paul Akayesu*. Judgment of September 2, 1998. Case No. ICTR-96-4-T, para. 688.

<sup>66</sup> IACHR, Report No. 89/08, Case 12.580, Merits, *Inés Fernández Ortega and others* (Mexico), October 30, 2008.

<sup>67</sup> IACHR, Report No. 36/09, Case 12.579, Merits, *Valentina Rosendo Cantú and other* (Mexico), March 27, 2009.

consequences of which even transcend the person of the victim; (b) rape may constitute torture even if it entails a single act or takes place outside state facilities, if intentionality, severe suffering, and the pursuit of a goal by the perpetrators are present; (c) a rape undermines values and essential aspects of a person's private life and represents an intrusion into her sexuality, annulling her right to decide freely with whom to have intimate relations – one of the most personal and private decisions – and over her basic bodily functions; (d) following an act of violence against a woman, it is particularly important for the authorities in charge of the investigation to pursue it with determination and effectiveness, bearing in mind the duty of society to reject violence against women and the State's obligation to eradicate it and to ensure the victims' trust in the public institutions charged with their protection; (e) investigations in cases of sexual violence must strive to avoid revictimization or the re-experiencing of the profoundly traumatic experience; and (f) the victim's statement regarding an act of sexual violence is of fundamental importance in investigating, prosecuting, and punishing the offense.

46. It is important that this analysis also reflects current trends in international and comparative law relating to the problem of sexual violence and the specific obligations of States in that regard.

47. The Committee that oversees compliance with the CEDAW has ruled that all forms of violence against women constitute discrimination, including "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."<sup>68</sup> In addition, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any comparably serious form of sexual violence are considered, in specific circumstances, crimes against humanity and war crimes under the Rome Statute.<sup>69</sup>

48. The European Court of Human Rights, in the case of *MC v. Bulgaria*, also analyzed the conditions of the crime of rape with a focus on the topic of consent and the use of force. The Court ruled that force or threats represent incontrovertible evidence of the absence of consent, but it noted that force is not, *per se*, an element of rape. It ruled that there were elements other than the use of force that can make an act of sexual penetration a nonconsensual or involuntary act on the part of the victim. In the European Court's view, placing emphasis on force or on the threat of force would enable perpetrators to escape responsibility for nonconsensual sexual acts in which they take advantage of forms of coercion that do not necessarily have to be physical.<sup>70</sup>

49. A similar view is shared by the International Criminal Court's Rules of Procedure and Evidence. Those rules state that the specific needs of victims of sexual violence must be taken into account to facilitate their participation and testimony in

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<sup>68</sup> 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.

<sup>69</sup> Rome Statute, Articles 7 and 8.

<sup>70</sup> *Case of M.C. v. Bulgaria* (Application No. 39272/98), Judgment Strasbourg, December 4, 2003.

criminal proceedings, and the victims must be given full access to information about the proceedings.<sup>71</sup> They also stress the importance of not inferring the victim's consent in cases of sexual violence, on account of the context of coercion that assailants can create and a range of other factors that can prevent a victim from physically resisting her attacker. They also provide that evidence relating to the victim's prior sexual conduct is inadmissible.<sup>72</sup>

50. In the case of *X and Y v. the Netherlands*, the European Court found that the State failed in its obligation to guarantee the right to a private life by failing to provide a mechanism under criminal law for the prosecution of the alleged rapist of a girl with disabilities. In this sense, since the State failed to effectively protect the girl from sexual violence, the European Court concluded that it had violated Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>73</sup>

51. A relevant judgment from the Constitutional Court of Colombia – T-453 of May 2, 2005 – deals with the topic of evidence in cases involving sexual violence. The Court held that victims of sex crimes have the constitutional right to the protection of their privacy against evidence representing an unreasonable, unnecessary, and disproportionate intrusion into their private lives. That occurs when generic inquiries are conducted into the sexual or social conduct of the victim, either before or after the facts under investigation. The Constitutional Court grounded its ruling on the special protection that – according to the directives of international agencies, particularly those of the UN – must be afforded to victims of crimes, particularly sex crimes, to ensure their right to physical, mental, and moral integrity, to dignity, to honor, and to privacy. Secondly, the Court analyzed the conditions of the specific case to determine whether the violation of the right of privacy that would be caused by the gathering of such evidence was a reasonable, proportionate, and necessary measure to ensuring the right of defense of the accused. It conducted a

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<sup>71</sup> United Nations, International Criminal Court, Rules of Procedure and Evidence, U.N. Doc. PCNICC/2000/1/Add.1 (2000), Rule 70. The Rules provide as follows:

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.

<sup>72</sup> United Nations, International Criminal Court, *Rules of Procedure and Evidence*, U.N. Doc. PCNICC/2000/1/Add.1 (2000), Rule 71.

<sup>73</sup> European Court of Human Rights, *Case of X and Y v. the Netherlands*, Application No. 8978/80, Judgment, March 26, 1985.

close analysis of each piece of evidence requested and concluded that one group of them had to be excluded because, in light of both their content and the way in which they were requested, they were intended to raise questions about the moral character of the victim as reflected in her prior or subsequent actions in different relations and with persons other than the accused.<sup>74</sup>

**D. Women at particular risk to human rights violations: girls; indigenous women; women with disabilities; and women affected by armed conflict, or generalized violence situations**

**Girls**

52. The problem of sexual violence involving minor-aged girls is largely due to the fact that in addition to facing discrimination on account of their gender, they are also relegated in importance because they are considered mere objects of protection on account of their minor status. Thus, “the lower credibility of children places them at a disadvantage when sexual violence is reported, since the world of children is associated with wild imagination, and so their accusations and statements are used to reduce the punishments imposed on their assailants.”<sup>75</sup>

53. The jurisprudence of the inter-American human rights system has determined that states are obliged to adopt measures to afford particular protection to children and adolescents, with greater care and responsibility in accordance with the principle of the child’s best interest.<sup>76</sup> As stated previously, the Inter-American Court has also said that the Convention on the Rights of the Child<sup>77</sup> is a part of an international *corpus juris* for the protection of children that serves to “establish the content and scope of the general provision established in Article 19 of the American Convention”<sup>78</sup> and, also, in Article VII of the American Declaration.<sup>79</sup> Thus, the special protection that states owe to children and adolescents under Article 19 of the American Convention and Article VII of the American Declaration entails a series of obligations that differ from those extended to

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<sup>74</sup> Constitutional Court of Colombia, Judgment T-453, May 2, 2005.

<sup>75</sup> Calla, Pamela (coord.), *Breaking Silence: An Approach to Sexual Violence and Child Abuse in Bolivia*, Coordinator for Women and People’s Defender, 2005, p. 253. Available at: [http://www.unicef.org/bolivia/Rompiendo\\_Silencios.pdf](http://www.unicef.org/bolivia/Rompiendo_Silencios.pdf)

<sup>76</sup> I/A Court H. R., *Case of the Gómez Paquiyaui Brothers V. Peru*. Judgment of July 8, 2004. Series C No. 110, paras. 124, 163-164, and 171; I/A Court H. R., *Case of Bulacio V. Argentina*. Judgment of September 18, 2003, Series C No. 100, paras. 126 and 134; I/A Court H. R., *The Street Children Case (Villagrán Morales et al.) V. Guatemala*. Judgment of November 19, 1999. Series C No. 63, paras. 146 and 191. Similarly: I/A Court H. R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 56 and 60.

<sup>77</sup> The Convention on the Rights of the Child was ratified by the Chilean State on August 13, 1990.

<sup>78</sup> I/A Court H. R., *The Street Children Case (Villagrán Morales et al.) V. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 194.

<sup>79</sup> IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II, Doc. 78, July 13, 2011, (hereinafter “*Juvenile Justice and Human Rights in the Americas*”), paras. 15 and 20.

adults.<sup>80</sup> Those state obligations are based on the recognition that children and adolescents are subjects of rights<sup>81</sup> and that they have special needs that must be satisfied so they can develop their capacities and enjoy their rights in full.<sup>82</sup> In the Commission's view, every child and adolescent has different needs, which must be taken into consideration, paying attention to their opinions, when it falls to the State to determine their rights and the corresponding obligations of their families, societies, or state authorities toward them.<sup>83</sup>

54. In the words of the Committee on the Rights of the Child, "children are at risk of being exposed to violence in many settings where professionals and State actors have often misused their power over children, such as schools, residential homes, police stations or justice institutions. All of these conditions fall under the scope of article 19 [of the Convention on the Rights of the Child], which is not limited to violence perpetrated solely by caregivers in a personal context."<sup>84</sup>

55. According to the *corpus juris* on the rights of children and adolescents, States must guarantee all girls the right to be heard by creating suitable mechanisms and environments so they can denounce any acts of sexual violence they suffer and enjoy effective access to justice. In interpreting Article 12 of the Convention on the Rights of the Child, the Committee on the Rights of the Child concluded that States parties must remain aware of the potential negative consequences of an inconsiderate practice of the right of children and adolescents to be heard in all matters affecting them, particularly in instances where the child has been a victim of a criminal offence, sexual abuse, violence, or other forms of mistreatment. States parties must undertake all necessary measures to ensure that the right to be heard is exercised, ensuring full protection of the child.<sup>85</sup>

56. In addition, so that girls can effectively exercise their right to be heard and their right of access to justice, States must effectively guarantee their right of access to information, in accordance with their needs, age, and maturity. As the Committee on the Rights of the Child has said:

Effective inclusion of children in protective measures requires that children be informed about their right to be heard and to grow up free from all forms of physical and psychological violence. States parties

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<sup>80</sup> I/A Court H. R., *Juridical Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 54 and 96.

<sup>81</sup> IACHR, *Juvenile Justice and Human Rights in the Americas*, para. 24.

<sup>82</sup> The capacity-focused approach has been developed by authors including Amartya Sen. It has also been adopted by the United Nations in various reports on human development. See: UNDP, *Human Development Report 2010. The Real Wealth of Nations: Pathways to Human Development*. Available at: <http://hdr.undp.org/es/informes/mundial/idh2010/capitulos/es/>.

<sup>83</sup> IACHR, *Juvenile Justice and Human Rights in the Americas*, para. 27.

<sup>84</sup> Committee on the Rights of the Child, General Comment No. 13, *The right of the child to freedom from all forms of violence*, CRC/C/GC/13, April 18, 2011, para. 36.

<sup>85</sup> Committee on the Rights of the Child, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12, July 20, 2009, para. 21.

should oblige all children's institutions to establish easy access to individuals or organizations to which they can report in confidence and safety, including through telephone helplines, and to provide places where children can contribute their experience and views on combating violence against children.<sup>86</sup>

57. Similarly, the Convention of Belém do Pará requires the State, in acting with due diligence in connection with acts of violence, to take special account of the vulnerability of women to violence and discrimination by reason of their minority age and other risk factors.<sup>87</sup> The IACHR has established that the reason for this provision is that discrimination, in its different manifestations, does not always affect all women to the same degree: there are women who are particularly exposed to the infringement of their rights and to suffer acts of violence and discrimination.<sup>88</sup>

58. According to the international legal framework presented, the duties of States under the instruments of the inter-American human rights system acquire a particular dimension in cases involving girls. The duty of special protection is heightened by the particular vulnerability and exposure of girls to acts of violence covered by the Convention of Belém do Pará. Consequently, the State has a heightened duty of due diligence with respect to girls on account of the obligation of special protection set forth in Articles 19 of the American Convention and VII of the American Declaration, and of the obligation of heightened due diligence established in the Convention of Belém do Pará.

### **Indigenous women**

59. The IACHR has noted the dual discrimination that indigenous women have historically faced: as women, and as members of indigenous peoples.<sup>89</sup> This translates into obstacles of a particular kind in securing access to justice, which are related to the social exclusion, ethnic discrimination, and poverty that they face.<sup>90</sup> The IACHR has ruled on the need for States, through their justice systems, to incorporate the specific needs of indigenous women in their undertakings, respecting their cultural identity and ethnicity, their language and uniqueness, and even creating systems and methods for the participation of cultural experts in cases of violence.<sup>91</sup>

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<sup>86</sup> Committee on the Rights of the Child, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12, July 20, 2009, para. 120.

<sup>87</sup> Article 9, Convention of Belém do Pará.

<sup>88</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II.124/Doc.6, October 18, 2006, (hereinafter "*Violence and Discrimination against Women in the Armed Conflict in Colombia*"), para. 140.

<sup>89</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. Doc. 68, January 20, 2007, (hereinafter "*Access to Justice for Women Victims of Violence in the Americas*"), para. 198.

<sup>90</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 199.

<sup>91</sup> IACHR, Report No. 89/08, Case 12.580, Merits, *Inés Fernández Ortega and others* (Mexico), October 30, 2008, para. 112. IACHR, *Access to Justice for Women Victims of Violence in the Americas*, Specific Recommendations for the States.



60. In its merits report on the case of the *González Pérez Sisters*,<sup>92</sup> the IACHR spoke of the specific obstacles that indigenous women face in seeking access to the agencies that provide judicial protection; it also developed the concept of rape as torture and as a violation of women's right to private life, speaking of the specific obstacles that indigenous women face in securing access to the agencies that provide judicial protection. In that report, the IACHR concluded by emphasizing that the pain and humiliation that the women suffered was heightened by their indigenous ethnicity, because they did not understand the language of their assailants and the authorities involved in the case, and, additionally, because of the rejection they faced from their own community as a consequence of the crimes against them.<sup>93</sup> In response, the Mexican State recognized "the institutional violence, the indifference, and the discrimination suffered by indigenous women at the hands of personnel associated with health institutions and instances that impart justice, which are poorly trained and insensitive to conditions of poverty and cultural diversity."<sup>94</sup>

61. In addition, the Inter-American Court recently had the opportunity to rule on the duty to act with the necessary due diligence in cases involving sexual violence against indigenous women, and on the problem of impunity regarding such incidents, in two cases submitted to Court by the IACHR. In the cases of *Inés Fernández Ortega* and *Valentina Rosendo Cantú*, already discussed above, the Court ruled extensively on the factors that expose indigenous women to greater risks of human rights violations in their dealings with the justice apparatus and the health-care system.<sup>95</sup> It spoke of the particular obstacles that indigenous women face in securing access to justice, such as speaking a different language and having no access to interpreters, the lack of economic resources for retaining legal counsel, etc.<sup>96</sup> This problem in particular leads to mistrust toward the justice system and other public protection agencies.<sup>97</sup> For indigenous women, states the Court, those obstacles are particularly serious, in that they also face rejection and ostracism within their communities when they report gender-related crimes.

<sup>92</sup> IACHR, Report No. 53/01, Case 11.565, Merits, *Ana, Beatriz, and Celia González Pérez* (Mexico), April 4, 2001.

<sup>93</sup> IACHR, Report No. 53/01, Case 11.565, Merits, *Ana, Beatriz, and Celia González Pérez* (Mexico), April 4, 2001, para. 95.

<sup>94</sup> Reply by the Mexican State to the IACHR's questionnaire on the situation of women's access to justice in the Americas, November 2005, p. 20.

<sup>95</sup> I/A Court H. R. *Case of Fernández Ortega et al. V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215. 44, para. 78; I/A Court H. R. *Case of Rosendo Cantú et al. V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, para. 185.

<sup>96</sup> I/A Court H. R. *Case of Fernández Ortega et al. V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215. 44, para. 78; I/A Court H. R. *Case of Rosendo Cantú et al. V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, para. 185.

<sup>97</sup> I/A Court H. R. *Case of Fernández Ortega et al. V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215. 44, para. 78; I/A Court H. R. *Case of Rosendo Cantú et al. V. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, para. 185.

### Women with disabilities

62. As stated in the Preamble and Article 6 of the Convention on the Rights of People with Disabilities, “women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,” and they “are subject to multiple discrimination.” The Committee on the Rights of the Child has noted its concern “at the growing number of child victims of child prostitution and child pornography. Children with disabilities are more likely than others to become victims of these serious crimes.” In the words of the Committee on the Rights of the Child:

Children with disabilities are more vulnerable to all forms of abuse be it mental, physical or sexual in all settings, including the family, schools, private and public institutions, *inter alia*, alternative care, work environment and community at large. It is often quoted that children with disabilities are five times more likely to be victims of abuse. In the home and in institutions, children with disabilities are often subjected to mental and physical violence and sexual abuse, and they are also particularly vulnerable to neglect and negligent treatment since they often present an extra physical and financial burden on the family.<sup>98</sup>

63. To address that problem, the IACHR considers that Article 7 of the Convention of Belém do Pará and Article 19 of the American Convention can be interpreted in accordance with the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities and the Convention on the Rights of People with Disabilities, so that the obligations of preventing, punishing, and eradicating discrimination and violence against women and girls are further strengthened when women and girls with disabilities are involved.<sup>99</sup>

64. Article III of the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities establishes the obligation of states to adopt the legislative, social, educational, labor-related, or any other measures needed to eliminate discrimination against persons with disabilities and to promote their full integration into society.

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<sup>98</sup> Committee on the Rights of the Child, General Comment No. 9, *The rights of children with disabilities*, CRC/C/GC/9, February 27, 2009, paras. 42 and 77.

<sup>99</sup> Pursuant to Article 29 of the American Convention, none of the Convention’s provisions shall be interpreted as excluding or limiting the effect that other international instruments of the same nature may have or as excluding any other rights and guarantees inherent to human beings. In addition, the provisions applicable to children and adolescents with disabilities are a part of the international *corpus juris* on the rights of children and adolescents.

65. Similarly, Article 16 of the Convention on the Rights of People with Disabilities establishes the following obligations for the states parties, from a gender perspective:

- States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
- States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, *inter alia*, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
- In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programs designed to serve persons with disabilities are effectively monitored by independent authorities.
- States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
- States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

66. With reference to girls with disabilities, Article 7 of the Convention on the Rights of People with Disabilities stipulates that children with disabilities must enjoy all human rights and fundamental freedoms on an equal basis with other children. In addition, in all activities related to children with disabilities, states must give primordial consideration to protecting the child's best interest, ensuring that they can freely express their opinions on all matters that affect them and taking those opinions on board in accordance with their age and maturity, in equality of conditions with other children, and guaranteeing that they receive appropriate assistance for exercising that right according to their disability and age.

### Women and girls affected by situations of armed conflict

67. The IACHR has pronounced over the state's responsibility to act with due diligence to prevent violations of women's human rights during times of peace and times of conflict. It has noted numerous obstacles of a legislative, institutional, cultural, and geographical nature that impede access to effective justice.<sup>100</sup> These include:

Deficiencies in the investigation, judgment and sanction of acts of violence and discrimination, which result in a mistrust of the administration of justice; gaps in systems to gather statistics; and the dearth of human and financial resources to address the persisting problems. Furthermore, it is necessary to establish sustainable capacity-building programs for justice officials and to begin programs to sensitize the population and to promote an increase in the submission of complaints. Lastly, the report recognizes weaknesses of the administration of justice in the zones occupied by the armed actors, and the implementation of principles and practices within the penal procedures applicable to violence against women that can challenge women's access to effective judicial protections and guarantees.<sup>101</sup>

68. In its reports on Colombia (2006)<sup>102</sup> and Haiti (2009),<sup>103</sup> the IACHR acknowledged that: (a) "The responsibility of the State to act with due diligence to prevent the infringement of women's human rights in times of peace and conflict has a comprehensive nature,"<sup>104</sup> (b) "The State is directly responsible for violence perpetrated by its own agents, as well as that perpetrated by non-state players and individual persons under its tolerance or acquiescence,"<sup>105</sup> and (c) "Furthermore, the State's obligation is not limited to eliminating and punishing violence, but also includes the duty of prevention."<sup>106</sup>

69. In its report on Colombia in particular, the IACHR noted that: "Within the armed conflict, all the circumstances that have historically exposed women to discrimination and to receive an inferior treatment, above all their bodily differences and

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<sup>100</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, para. 19.

<sup>101</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, para. 19.

<sup>102</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, para. 30.

<sup>103</sup> IACHR, *The Right of Women in Haiti to be Free from Violence and Discrimination* (2009), para 86.

<sup>104</sup> The principle of due diligence was established by the Inter-American Court of Human Rights in its judgment in the *Velásquez Rodríguez* case, when it ruled on the "obligation of the States Parties to 'ensure' the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction [...] As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention." I/A Court H. R., *Case of Velásquez Rodríguez V. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 166.

<sup>105</sup> I/A Court H. R., *Case of the "Mapiripán Massacre" V. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 178.

<sup>106</sup> IACHR, Report No. 54/01, Case 12.051, Merits, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

their reproductive capacity, as well as the civil, political, economic and social consequences of this situation of disadvantage, are exploited and manipulated by the actors of the armed conflict in their struggle to control territory and economic resources. A variety of sources, including the United Nations, Amnesty International and civil society organizations in Colombia, have identified, described and documented multiple forms in which the rights of women are infringed upon in the context of the armed conflict, because of their condition as women.”<sup>107</sup> The IACHR also observed the absence of an integral vision and policy “sustained by adequate human and financial resources from the Colombian State, to investigate, sanction and offer reparation in the sphere of justice to acts of violence and discrimination that women suffer as a result of the armed conflict in all zones of the country.”<sup>108</sup>

70. In this regard, the IACHR has included, among its general recommendations to States, the adoption of comprehensive state policies to deal with specific impact of armed conflicts on women in the areas of justice, health, education, etc., noting that those policies must be guided by the logic of protecting women’s rights and must encourage their autonomy.<sup>109</sup> In addition it has recommended the implementation and strengthening of measures for fulfilling the duty of acting with due diligence to prevent, punish, and eradicate violence and discrimination against women when they are exacerbated by armed conflicts, including specific efforts to meet the four state obligations: preventing, investigating, punishing, and providing redress for violations of women’s human rights.<sup>110</sup>

#### **E. The right to education free from violence and discrimination**

71. International human rights law provides a broad regulatory framework for protecting the rights of women, girls, and adolescents in the context of education.

72. Article 50 of the Charter of the Organization of American States stipulates that “the Member States will give special attention to the eradication of illiteracy, will strengthen adult and vocational education systems, and will ensure that the benefits of culture will be available to the entire population. They will promote the use of all information media to fulfill these aims.”<sup>111</sup>

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<sup>107</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, para. 46.

<sup>108</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, para. 204.

<sup>109</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, General Recommendations.

<sup>110</sup> IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, General Recommendations.

<sup>111</sup> Charter of the Organization of American States, Bogotá, 1948. Amended by the Protocol of Buenos Aires in 1967, by the Protocol of Cartagena de Indias in 1985, by the Protocol of Washington in 1992, and by the Protocol of Managua in 1993. Available at: [http://www.oas.org/dil/esp/tratados\\_A41\\_Carta\\_de\\_la\\_Organizacion\\_de\\_los\\_Estados\\_Americanos.htm](http://www.oas.org/dil/esp/tratados_A41_Carta_de_la_Organizacion_de_los_Estados_Americanos.htm).

73. Article 13 of the Protocol of San Salvador provides that everyone has the right to education. It adds that the states parties agree that education “should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.”

74. This right is addressed by the obligations contained in the Universal Declaration of Human Rights, the ICESCR, the CEDAW, and other international instruments. Article 26 of the Universal Declaration of Human Rights protects the right to education in pursuit of “the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.” The ICESCR enshrines this principle in Article 13, emphasizing, with regard to each level of teaching, that: (a) primary education shall be “compulsory and available free to all,” (b) secondary education, including technical and vocational secondary education, shall be made generally available and accessible to all “by every appropriate means” and by the progressive introduction of free education, (c) higher education shall be made equally accessible to all, “on the basis of capacity, by every appropriate means” and by the progressive introduction of free education, and (d) fundamental education shall be encouraged “as far as possible” for those persons who have not received or completed the whole period of their primary education.

75. Regarding the right to education, the ESCR Committee has also stated that in compliance with the principle of equality and the obligation of nondiscrimination against women, states parties must set the same admission criteria at all levels of education for both boys and girls; must implement awareness-raising campaigns so that families desist from giving preferential treatment to boys when sending their children to school and so that their curricula promote equality and nondiscrimination; and must create favorable conditions to ensure the safety of girls, in particular, at school.<sup>112</sup> The Committee has ruled that the obligations of nondiscrimination and of upholding equality before the law established in the Covenant apply immediately to all aspects of the enjoyment of the right to education at all levels of schooling.<sup>113</sup>

76. The CEDAW also establishes, in Article 10, the States’ obligation of adopting all appropriate measures to eliminate discrimination against women, “in order to ensure to them equal rights with men in the field of education.” In accordance with the principle of equality and nondiscrimination, states are obliged to offer women: (a) the same conditions for career and vocational guidance, for access to studies of all categories in rural as well as in urban areas, (b) access to the same curricula and teaching staff with qualifications of the same standard, (c) the elimination of any stereotyped concept of the

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<sup>112</sup> Committee on Economic, Social and Cultural Rights, General Comment 16, *The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights* (Article 3 of the International Covenant on Economic, Social, and Cultural Rights), 2005, para. 30.

<sup>113</sup> United Nations, Committee on Economic, Social and Cultural Rights, *General Comment 13, The Right to Education (Article 13 of the Covenant)*, December 8, 1999, para. 31.

roles of men and women at all levels and in all forms of education, which may entail revising textbooks, school programs, and teaching methods, (d) the same opportunities to benefit from scholarships and other study grants, (e) the same opportunities for access to complementary education programs, such as adult and functional literacy programs, (e) the reduction of female student drop-out rates, (f) the same opportunities to participate actively in sports and physical education, and (g) access to specific educational information to help to ensure the health and wellbeing of families.

77. Regarding the right of girls to an education free from violence and discrimination, the Committee on the Rights of the Child has said that it “notes with concern continuing authoritarianism, discrimination, disrespect and violence which characterize the reality of many schools and classrooms. Such environments are not conducive to the expression of children’s views and the due weight to be given these views,” concluding that “giving children’s views weight is particularly important in the elimination of discrimination, prevention of bullying and disciplinary measures.”<sup>114</sup>

78. The Committee on the Rights of the Child has also expressed concern at the high suicide rate among adolescents. It stated that those suicides may be related to, *inter alia*, violence, mistreatment, abuse and neglect, including sexual abuse, unrealistically high expectations, and/or bullying or hazing in and outside school.<sup>115</sup>

#### **F. The right to health free from violence and discrimination**

79. To quote the Convention of Belém do Pará, “violence against women shall be understood to include physical, sexual and psychological violence that occurs within the family or domestic unit or within any other interpersonal relationship [...] in the community [...] in the workplace, as well as in educational institutions, health facilities or any other place.” It also includes violence “that is perpetrated or condoned by the state or its agents regardless of where it occurs.”<sup>116</sup>

80. As noted by the IACHR in its report *Access to Maternal Health Services from a Human Rights Perspective*:

The right of every person to physical, mental, and moral integrity without discrimination is enshrined in the American Convention. The right to personal integrity in the area of health is closely tied to the right to health since the provision of adequate and timely maternal health services is one of the principal ways to ensure women’s right to personal integrity. The American Declaration of the Rights and Duties of Man establishes the right to personal integrity, and more specifically, that every person has

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<sup>114</sup> Committee on the Rights of the Child, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12, July 20, 2009, paras. 105 and 109.

<sup>115</sup> Committee on the Rights of the Child, General Comment No. 4, *Adolescent health and development in the context of the Convention on the Rights of the Child*, CRC/GC/2003/4, July 21, 2003, para. 22.

<sup>116</sup> Convention of Belém do Pará, Article 2.

the right to the preservation of his health through sanitary and social measures (...) and medical care without discrimination to the extent permitted by public and community resources. The Protocol of San Salvador establishes that everyone has the right to health without discrimination, which is understood as the enjoyment of the highest level of physical, mental, and social well-being.<sup>117</sup>

81. Article 5 of the American Convention establishes the right of every person to have his or her physical, mental, and moral integrity respected.

82. Article 10 of the Protocol of San Salvador establishes that everyone has the right to health, understood as the enjoyment of the highest level of physical, mental, and social wellbeing. Similarly, Article 3 of the Protocol of San Salvador stipulates that the states parties are to guarantee the rights recognized therein, without any discrimination for reasons of race, color, sex, language, religion, political, or other opinion, national or social origin, economic status, birth, or any other social condition.

83. The Inter-American Court of Human Rights has ruled that health is a public good that States must protect.<sup>118</sup> It has also established that States are responsible for the regulation and oversight of health services in order to ensure effective protection for the rights to life and humane treatment,<sup>119</sup> regardless of whether the agency providing those services is public or private in nature.

84. The right to personal integrity requires States to respect and ensure that no one suffers physical and/or mental attacks or injuries. In addition, protecting the right to the personal integrity of women in the health area requires states to guarantee, through legislative provisions or other measures, that women can enjoy the right of the highest possible level of physical and mental health, without discrimination.

85. As noted by the IACHR in its report *Access to Maternal Health Services from a Human Rights Perspective*:<sup>120</sup>

The perception of service quality may influence a woman's decision to seek medical care. In addition, perceived cultural insensitivity or disrespectful treatment on the part of medical personnel may cause women and their families to cease seeking help. Thus, the lack of interpreters in areas where there are communities speaking other languages may constitute an obstacle to women's access to services. Similarly, attitudes such as indifference, mistreatment and discrimination

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<sup>117</sup> IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, para. 2.

<sup>118</sup> I/A Court H. R., *Case of Ximenes Lopes, V. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 89.

<sup>119</sup> I/A Court H. R., *Case of Albán Cornejo et al. V. Ecuador*. Merits, Reparations, and Costs. Judgment of November 22, 2007. Series C No. 171, para. 121. 42. I/A Court H. R., *Case of Ximenes Lopes V. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 89.

<sup>120</sup> IACHR, *Access to Maternal Health Services from a Human Rights Perspective*.



perpetrated by health sector employees that affects women and girls victims of violence and/or sexual abuse, as well as the lack of appropriate reproductive health services to address situations of violence, constitute barriers to access of health services.

86. The international community has also spoken out about the problem of sexual violence in the area of health and its effects on women. Article 12 of the CEDAW provides that the states parties must adopt appropriate measures to eliminate all discrimination against women in the health area. That includes the duty of acting with due diligence toward acts of violence against women occurring in that area, in accordance with the terms of General Recommendation 24 of the CEDAW, which states:

The obligation to protect rights relating to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations. Since gender-based violence is a critical health issue for women, States parties should ensure:

- (a) The enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services;
- (b) Gender-sensitive training to enable health care workers to detect and manage the health consequences of gender-based violence;
- (c) Fair and protective procedures for hearing complaints and imposing appropriate sanctions on health care professionals guilty of sexual abuse of women patients.

87. In line with the precedent set by the CEDAW, the IACHR notes the following immediate obligations: (a) incorporation of the gender perspective and elimination of *de facto* and *de jure* forms of discrimination that impede women's access to maternal health services, which applies to cases of sexual violence, (b) prioritization of efforts and resources in order to guarantee access to health services for women who may be at greater risk because they have been subject to various forms of discrimination such as indigenous, afro-descendant, and adolescent women, women living in poverty, and women living in rural areas, and (c) timely access to effective judicial remedies to ensure that women who allege that the State has not met its obligations in this area have access to effective judicial remedies.<sup>121</sup>

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<sup>121</sup> IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, p. 7.

### III. THE SCALE OF THE PROBLEM

88. This report underscores the fact that although the States have both formally and legally recognized violence against women and girls as a priority challenge, the sexual violence that takes place in educational and health-care institutions has not been addressed as a problem of special gravity that poses its own special needs. As the United Nations has observed, little is known about the violence that women and children endure in these settings and too little has been done to address it.<sup>122</sup>

89. Without reliable and systematic figures and statistics, grasping the full dimension of the problem of sexual violence in educational institutions is a challenge.<sup>123</sup> The IACHR, CIM and the MESECVI have all made observations about how cases of sexual violence are under-recorded in the region, and that systems for recording statistical and qualitative data on the subject either do not exist or are flawed.<sup>124</sup> The IACHR has observed how official statistics from every quarter of government grossly underestimate the magnitude of the problem of gender-based violence.<sup>125</sup> In the Commission's view, 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 suggested."<sup>126</sup> The problem of under-recording "would reveal only partially the dimensions of the problem in the various States and throughout the region,"<sup>127</sup> and this situation prevails in the education and health settings.

90. The information available indicates that the sexual violence which occurs in education and health institutions has common elements. It tends to be the function of power relations built upon age and/or gender differences amidst very hierarchical structures typical of so many schools and in medical practice in general. The disequilibrium in this relationship is further affected by poverty, inequality, and by pertaining to minority ethnic groups, and exposes women pertaining to these groups to an increased risk to human rights violations. Similarly, sexual violence in these settings is concealed under a kind of "pact of silence" which in such cases acts as a deterrent to filing a complaint, for fear of social stigmatization as a victim, and reprisals for these acts.

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<sup>122</sup> United Nations, General Assembly, *In-depth study on all forms of violence against women*, Report of the Secretary-General, July 6, 2006, p. 54.

<sup>123</sup> See, IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Session, *Sexual Violence in Educational Institutions in the Americas*, October 24, 2011, requested by the Center for Reproductive Rights, Women's Link Worldwide, *Fundación para la Defensa y Restitución de los Derechos Humanos* (FUNDERES) and the *Instituto Tecnológico Autónomo de México* (ITAM).

<sup>124</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, paras. 188-194; CIM, *Violence in the Americas - a Regional Analysis* (2001), including a review of the implementation of the Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women, October , p.89, July 2001; CIM, MESECVI, *Hemispheric Report* (2008), paragraph 40.

<sup>125</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 188.

<sup>126</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 188.

<sup>127</sup> CIM, MESECVI, *Hemispheric Report* (2008).

91. Additionally, sexual violence in these spaces tends to be under-reported and remains silent, due to the victim's fear of social stigmatization, and to reprisals for the events. The United Nations' *World Report on Violence against Children* indicates that the vast majority of children do not report the sexual violence they suffer because they fear that it will happen to them and their families.<sup>128</sup> They also fear that their families will be ashamed or rejects them, or think that nobody will believe them.<sup>129</sup>

92. The Commission highlights that the problems linked to the reporting, investigation, and sanction of sexual violence acts against women in educational and health institutions are related to a diversity of factors. In the first place, the absence of protection mechanisms designed for victims challenges the reporting of these acts. Second, discriminatory socio-cultural patterns that discredit victims are still prominent, demanding corroboration mechanisms to launch an investigation. Third, the conflict between administrative and criminal norms challenges the sanction of the facts investigated.

93. In its study of the problem of violence against women, the IACHR has reiterated in a consistent fashion that certain groups of women are at a particular risk of these acts, due to historical factors of discrimination on the basis of their sex, race, economic position, and sociopolitical context, among others. Some examples are the particular exposure to acts of violence against women of girls, indigenous women, women who have disabilities, and women living in zones affected by armed conflicts. Poverty, race, ethnicity, sexual diversity and living in rural zones as well could be risk factors.<sup>130</sup> Due to this noteworthy history of discrimination based on an intersection of factors, it is key for States to take special account of the increased risk to acts of sexual violence confronted by these groups of women in the spheres of education and health. The IACHR in this report encourages States to investigate and collect information regarding this situation with due diligence according to article 9 of the Convention of Belém do Pará.

#### **A. Sexual violence in educational institutions**

94. The IACHR has received information from different organizations in the region linked to risk factors to sexual violence in the education sector.<sup>131</sup> At a first level,

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<sup>128</sup> Paulo Sergio Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence against Children, *World Report on Violence against Children*, p. 55. Available at: [http://www.crin.org/docs/UNVAC\\_World\\_Report\\_on\\_Violence\\_against\\_Children.pdf](http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf)

<sup>129</sup> Paulo Sergio Pinheiro, Independent Expert for the United Nations Secretary-General's Study on Violence against Children, *World Report on Violence against Children*, p. 55. Available at: [http://www.crin.org/docs/UNVAC\\_World\\_Report\\_on\\_Violence\\_against\\_Children.pdf](http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf)

<sup>130</sup> See, IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Session, *Access to Education of Indigenous, Afrodescendent and Rural Women*, October 25, 2011, requested by CLADEM.

<sup>131</sup> See, IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Session, *Sexual Violence in Educational Institutions in the Americas*, October 24, 2011, requested by the Center for Reproductive Rights, Women's Link Worldwide, *Fundación para la Defensa y Restitución de los Derechos Humanos (FUNDERES)* and the *Instituto Tecnológico Autónomo de México (ITAM)*; IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Session, *Access to Education of Indigenous, Afrodescendent and Rural Women*, October 25, 2011, requested by CLADEM; IACHR, Rapporteurship on the Rights of Women, Meeting of Experts and Workshop: *Access to Justice for Women Victims of Sexual Violence in the Area of Their Economic and Social Rights*, October 19, 2010.

these risks can be associated with the same nature of educational institutions, in which trust relationships are built between the students and the school personnel, where the personnel can commit acts of sexual violence abusing their power. The second factor is linked to the covering up and the institutional tolerance favoring the perpetrators. The third factor can be associated to the weakness of justice mechanisms in responding to these violations. This is combined with individual factors that increase the likelihood of sexual violence such as sex, age, ethnicity, sexual diversity, disability, migration, poverty and to live in rural and marginalized zones.

95. The Commission considers that diverse structural barriers are combined with forms of discrimination, exposing girls to an increased risk to violations of their personal integrity and to acts of violence when they seek to enforce their right to education.<sup>132</sup> Some of the structural barriers identified are the geographic distance of the education centers; the lack of adequate sanitation facilities for girls entering puberty promoting their irregular attendance to school and their absenteeism; living in rural zones due to the absence of centers to file complaints; and the cost of education, among others. Additionally, girls and women face other socio-cultural barriers such as the family's unwillingness to send their daughters to school; the family responsibilities assigned to girls and adolescents; the stereotypes in school curricula that perpetuate discrimination against women; teenage pregnancy; and violence against women and girls; among others.

96. The Commission has established how the curriculum and school texts used in teaching can be a priority challenge to eliminate discrimination against women, and to guarantee an effective education in conditions of equality.<sup>133</sup> Different organizations have made reference before the Inter-American Commission of Human Rights to the "hidden curriculum", understood to mean the "combination of routine practices in the educational system that, although neither over nor explicit, are nonetheless part of customary teaching habits, both in terms of attention paid to the student and the teachers' observations and evaluations."<sup>134</sup> The Commission reiterates that the knowledge and values that the curricula teach must be free of any element that can be construed as discrimination on the basis of sex, gender, age, religion, social status and so on. There is an avid link between discrimination, gender stereotypes, and violence against women. In concrete, the Commission has established that:

This problem necessitates an overhaul of books and school textbooks littered with images that perpetuate the roles traditionally assigned to

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<sup>132</sup> See, IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Session, *Sexual Violence in Educational Institutions in the Americas*, October 24, 2011, requested by the Center for Reproductive Rights, Women's Link Worldwide, *Fundación para la Defensa y Restitución de los Derechos Humanos* (FUNDERES) and the *Instituto Tecnológico Autónomo de México* (ITAM); IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Session, *Access to Education of Indigenous, Afrodescendent and Rural Women*, October 25, 2011, requested by CLADEM; IACHR, Rapporteurship on the Rights of Women, Meeting of Experts and Workshop: *Access to Justice for Women Victims of Sexual Violence in the Area of Their Economic and Social Rights*, October 19, 2010.

<sup>133</sup> IACHR, *The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights*, OEA/Ser.L./V.II.143 Doc. 59, November 3, 2011, para. 217.

<sup>134</sup> IACHR, *The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights*, OEA/Ser.L./V.II.143 Doc. 59, November 3, 2011, para. 220.

men and women, or texts that do not include women at all. This also necessitates a review of school textbooks that portray women as passive subjects and men as those who make history. The language used in the education system has to be checked: both the language used in teaching and the language used in textbooks, which may be sexist or discriminatory. A stereotyped-free education is a challenge that no State in this hemisphere has completely conquered.<sup>135</sup>

97. For example, the United Nations Rapporteur on the Right to Education has singled out a number of factors that foster discrimination against girls and teenage girls in school. Salient among these are a lack of educational models that have a cultural focus and are respectful of diversity; the long distances girls must travel to get to school; the lack of safe transport; the sparse recruitment of women teachers; and the absence of thorough, continual gender awareness-raising and training for male and female teachers.<sup>136</sup> The United Nations Rapporteur also pointed to the scant interest taken in attracting back and retaining pregnant teenagers and adolescent mothers; to the lack of sex education; and to the costs of registration, uniforms, meals, textbooks and teaching materials that families must defray.<sup>137</sup>

98. Different international agencies and non-governmental organizations have highlighted the urgent nature of the problem of sexual violence in schools, its causes and consequences.

99. For example, the United Nations' *World Report on Violence against Children*<sup>138</sup> asserts that sexual abuse, physical and psychological violence, and sexual harassment are forms of violence which occur in all settings. Sexual abuse of girls and boys is most common within the home, but also frequently occurs in schools and other educational settings. The report also observes that girls are more vulnerable to sexual violence than boys, and their greater vulnerability to violence is in large part a product of the influence of gender-based power relations that are deeply rooted within society. It cites a *World Education* study in Peru which found that "that as the distance a girl travels to school increases, so does her chance of being molested. The risks of sexual harassment, rape and unintended pregnancy keep many Peruvian girls home and increase absenteeism, grade repetition and dropouts."<sup>139</sup>

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<sup>135</sup> IACHR, *The Work, Education, and Resources of Women: The Road to Equality in Guaranteeing Economic, Social, and Cultural Rights*, OEA/Ser.L./V.II.143 Doc. 59, November 3, 2011, para. 218.

<sup>136</sup> United Nations, Economic, Social and Cultural Rights. Girls' right to education. Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, February 8, 2006, paragraph 66.

<sup>137</sup> United Nations, Economic, Social and Cultural Rights. Girls' right to education. Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, February 8, 2006, paragraph 66.

<sup>138</sup> Paulo Sergio Pinheiro, *World Report on Violence against Children*, p. 7, available online at: [http://www.crin.org/docs/UNVAC\\_World\\_Report\\_on\\_Violence\\_against\\_Children.pdf](http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf)

<sup>139</sup> Paulo Sergio Pinheiro, *World Report on Violence against Children*, p. 135, available online at: [http://www.crin.org/docs/UNVAC\\_World\\_Report\\_on\\_Violence\\_against\\_Children.pdf](http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf)

100. In the same line, UNESCO has stated that “Sexual assault and other forms of gender-based violence in schools are significant factors in low enrollment and drop-out rates for girls. Gender-based violence not only acts to discourage girls from going to school but may also cause parents to prohibit their daughters from attending school for fear that they too will be victimized. Sexual violence against boys in school can cause particular shame as it is often considered a taboo subject.” It also found that “Sexual and gender-based violence puts students at risk of sexually transmitted disease, unwanted pregnancy, low self-esteem and diminished performance at school.”<sup>140</sup> This was a finding shared by the UN Secretary-General’s Special Representative on Violence against Children, who has manifested that this “creates fear and insecurity among students, hampering their learning opportunities and well-being.” This, “in turn gives rise to anxiety and concerns in the family, sometimes fuelling pressure to keep children, particularly girls, out of school or to encourage school abandonment as a means of avoiding further violence.”<sup>141</sup>

101. The organization *Save the Children* has stressed the point that girls are particularly at risk of sexual abuse in schools from both peers and teachers. Sexual demands are often accompanied by threats of physical punishment, force, manipulation or promises of better grades or financial rewards. It also observes that few teachers have sufficient training to teach about sexuality, sexual abuse and child rights.<sup>142</sup> *Human Rights Watch* has observed that in addition to corporal punishment in the schools, which is still allowed in many countries, girls are at particular risk of sexual violence from both teachers and male students, and may be fondled, verbally degraded, assaulted and raped.<sup>143</sup>

102. Other entities have highlighted the violence perpetrated by the students themselves against children in the context of schools. The United Nations’ *World Report on Violence against Children* documents the common nature of sexual violence in schools, and how it is also committed by students against other students.<sup>144</sup> There are risk factors that can increase the sexual violence committed between students, including sexual diversity, disabilities, marginalization, the condition of migrants, and poverty.<sup>145</sup>

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<sup>140</sup> UNESCO, *Stopping Violence in School: A Guide for Teachers*. Available at: <http://unesdoc.unesco.org/images/0018/001841/184162e.pdf>

<sup>141</sup> United Nations, Special Representative of the Secretary-General on violence against children, Annual Report, A/66/227, August 2, 2011, paragraph 52.

<sup>142</sup> Save the Children, 10 essential learning points. Listen and Speak out against Sexual Abuse of Girls and Boys, Based on Country Reports from Save the Children in Canada, Colombia, Brazil, Nicaragua, Syria, South Africa, Mozambique, Rwanda, Uganda, Bangladesh, Nepal, Spain and Romania. Available at: [http://www.crin.org/docs/resources/publications/violence/Save Alliance Global Submission.pdf](http://www.crin.org/docs/resources/publications/violence/Save%20Alliance%20Global%20Submission.pdf)

<sup>143</sup> Human Rights Watch, *Easy Targets: Violence against Children Worldwide*, September 1, 2001, available at: <http://www.hrw.org/sites/default/files/reports/violence2001.pdf>

<sup>144</sup> Paulo Sergio Pinheiro, Independent Expert for the United Nations Secretary-General’s Study on Violence against Children, *World Report on Violence against Children*, p. 119. Available at: [http://www.crin.org/docs/UNVAC World Report on Violence against Children.pdf](http://www.crin.org/docs/UNVAC%20World%20Report%20on%20Violence%20against%20Children.pdf)

<sup>145</sup> See, IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Session, *Sexual Violence in Educational Institutions in the Americas*, October 24, 2011, requested by the Center for Reproductive Rights, Women’s Link Worldwide, *Fundación para la Defensa y Restitución de los Derechos Humanos* (FUNDERES) and the *Instituto Tecnológico Autónomo de México* (ITAM); IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Session, *Access to Education of Indigenous, Afrodescendent and Rural Women*, October 25, 2011, requested by CLADEM; IACHR, Continues...

103. On a number of occasions, UNICEF has mentioned another of the most serious consequences of sexual violence in educational institutions, where it asserted that sexual violence against school-age girls is not simply a grave violation of the right to personal liberty, but also a systematic violation of the right to receive a quality education, a right protected under Article 26 of the Universal Declaration of Human Rights and Article 28 of the Convention on the Rights of the Child.<sup>146</sup>

104. The Coordinator of Comprehensive Promotion of the Rights of the Child of the Inter-American Children's Institute has observed that "the existing research on the question of education and the intellectual development of children and adolescents who are victims of sexual violence, reveals that most are outside the regular education system or have been held back in school. Those who do go to school perform poorly and over half repeat the same grade more than once. Also, more than half drop out of school before completing elementary school."<sup>147</sup>

105. Some of the most severe consequences of sexual violence against women in educational institutions are those that have resulted in unwanted pregnancies. As Amnesty International observed, "Unintended pregnancy can have serious repercussions – unsafe abortions, suicides and family reactions that may include social isolation, ostracism or even murder. Unsafe abortions sought to end unwanted pregnancies also have many health complications, including the risk of death, for teenage girls."<sup>148</sup>

106. A document prepared by UNESCO observes that "Data on students' exposure to sexual violence in schools is limited, due to the fact that they are hesitant to report acts of sexual violence for fear of being shamed, stigmatized, not believed or retaliated against."<sup>149</sup> The Special Representative of the United Nations Secretary-General on Violence against Children came to the same conclusion, and wrote that:

Although statistical information on violence in schools is scarce and fragmented, available data confirm the serious magnitude of this phenomenon and its long-lasting consequences, both for children and their families and for the education system as a whole. Surveys

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Rapporteurship on the Rights of Women, Meeting of Experts and Workshop: *Access to Justice for Women Victims of Sexual Violence in the Area of Their Economic and Social Rights*, October 19, 2010.

<sup>146</sup> UNICEF, *Early Marriage. Child Spouses*, en, Innocenti Digest N. 7, March 2001, p. 9, available at: <http://www.unicef-irc.org/publications/pdf/digest7e.pdf>.

<sup>147</sup> Forselledo, Ariel Gustavo, "La explotación sexual comercial de niños, niñas y adolescentes en América Latina", in IIDH, *La protección de los derechos de los niños, niñas y adolescentes frente a la violencia sexual*, 2003, p. 28. Available [in Spanish] at: [http://www.iin.oea.org/La\\_proteccion\\_de\\_los\\_derechos.pdf](http://www.iin.oea.org/La_proteccion_de_los_derechos.pdf).

<sup>148</sup> Amnesty International, *Safe Schools. Every Girls Right*, 2008, p. 12 and 13. Available at: <http://www.amnesty.org/en/library/asset/ACT77/001/2008/en/c3fb8b67-db24-11dc-b4a6-0fa73a85cd41/act770012008eng.pdf>.

<sup>149</sup> UNESCO, *Stopping Violence in School: A Guide for Teachers*, Available at: <http://unesdoc.unesco.org/images/0018/001841/184162e.pdf>.

conducted in a number of countries have confirmed this pattern and, in some cases, have assisted in the reporting of emerging forms of violence, including a new form of sexual abuse in schools, referred to as “sex for grades.”<sup>150</sup>

107. However, some of the available data reveals important information about the dimension of this problem in schools. For example, a consultation implemented by the United Nations about violence against children in the countries of the Dominican Republic, Honduras, Guatemala, Mexico, Nicaragua, and Panama indicates that girls experience sexual coercion from their teachers, and are sometimes threatened that their grades will suffer if they refuse to give in to the teachers’ demands.<sup>151</sup> The Commission has also received information from Canada indicating that one out of four girls surveyed said that she had experienced sexual harassment in school.<sup>152</sup> Moreover, a study done in the United States found that in public schools, 83% of the girls in grades eight to eleven (from 12 to 16 years old) had experienced some form of sexual harassment.<sup>153</sup> Even at the university level, the United States Department of Justice recognized that for every 1,000 students, 35 are victims of some form of sexual violence within the university community.<sup>154</sup> A survey implemented in 10 Latin American countries revealed that girls and adolescents in Nicaragua, Honduras, Guatemala, Mexico, Panama and the Dominican Republic reported the existence of acts of sexual violence such as rape and sexual abuse in schools.<sup>155</sup>

108. Other international and national studies have underscored indigenous women’s particular exposure to sexual violence and the impact it has on the exercise of their right to education.<sup>156</sup>

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<sup>150</sup> United Nations, Special Representative of the Secretary-General on violence against children, Annual Report, A/66/227, August 2, 2011, para. 68.

<sup>151</sup> Study from the Secretary General of the United Nations about Violence against Children and Adolescents, *Report from the Regional Secretariat for the Study of Latin America, Cuba and the Dominican Republic in the Caribbean*, p. 35, (2005).

<sup>152</sup> International Plan: Learn Without Fear: The global campaign to end violence in schools, 2008, p. 23 and 25. Available at: <http://plan-international.org/learnwithoutfear/files/learn-without-fear-global-campaign-report-english/++atfield++file> and Amnesty International, *Safe Schools: Every Girl’s Right*, 2008, p. 12. Available at: <http://www.es.amnesty.org/noticias/noticias/articulo/las-ninas-son-victimas-de-hostigamiento-acoso-sexual-y-abusos-en-escuelas-de-todo-el-mundo/>

<sup>153</sup> Amnesty International. *Safe Schools. Every Girl’s Right*. 2008. Available at: <http://www.amnesty.org/en/library/asset/ACT77/001/2008/en/c3fb8b67-db24-11dc-b4a6-0fa73a85cd41/act770012008eng.pdf>

<sup>154</sup> U.S. Department of Justice. Office of Justice Programs, *Sexual Assault on Campus: What Colleges and Universities are doing about it*, 2005, p. 2.

<sup>155</sup> Center for Reproductive Rights, Women’s Link Worldwide, *Fundación para la Defensa y Restitución de los Derechos Humanos* (FUNDERES) and the *Instituto Tecnológico Autónomo de México* (ITAM), *Sexual Violence in Education Institutions: Mexico, Colombia, Ecuador and Bolivia* (2011) citing *Violence against Children, Girls, and Adolescents, Report related to Latin America in the framework of the Global Report of the United Nations* (2006).

<sup>156</sup> See, IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Session, *Sexual Violence in Educational Institutions in the Americas*, October 24, 2011, requested by the Center for Reproductive Rights, Women’s Link Worldwide, *Fundación para la Defensa y Restitución de los Derechos Humanos* (FUNDERES) and the *Instituto*  
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109. For example, the UN Secretary-General's special study on violence against children observed that sexual violence against children can involve discrimination and have the effect of cutting off rural children, indigenous children, Afro-descendant children, and pregnant teens from access to education.<sup>157</sup> Research done in Chiapas, México, found that:

Not having a local school or having a school that does not go beyond the second or third grade may require children to walk long distances on an empty stomach just in order to get to the nearest classroom; all too often the teacher hasn't even arrived. Girls are under the constant threat of possible sexual harassment or sexual assault on the way to school or in the classroom itself. To pursue secondary studies, children have to leave the community. Parents, who sometimes make enormous economic sacrifices to send their sons to the city to continue with their studies, will rarely send their daughters for fear of the "immorality" of the mestizo cities. Girls are also the victims of discrimination in the classroom: they are always an extreme minority, especially in the later grades, when they are already old enough for the boys to "tease" and are embarrassed by the biology classes in fifth and sixth grade. At times it seems that they are just there temporarily, tolerated but not present in every respect. The attitude of many teachers reinforces this sensation: consciously or unconsciously, they do not care as much whether the girls participate or take an interest in their intellectual talents; their interest in encouraging talented boys to pursue their studies is less fulsome in the case of talented girls.<sup>158</sup>

110. The Commission observes that in the design of interventions to address sexual violence taking place in the education and health sectors, States should pay particular attention to the situation of indigenous women and other groups of women at risk to human rights violations on the basis of their race and ethnicity, among other factors which have been historically used to discriminate. In the identification of actions to prevent, investigate, and sanction these acts, it is also important to consult indigenous women and these groups, and the organizations that represent them, with the goal of ensuring interventions that are sensitive to their world view and reflect an intercultural perspective.

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*Tecnológico Autónomo de México (ITAM)*; IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Session, *Access to Education of Indigenous, Afrodescendent and Rural Women*, October 25, 2011, requested by CLADEM; IACHR, Rapporteurship on the Rights of Women, Meeting of Experts and Workshop: *Access to Justice for Women Victims of Sexual Violence in the Area of Their Economic and Social Rights*, October 19, 2010.

<sup>157</sup> United Nations, *Estudio del Secretario General sobre la violencia contra los Niños, Niñas y Adolescentes en América Latina*. Hoja de Datos. Available [in Spanish] at: [http://www.unicef.org/lac/hoja1\(1\).pdf](http://www.unicef.org/lac/hoja1(1).pdf)

<sup>158</sup> *Las Mujeres Indígenas de Chiapas de Cara a la Escuela: Reflexiones sobre el Derecho a la Educación, la Aculturación y la Resistencia Cultural Indígena*. Report published by INAREMAC (Working papers, San Cristóbal de Las Casas, Chiapas, 1995), available [in Spanish] at: [www.julesfalquet.files.wordpress.com/2010/05/reporte-inaremac.doc](http://www.julesfalquet.files.wordpress.com/2010/05/reporte-inaremac.doc)

111. The IACHR also considers appropriate to highlight individual petitions it has received illustrating the severity of the problem of discrimination and violence in education. On March 12, 2002, the Commission published a friendly settlement report in the case of *Mónica Carabantes Galleguillos*, about a student expelled from a private school subsidized by the Chilean State because she was pregnant.<sup>159</sup> When the family challenged her expulsion in court, the action taken by the school was upheld by the courts right up to the Supreme Court. The settlement involved the enactment of laws on pregnant students' access to education, the State's acknowledgement of the violations denounced, and a fellowship for the victim to pursue a university degree.

112. The IACHR also admitted the case of *Paola del Rosario Guzmán Albarracín and next of kin*<sup>160</sup> which alleged that the Ecuadoran State was internationally responsible for acts of harassment and sexual abuse, a lack of medical attention, and delays in the criminal proceedings that were detrimental to Paola del Rosario Guzmán Albarracín, age 14. The petitioners alleged that the vice principal of the school where Paola del Rosario was studying abused his position of authority to sexually harass the victim, as a result of which she committed suicide. The petitioners further alleged that the judicial and administrative systems allowed these acts to go unpunished. Regarding this case, the Committee against Torture observed that it was "closely following the proceedings of the *Paola Guzmán v. Ecuador*" case and has expressed its "deepest concern about the numerous and consistent reports received describing the scale of the problem of abuse and sexual violence against minors in educational establishments in Ecuador."<sup>161</sup> According to a study done with adolescent women who were victims of sexual violence in Ecuador, more than a third (36.9 per cent) named teachers as the perpetrators."<sup>162</sup>

113. Although scarce and random, the existing data and analyses on sexual violence in the schools demonstrate a disturbing pattern which has been buried among the regional and international concerns about gender violence. Until relatively recently, the emphasis was on child abuse within the family; for some reason, sexual violence in the school has not been given the attention that the subject deserves. The States have to take a comprehensive approach when addressing the problem of violence in schools, and not focus entirely on the issue of violence against children. This will be a fundamental factor in crafting adequate and effective prevention policies.

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<sup>159</sup> IACHR, Report No. 33/02, Petition 12.046, Friendly Settlement, *Mónica Carabantes Galleguillos* (Chile), March 12, 2002.

<sup>160</sup> IACHR, Report No.76/08, Petition1055-06, Admissibility, *Paola del Rosario Guzmán Albarracín and next of kin*(Ecuador), October 17, 2008..

<sup>161</sup> Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention. Concluding observations of the Committee against Torture: Ecuador, CAT/C/ECU/CO/4-6, December 7, 2010, para. 18.

<sup>162</sup> Plan International, *Learn Without Fear: the global campaign to end violence in schools*, 2008, p. 23. Available at: <http://plan-international.org/learnwithoutfear/files/learn-without-fear-global-campaign-report-english>

## B. Sexual violence in health-care institutions

114. The IACHR has reported on the various barriers obstructing women's access to health services. These barriers may be a function of structural factors, laws and policies regulating these services. They may also be a function of discriminatory attitudes and stereotypes about women that have taken hold in the family, community and health-care institutions.<sup>163</sup> These barriers offer an appropriate scenario for the problem of sexual violence against women. Several studies and international investigations, and petitions received by the IACHR show that this is a problem which is in the increase but gravely hidden.

115. The Commission manifests its concern over the scarcity of information available in regards to acts of sexual violence that take place in the health sector. These facts are rarely reported and the States are not undertaking adequate strategies to duly diagnose the magnitude of this problem.

116. There is an undisputable link between discriminatory practices and the reproduction of violence against women. The IACHR has repeatedly observed that gender stereotypes persist within the health sector. Laws, policies or practices that require women to get third-party authorization in order to get medical treatment and that allow forms of coercion such as a woman's sterilization without her consent, serve to perpetuate stereotypes that advance the notion of women as vulnerable, and as persons incapable of adopting autonomous decisions regarding their health. In fact, situations in which women are denied medical attention due to their sex, civil status, and educational level, constitute forms of discrimination in the access to these services. Equally, the policies, practices, and gender stereotypes that do not respect the right of women to confidentiality, can constitute barriers in the access to maternal health care services, particularly in regards to adolescents. These stereotypes, socio-cultural patterns, and discriminatory practices need to be addressed as part of an integral strategy to confront sexual violence which occurs in health institutions.

117. Some international studies illustrate the dynamics of the problem of sexual violence in the health sector.

118. For example, the 2003 *World Report on Violence and Health* observed that a study of physicians disciplined for sexual offences in the United States found that the number of cases had increased from 42 in 1989 to 147 in 1996, with the proportion of all disciplinary action that was sex-related rising from 2.1% to 4.4% over the same period.<sup>164</sup>

119. Additionally, the United Nations Special Rapporteur on Torture highlighted before the United Nations General Assembly the neglect and abuse that

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<sup>163</sup> See, IACHR, *Access to Maternal Health Care from a Human Rights Perspective*.

<sup>164</sup> PAHO, WHO, *World Report on Violence and Health*, 2002. Available at: [http://whqlibdoc.who.int/publications/2002/9241545615\\_chap6\\_eng.pdf](http://whqlibdoc.who.int/publications/2002/9241545615_chap6_eng.pdf)

persons with disabilities experience in the institutions that house them. He reported that they are frequently subjected to unspeakable indignities, neglect, severe forms of restraint and seclusion, as well as physical, mental and sexual violence. The Rapporteur said that such practices are committed in both public and private institutions, remain invisible and are not recognized as torture or other cruel, inhuman or degrading treatment or punishment.<sup>165</sup> In Canada, a 1991 state survey found that 8 percent of women in Ontario had been sexually abused or harassed by physicians.<sup>166</sup> At least 9% of the physicians had raped a patient; nurses reported having witnessed other nurses verbally or physically abusing other patients, but not sexual abuse.<sup>167</sup>

120. In regards to Argentina in particular, it has been documented that at the Braulio A. Moyano Psychiatric Hospital (Moyano Hospital), a neuropsychiatric hospital for women in Buenos Aires with more than 1,000 beds, investigators documented -according to statements made by authorities and various women institutionalized there- accounts of sexual abuse of women perpetrated by staff and by people outside the institution.<sup>168</sup> Furthermore, a study done on Mexico by *Disability Rights International* and the Mexican Commission for the Defense and Promotion of Human Rights documents a number of cases of sexual violence committed against disabled women and girls, and the under-recording of this population and of the cases of sexual violence. In the report, the following stands out:

In 2010, Mexican authorities identified another institution, the Drug and Alcohol Rehabilitation Institute Hospital Center “Saint Tomás, Los Elegidos de Dios,” where women and girls were subject to sexual abuse and trafficking. The Special Prosecutor for the Abduction Office of the District Attorney of the Federal District, reportedly found 107 people, from 14 to 70 years old, living in “overcrowded facilities” in “extreme conditions of abuse and sexual exploitation.” At another shelter, there have been reports of children being detained until age 18 and abused and reports of authorities failing to respond to the situation. A local newspaper also reported on these allegations, stating that there have been women who claim to have been raped and forced to give up their babies, while another woman has said that she was forced to abort.<sup>169</sup>

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<sup>165</sup> *Torture and other cruel, inhuman or degrading treatment or punishment*, Note from the Secretary-General, U.N. Doc. A/63/175, July 28, 2008, by Manfred Nowak, paragraphs 37-41; IACHR, Report No. 71/03, Petition 12.191.

<sup>166</sup> Mc Phedran M, *Sexual abuse in the health professions-who's counting?* World Health Statistics Quarterly. Rapport Trimestriel de Statistiques Sanitaires Mondiales. 1996; 49:154-7.

<sup>167</sup> Mc Phedran M, *Sexual abuse in the health professions-who's counting?* World Health Statistics Quarterly. Rapport Trimestriel de Statistiques Sanitaires Mondiales. 1996; 49:154-7.

<sup>168</sup> Mental Disability Rights International and Centro de Estudios Legales y Sociales, *Vidas arrasadas: la segregación de las personas en los asilos psiquiátricos argentinos*, 2007. Available [in Spanish] at: [http://www.cels.org.ar/common/documentos/mdri\\_cels.pdf](http://www.cels.org.ar/common/documentos/mdri_cels.pdf)

<sup>169</sup> Disability Rights International and Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Abandoned & Disappeared: Mexico's Segregation and Abuse of Children and Adults with Disabilities*, 2010, p. 28. Available at: <http://www.disabilityrightsintl.org/work/country-projects/mexico/>

121. The Commission has also received individual petitions illustrating the dimensions of this problem.

122. As for incidents of sexual violence, the IACHR received a petition on April 23, 1998, for alleged violations by the Peruvian State because of the rape of *M.M.* by a physician employed by the Ministry of Health in a regional public hospital. The parties to this case reached a friendly settlement in which the State acknowledged its international responsibility for the violations that occurred; the settlement also called for other measures, including punishment of the physician, monetary compensation for the victim and a pledge on the State's part to introduce changes in the health system.

123. On September 7, 2009, the IACHR also agreed to hear the case of *Samanta Nunes da Silva*, in which the petitioner maintained that Samanta Nunes da Silva – a 16 year old girl - arranged a medical appointment with a private orthopedic physician for October 15, 1997, to treat the back pain she was experiencing. The petitioner alleges that during the appointment, the physician sexually molested the victim: “the doctor ordered Samanta to undress and fondled her breasts and her private areas – including her anus and vagina – complimenting her and asking her silly questions.”<sup>170</sup> The focus of the petitioner's arguments before the IACHR was the lack of adequate access to justice and an unequal protection of the law because of her gender, race, age and economic situation. In this context, the petitioner stated that during the criminal trial of the orthopedic physician the minimum standards of due process were not observed and that she was discriminated against. These defects were especially serious in view of the gender, race, minor age and economic situation of Samanta Nunes da Silva, which obliged the State to provide special protection and heightened the State's duty to act with the necessary due diligence to prosecute and punish the actions involved.

124. In regards to other related forms of violence against women, the IACHR admitted the case of *María Mamérita Mestanza* of Peru, in which the petitioners alleged that the victim was forced to undergo a surgical sterilization as a result of which she died.<sup>171</sup> She had also been harassed and threatened by the health care personnel at the same establishment and told that she would be reported to the police if she refused to undergo the operation. The parties reached a friendly settlement in which the State acknowledged its responsibility for violating the victim's right to life, her right to physical and psychological integrity, her right to humane treatment, her right to equal protection by the law and her right to live free of violence. The State's acknowledgement of responsibility was one of a number of measures aimed at preventing a recurrence of the events.<sup>172</sup>

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<sup>170</sup> IACHR, Report No. 93/09, Petition 337-03, Admissibility, *Samanta Nunes da Silva* (Brazil), September 7, 2009, paragraph 12.

<sup>171</sup> IACHR, Report No. 71/03, Petition 12.191, Friendly Settlement, *María Mamérita Mestanza Chávez* (Peru), October 10, 2000.

<sup>172</sup> IACHR, Report No. 71/03, Petition 12.191, Friendly Settlement, *María Mamérita Mestanza Chávez* (Peru), October 10, 2003.

125. The IACHR also admitted the case of *I.V.* related to Bolivia, in which the petitioners argued that while in a public hospital, the alleged victim underwent a surgical procedure in which her tubes were tied. The procedure was performed without the victim's informed consent. It therefore amounted to nonconsensual sterilization, in which the victim permanently lost her reproductive ability. The petitioners alleged that as a result of the unwarranted and undue delays in the criminal case, no one has ever been made to answer for happened and *I.V.* is still suffering the physical and psychological consequences of the surgery.<sup>173</sup>

126. The IACHR closes this analysis by highlighting the lack of data on health-care providers' abuse of female patients is the most frustrating aspect of the problem and proves the point that States must undertake and enforce policies requiring evaluation of medical and hospital performance in order to establish just how pervasive this problem is. Similarly, the IACHR underscores the need for regulations to protect patients from gender violence and prevent events of this kind. Regulations calculated to prevent the molestation of women in health-care institutions are rare and the systems for processing complaints of such conduct are virtually non-existent.

#### **IV. CHALLENGES TO ACCESS JUSTICE**

127. The Commission has highlighted that a key component of the States' duty to act with due diligence in relation to acts of violence against women includes the guarantee of an adequate and effective access to justice. This duty implicates making accessible judicial resources which are simple, rapid, adequate, and impartial, without discrimination, to investigate, sanction and offer reparations for these, thereby preventing impunity.<sup>174</sup> The Commission has highlighted that an adequate access to justice is not only composed of the formal existence of judicial avenues, but also entails that these are effective to investigate, sanction and offer reparations for the reported violations.

128. On numerous occasions, the IACHR has received information highlighting the States' efforts to enact laws and reform the administration of justice so as to be able to effectively address cases of violence against women. The following are among the many initiatives adopted by the States to improve the response to women victims of violence and their access to justice: criminalizing certain behaviors; eliminating certain mitigating circumstances; creating special courts and special administrative units; training programs for officers of the court and law enforcement personnel; and special units to receive cases.

129. Nevertheless, these positive developments are not materializing in the form of effective judicial protection when the violence that victimizes women happens in the areas in which economic, social and cultural rights are exercised, such as education and health.

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<sup>173</sup> IACHR, Report 40/08, Petition 270-07, Admissibility, *I.V.*, Bolivia, June 23, 2008.

<sup>174</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 5.

130. This void can be associated to two interrelated factors. On the one hand, sexual violence continues to be regarded as a private matter that has to be settled within the family or the institution; notions that negatively influence the actions of public officials in the education and health sectors. In combination with this problem, there is an absence of adequate and effective justice mechanisms that facilitate and promote the reporting of complaints and protect victims and their family members. The existing mechanisms are affected by irregularities in all procedural phases: the complaint, the investigation and the sanction.

131. The social tolerance to the problem of sexual violence is an obstacle of particular relevance. The IACHR observes that in some cases, sexual violence in the school is regarded as the natural order of things,<sup>175</sup> as part of discipline and punishment.<sup>176</sup> The Commission reminds States that Article 6 of the Convention of Belém do Pará provides that States have an obligation to address stereotypes and social and cultural practices that foster discrimination and sexual violence against women. One of the complications is that cases of sexual violence that happen in the school are often regarded as the institution's problem that has to be settled without the State's intervention.<sup>177</sup> A sweeping research study on Bolivia described the situation in the following terms:

Formed as a kind of family, a teachers' union becomes a private sphere in which to settle disputes and come to agreements in connection with episodes of sexual violence and the consequences and procedures that these acts set in motion (...) 'Normally, the cases brought to our attention are those involving school officials; cases involving teachers are settled at the district level, or generally within the high school itself.' (...) On the matter of union loyalties, teachers who have engaged in serious misconduct, such as rape, receive the same light punishment they would have received had they committed a lesser offense. The punishment is something like transferring the teacher to another school, generally to a more remote school, more rural (...) the vulnerability of female teachers and girls is greater in rural areas.<sup>178</sup>

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<sup>175</sup> As reported in the study by Pamela Calla (coordinator), *Rompiendo Silencios, Una aproximación a la violencia sexual y al maltrato infantil en Bolivia*, UNICEF, pág. 16. Available [in Spanish] at: [http://www.unicef.org/bolivia/Rompiendo\\_Silencios.pdf](http://www.unicef.org/bolivia/Rompiendo_Silencios.pdf)

<sup>176</sup> According to Amnesty International, as of 2006 nearly half the countries in the world had not prohibited corporal punishment in schools. In Haiti, for example, Amnesty International researchers found that everyone they interviewed believed that violence in schools is widespread, but there was no specific information on how prevalent it is. It is a taboo subject and very few cases have been reported. Although physical punishment is banned in Haitian schools, corporal punishment was commonly reported, including the use of whips, beatings with electric cables, and forcing children to kneel in the sun. Other forms of violence described by interviewees included food deprivation, sexual abuse of girls by teachers and administrative staff. See, Amnesty International, *Safe Schools: Every Girl's Right*. Available at: <http://www.amnesty.org/en/library/asset/ACT77/001/2008/en/c3fb8b67-db24-11dc-b4a6-0fa73a85cd41/act770012008eng.pdf>.

<sup>177</sup> Professor Jorge Luis Silva Méndez, *Procedimiento para cesar al personal de la Secretaría de Educación Pública que acosa y/o abusa sexualmente de los alumnos/as*, ICEV: Revisa d'Estudis de la Violència, p. 4.

<sup>178</sup> Pamela Calla (coordinator), *Rompiendo Silencios, Una aproximación a la violencia sexual y al maltrato infantil en Bolivia*, p. 234.

132. This social tolerance is aggravated by the limited understanding of the real dimensions and ramifications of the problem of sexual violence. Sexual violence tends to be reduced to rape, which contributes to its under-recording by many educational institutions. In this sense, the Commission recalls that a number of international organizations, among them the World Health Organization, have established broad definitions of sexual violence encompassing "any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work."<sup>179</sup>

133. Sexual abuse and violence by health-care providers is essentially rendered invisible because the women victims do not report these incidents and there are no procedures, protocols and mechanisms in place to compile complaints or claims about the quality of the medical service in hospitals.

134. This section initiates a discussion regarding the principal gaps and weaknesses in the investigation, prosecution and punishment of sexual violence against women, girls and adolescent girls in educational and health-care institutions. Particular emphasis is placed on the challenges for the prevention, investigation and punishment of these crimes. Also discussed are the special requirements in terms of access to justice in such cases. The Commission has as its objective with this preliminary analysis to motivate State actions to obtain an integral and complete assessment of this problem and its occurrence in the fields of education and health, and the implementation of interventions to guarantee an access to justice for women when they are victims of sexual violence.

**A. Problems with the filing of complaints, the investigation, and the sanction of acts of sexual violence**

135. In the first place, the Commission observes that the problems in the reporting, investigation and sanction of acts of sexual violence against women in educational and health-care institutions are attributable to a variety of factors.

136. First, although some countries have instituted procedures by which to detect and prevent sexual violence in the schools, the competent agencies do not apply them in adequate fashion. Second, the lack of regulations establishing witness/victim protection systems or the failure to enforce the existing regulations makes filing a complaint problematic. Third, discriminatory socio-cultural patterns still exist that set little store by the victim's version of what happened and require corroboration before moving forward with investigations. Fourth the conflict of competence between administrative law and criminal law makes it difficult to get the acts under investigation punished. These challenges are discussed in the following order: a) filing complaints; b) investigation, and c) punishment.

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<sup>179</sup> World Health Organization. *Violence and Health, Chapter 6, Sexual Violence, Capítulo 6*, p. 161. Available at: [http://whqlibdoc.who.int/publications/2002/9241545615\\_chap6\\_eng.pdf](http://whqlibdoc.who.int/publications/2002/9241545615_chap6_eng.pdf)



### Deficiencies with respect to the filing of complaints

137. One of the most important obstacles in the access to justice for victims of sexual violence in the spheres of education and health is the lack of safe and secure places to encourage the filing of complaints; the absence of protection measures for women, girls, and the family members that report these crimes; and the scarce information available about the appropriate administrative and/or judicial mechanisms. The problems confronted by women to report acts of sexual violence in these spaces are symptomatic of the challenges to access justice that persist in regards to acts of violence against women throughout the Americas. These factors contribute to the under-utilization of the justice system by sexual violence victims in educational and health institutions, particularly due to a mistrust in that the available justice mechanisms can remedy the acts suffered.

138. In regards to the deficiencies registered in the complaint stage, the MESECVI has reported that the majority of States say they have protective measures for women who are victims of violence, but do not indicate whether those measures apply to family members and witnesses as well.<sup>180</sup> Even if such measures are in place, the hierarchical relationship between professors and students and health-care professionals and patients is one of the decisive factors in explaining why so few complaints are filed; that and the fear of reprisals when these acts are reported. And so States must be careful to apply the protection systems in place for women who file complaints and ensure that the administrative procedures temporarily remove the teacher or health-care professional under investigation.

139. In the area of education in particular, the Commission observes that teachers can use grades and the students' fear of being thrown out of school or suspended as a way to discipline or intimidate children and adolescents when they report these types of acts. One person in Bolivia testified that in said country, professors "bring up the question of grades [...] We often keep our mouths shut for fear of being thrown out of school or suspended."....."The fear of punishment, then, is part of the game of keeping quiet, which only makes the teacher feel more powerful and reinforces his sense of his own masculinity and his sense of the student's subordination."<sup>181</sup>

140. The absence of complaint of sexual violence incidents is a problem across the region. In Argentina, for example, the President of Federal Trial Court No. 1 of La Plata observed that in Argentina, "about three out of every one hundred reported cases of sexual abuse of minors ends with a conviction. Of all the crimes in the Criminal Code, sexual abuse of minors is the least likely to be punished. When one considers that at most only 10 percent of the child sex abuses cases committed are ever reported, then we have a total of three convictions out of every 1000 cases."<sup>182</sup> In Peru, figures from the Ministry of

<sup>180</sup> Inter-American Commission of Women, Hemispheric Report. Adopted at the Second Conference of States Party, held in Caracas, Venezuela, July 9 and 10, 2008.

<sup>181</sup> *Rompiendo Silencios, Una aproximación a la violencia sexual y al maltrato infantil en Bolivia*, UNICEF, p.16. Available [in Spanish] at: [http://www.unicef.org/bolivia/Rompiendo\\_Silencios.pdf](http://www.unicef.org/bolivia/Rompiendo_Silencios.pdf).

<sup>182</sup> La Nación, *El abuso a menores, casi sin condenas*, Buenos Aires, August 1, 2008. Available [in Spanish] at: <http://www.lanacion.com.ar/1035527-el-abuso-a-menores-casi-sin-condenas>.

Women's Issues and Social Development show that fewer than half (46.7%) of the children abused in schools ever report their abuse to an adult.<sup>183</sup> *UN Women* points out that "across 57 countries, on average 10 percent of women say they have experienced sexual assault, but of these only 11 percent reported it. This compares to a similar incidence of robbery, on average 8 percent, but a reporting rate of 38 percent."<sup>184</sup>

141. Another factor that explains the under-reporting is the failure to comply with the duty to report by public officials where reporting is required. Even though most countries in the region have a provision in their codes of criminal procedure that requires public officials to report any criminal acts of which they have knowledge,<sup>185</sup> the IACHR has found that school officials are not always aware of these reporting requirements and opt instead to try to settle the dispute through negotiations between the victim's parents and the accused. Because of their ignorance of the law, their fear of the consequences of filing a formal complaint, and their misconceptions about professional confidentiality, school officials and fellow teachers often do not report the cases of which they are aware.

142. Despite these obstacles, parents tend to resolve the cases in a private fashion, opting instead to settle the matter on their own through a settlement reached with the school, the accused or both. The IACHR has received information to the effect that 50% of the cases in Jamaica are dismissed before they even go to trial; one reason for doing so are the financial settlements between the families and the accused, especially when the victims are children.<sup>186</sup>

143. Another major deterrent when it comes to reporting cases of sexual violence committed against girls is that their allegations tend not to be believed; they thus become victims of discrimination on two fronts: age and gender. For example, UNICEF has documented how in Chile, "those who hear the accounts given by children and adolescents who are victims of sexual abuse tend not to believe them. Their credibility is called into question, and their stories are often classified as children's fantasies." The report concludes that one of the main challenges here is winning the trust of the child or adolescent when the complaint is reported; this means that the personnel involved must be specialists in crimes of this type with a firm command of the rights of children and

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<sup>183</sup> Olga Bardales Mendoza, Elisa Huallpa Arancibia, *Maltrato y Abuso Sexual en Niños, Niñas y Adolescentes*, study done in San Martín de Porres, Cuzco and Iquitos. Ministry of Women's Issues and Social Development, 2005. Available [in Spanish] at: [http://www.mimdes.gob.pe/files/PROGRAMAS%20NACIONALES/PNCVFS/maltrat\\_nna\\_smp.pdf](http://www.mimdes.gob.pe/files/PROGRAMAS%20NACIONALES/PNCVFS/maltrat_nna_smp.pdf).

<sup>184</sup> United Nations Entity for Gender Equality and the Empowerment of Women, UN Women, *In Pursuit of Justice. Progress of the World's Women, 2011-2012*, p. 51.

<sup>185</sup> The reporting requirement is stipulated in various laws in the region. In general, the laws provide that public officials shall advise the authorities any unlawful act of which they have knowledge by virtue of their functions. Article 12 of the Rules to Prevent, Investigate and Punish Sexual Harassment in the Judicial Branch in Costa Rica provides that this same obligation applies as well to colleagues or superiors of any staff member alleged to be a victim of sexual harassment.

<sup>186</sup> Rapporteurship on the Rights of Women, Meeting of Experts and Workshop: *Access to Justice for Women Victims of Sexual Violence in the Area of Their Economic and Social Rights*, October 19, 2010, p. 4.

adolescents.<sup>187</sup> As guideline 2(d) of the Guidelines on Justice for Child Victims and Witnesses of Crime of the International Bureau for Children’s Rights states, “Age should not be a barrier to a child’s right to participate fully in the justice process.”<sup>188</sup>

144. These problems are aggravated by the scarcity of adequate complaint mechanisms and the lack of periodic supervision of the performance of these institutions, including those public and private. In regards to the particular, the Committee on the Rights of the child has concluded that “[m]uch of the violence perpetrated against children goes unchallenged both because certain forms of abusive behavior are understood by children as accepted practices, and due to the lack of child-friendly reporting mechanisms. For example, they have no one to whom they can report in confidence and safety about experienced maltreatment, such as corporal punishment, genital mutilation or early marriage, and no channel to communicate their general observations to those accountable for implementation of their rights.”<sup>189</sup>

145. The Commission highlights the importance of joining the establishment of complaint mechanisms with interventions to guarantee the privacy of the women who report these crimes and the confidentiality of the facts alleged. The victims should be able to opt for the serve of their identity if they so prefer. Additionally and in conformity with the Istanbul Protocol,<sup>190</sup> States should guarantee that the obligation of confidentiality and to reserve identify is guaranteed, not only by justice officials, but also by the doctors in charge of conducting the exams:

If in cases of sexual abuse the victim does not wish the event to be known due to sociocultural pressures or personal reasons, the physician who carries out the medical examination, investigative agencies and the courts have an obligation to cooperate in maintaining the victim’s privacy.<sup>191</sup>

146. Several international organizations have pronounced over the obligation to guarantee the confidentiality of the complaint filed regarding sexual violence. The Guidelines on Justice for Child Victims and Witnesses of Crime, prepared by the

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<sup>187</sup> UNICEF, *Niños, niñas y adolescentes víctimas de delitos sexuales, en el marco de la reforma procesal penal, Informe final*, 2006, Chile, pp. 51, 110 and 111. Available [in Spanish] at: [http://www.unicef.cl/unicef/public/archivos\\_documento/173/Informe%20final.pdf](http://www.unicef.cl/unicef/public/archivos_documento/173/Informe%20final.pdf).

<sup>188</sup> Available at: [http://www.iccnw.org/documents/IBCRGuidelinesMar2003\\_e.pdf](http://www.iccnw.org/documents/IBCRGuidelinesMar2003_e.pdf).

<sup>189</sup> Committee on the Rights of the Child, General Comment No. 12, *The right of the child to be heard*, CRC/C/GC/12, July 20, 2009, paragraph 120.

<sup>190</sup> I/A Court H.R. *Case of González et al (“Cotton Field”) V. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 502.

<sup>191</sup> Office of the United Nations High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* or Istanbul Protocol, para. 217.

International Bureau for Children’s Rights, also provide that States have an obligation to ensure that the identity of child victims of crime will remain confidential:

Any information relating to a child’s involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process.<sup>192</sup>

147. In sum, the Commission considers as a priority issue that the protocols and directives from education and health institutions incorporate the guarantee of confidentiality in the report of sexual violence acts, including the option to keep in reserve the identity of the victim. This guarantee should be implemented simultaneously with effective and reliable mechanisms in order for sexual violence victims to receive the psychological, medical, and legal attention in the process of presenting their complaint; the implementation of special protection measures in the case of girls; and the guarantee that women filing the complaint have the necessary information to present their complaints in a fashion that is dignified and private, free from all forms of revictimization. This is a fundamental aspect for States to prevent, investigate, sanction, and offer reparations for sexual violence acts that occur in the framework of these institutions.

#### **Problems with investigation**

148. The obstacles that arise in the complaint stage tend to continue in the investigation phase. The exclusive emphasis in the physical evidence, and the scarce credibility granted to the declaration of the victims continue being, from a process point of view, two of the major challenges for the access to justice of women that have overcome numerous limitations to report these crimes. Additionally, this phase is affected by the inadequate management of the evidence, interrogatories that are revictimizing and traumatic and the lack of sensibility toward the victims.<sup>193</sup>

149. In the administrative-law proceedings conducted into events of this kind requirements subsist of corroboration of the testimony of the victim that are contrary to the international standards. This was one of the findings of researchers from the Law Department of the *Instituto Tecnológico Autónomo de México* when examining the ineffectiveness of the process to terminate personnel of the Secretariat of Public Education who sexually harass and/or molest students. The study concluded that “the lack of

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<sup>192</sup> International Bureau for Children’s Rights, Guidelines on Justice for Child Victims and Witnesses of Crime, Guideline 6(b), para. 217, available at: [http://www.iccnw.org/documents/IBCRGuidelinesMar2003\\_e.pdf](http://www.iccnw.org/documents/IBCRGuidelinesMar2003_e.pdf).

<sup>193</sup> Center for Reproductive Rights, Women’s Link Worldwide, *Fundación para la Defensa y Restitución de los Derechos Humanos* (FUNDERES) and the *Instituto Tecnológico Autónomo de México* (ITAM), *Sexual Violence in Education Institutions: Mexico, Colombia, Ecuador and Bolivia* (2011); IACHR, Rapporteurship on the Rights of Women, Meeting of Experts and Workshop: *Access to Justice for Women Victims of Sexual Violence in the Area of Their Economic and Social Rights*, October 19, 2010.

corroboration based on witness testimony is why the SEP loses most of the cases it brings seeking authorization to terminate (teaching staff).<sup>194</sup>

150. Many prosecutors and judges in the region still harbor personal opinions, assumptions and prejudices that they bring into the courtroom and that have a discriminatory effect when the time comes to decide whether the evidence is sufficient to investigate or rule on cases of violence against women. Little credibility is still attached to the female victim's account of what happened, as evidence by the ruling delivered by the Sonsonate Trial Court in El Salvador,<sup>195</sup> which cleared a physician accused of raping a hospital patient who was a minor at the time, because it found that her testimony could have been influenced by the medication she was taking for her epilepsy. This despite the fact that the physician had to be prosecuted *in absentia*, as he fled when the complaint was filed.<sup>196</sup>

151. Many judges and courts in the region are still violating the obligation of due diligence, as evidenced by the case of the rape of a 13 year-old girl in Bolivia, which went unpunished because the statute of limitations expired as a result of the unwarranted and protracted delays and delaying tactics on the part of the Public Prosecutor's Office.<sup>197</sup>

152. Prosecution is also obstructed by the emphasis that some judges place on formalities and technicalities over substance, as a result of which many crimes go unpunished. An example is the Colombian Supreme Court's acquittal of two men accused of raping a minor. The Court cited the "congruence principle" (the lower court judge did not convict the accused of the same crime that the plaintiff had charged) as grounds for not convicting the two men.<sup>198</sup>

153. In the case of *Inés Fernández Ortega et al. v. Mexico*<sup>199</sup> the Inter-American Court of Human Rights explicitly sets out a number of factors that the State must

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<sup>194</sup> Professor Jorge Luis Silva Méndez, *Procedimiento para cesar al personal de la Secretaría de Educación Pública que acosa y/o abusa sexualmente de los alumnos/as*, ICEV: Revisa d'Estudis de la Violència, p. 18.

<sup>195</sup> El Salvador, Criminal Case No. 09-08-TSP-08-1. Available [in Spanish] at: <http://www.jurisprudencia.gob.sv/VisorMLX/Documento/Documento.aspx?Data=EGC2EtaRivOCrLmnuo2A51aYy/GYN5XOmGA0wYDKkYsceK4juGkFvcCZcujHnXvAbOSOR+nING0m+yLX7uGWbOngUzG2FzHO03EEEXiMd/9YX3FhGRi nDUCLlckf9R9OC1UarSnkYG9XRpORxl/VXHhidwkeYO1C+YBdhr1neGP0UDIR9ohSJtAViLuViE9tMQ==>.

<sup>196</sup> Marcos Salguero, *Ordenan detener a médico por violación, Práctica Médica Salvadoreña*, July 10, 2007. Available [in Spanish] at: [http://practicamedicasalvadorea.blogspot.com/2007\\_07\\_01\\_archive.html](http://practicamedicasalvadorea.blogspot.com/2007_07_01_archive.html).

<sup>197</sup> Criminal Trial Court No. 4 – Santa Cruz- 14/10/2009. Available [in Spanish] at <http://www.articulacionfeminista.org/a2/index.cfm?fuseaction=MUESTRA&codcontenido=492&plcontempl=3&aplicacion=app003&cni=3&opc=4&cni3=3>.

<sup>198</sup> Colombia, Supreme Court of Justice, Chamber of Criminal Cassation. M.P: Jorge Luis Quintero Milanes. Nº Radicado: 2864903/06/2009. Available [in Spanish] at: <http://www.articulacionfeminista.org/a2/index.cfm?fuseaction=MUESTRA&codcontenido=200&plcontempl=3&aplicacion=app003&cni=3&opc=4&cni3=14>.

<sup>199</sup> I/A Court H.R., *Case of Inés Fernández Ortega et al V. Mexico*, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 30, 2010, Series C No. 215.

take care to ensure in investigations of sexual violence. The Court highlights that authorities in charge of investigating an act of sexual violence undertake this inquiry with determination and efficacy, considering the duty of society to reject violence against women, and the obligations of the State to eradicate and to build the trust of victims in the state institutions in charge of their protection. Additionally, the investigation of sexual violence cases should prevent the revictimization of the traumatic experience. The Court highlights the importance of the declaration of the victim about a sexual violence act as fundamental in the investigation, judgment, and sanction of these acts. Additionally, during the investigation and judgment of sexual violence cases, the State should guarantee the full access and capacity to act of the victim, and to grant her the means for her to access and participate in the procedural stages of the case.

154. As for the duty to investigate, the Inter-American Court has established that States must make certain that investigations are not undertaken “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.”<sup>200</sup>

155. The IACHR also shares the position taken by the Committee on the Rights of the Child to the effect that States must diligently investigate acts of violence committed against children, especially acts of sexual violence against girls:

Investigation of instances of violence, whether reported by the child, a representative or an external party, must be undertaken by qualified professionals who have received role-specific and comprehensive training, and require a child rights-based and child-sensitive approach. Rigorous but child-sensitive investigation procedures will help to ensure that violence is correctly identified and help provide evidence for administrative, civil, child-protection and criminal proceedings. Extreme care must be taken to avoid subjecting the child to further harm through the process of the investigation. Towards this end, all parties are obliged to invite and give due weight to the child’s views.<sup>201</sup>

156. As for the right of girls who are victims of sexual violence to be heard during the investigation and criminal proceedings, as the Committee on the Rights of the Child wrote, the States must ensure that these child victims are informed of such issues as the availability of medical, psychological and social services, their role and participation in the investigation and then in the criminal proceedings, how the questioning will be conducted, existing support mechanisms in place for the child when submitting a complaint

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<sup>200</sup> I/A Court H.R., *Case of Godínez Cruz V. Honduras*. Judgment of January 20, 1989. Series C No. 5, para. 188; I/A Court H.R., *Case of Velásquez Rodríguez V. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 177; I/A Court H.R. *Case of the “Street Children” (Villagrán Morales et al.) V. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 226.

<sup>201</sup> Committee on the Rights of the Child, General Comment No. 13, The right of the child to freedom from all forms of violence, CRC/C/GC/13, April 18, 2011, para. 51.

and participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures, the possibilities of receiving reparation, and the provisions for appeal.<sup>202</sup>

157. The Commission reiterates the duty of States to investigate in a diligent, prompt and exhaustive fashion all acts of sexual violence. Effective compliance with this duty is key to prevent impunity and to promote the non repetition of these acts.

#### **Problems with sanction**

158. The Commission has received consistently information indicating that the few complaints that are formulated related to acts of sexual violence which occur in the education and health sectors, do not culminate in the sanction of the perpetrator.<sup>203</sup>

159. In the realm of sanction, the Commission has received information indicating that due to imprecisions, challenges, or the violation of administrative proceedings, teachers accused of sexual violence are often simply transferred to another school. Whether because the rules of administrative procedure do not make provision for penalties under which the teacher would be disqualified from practicing, or because rules that do make provision for disqualification are blatantly violated, in many cases the only penalty left for a teacher accused of sexual violence is transfer to another school.

160. Apart from the strong union loyalties observed within the education system, the suspension provisions in the teaching statute and laws are complex and the procedures slow, which often means that the offending teaching never answers for his or her wrongdoing. For example: "A worker can only be terminated after the TFCA (Federal Conciliation and Arbitration Tribunal) has given its authorization, which requires a complicated administrative and legal process that begins with the administrative document formally setting out the violations with which the worker is charged, continues with the proceeding for authorization of termination, and ends with the TFCA's ruling. The evidence presented is abundant, yet many of the documents setting out the charges are never taken up by the TFCA; even if there is a proceeding for termination authorization, the majority of such cases are lost."<sup>204</sup>

161. Similar complaints are heard in connection with cases involving sexual violence by health-care providers. In Argentina, for example, the *Colectiva Feminista La*

<sup>202</sup> Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, July 20, 2009, paragraph 64.

<sup>203</sup> See, for example, Center for Reproductive Rights, Women's Link Worldwide, *Fundación para la Defensa y Restitución de los Derechos Humanos (FUNDERES)* and the *Instituto Tecnológico Autónomo de México (ITAM)*, *Sexual Violence in Education Institutions: Mexico, Colombia, Ecuador and Bolivia* (2011); IACHR, Rapporteurship on the Rights of Women, Meeting of Experts and Workshop: *Access to Justice for Women Victims of Sexual Violence in the Area of Their Economic and Social Rights*, October 19, 2010; IACHR, Report No. 93/09, Petition 337-03, Admissibility, *Samanta Nunes da Silva*, (Brazil), September 7, 2009.

<sup>204</sup> Professor Jorge Luis Silva Méndez, *Procedimiento para cesar al personal de la Secretaría de Educación Pública que acosa y/o abusa sexualmente de los alumnos/as*, ICEV: Revisa d'Estudis de la Violència, p. 20.

*Revuelta* has reported abuses by gynecologists in various cities in Argentina. In their published accounts, women express frustration and impotence because judges have allowed the abusing physicians to go free, without facing charges of any kind.<sup>205</sup>

162. These problems, coupled with the more general pattern of systematic impunity in cases of violence against women, perpetuate their sense of insecurity and exacerbate their longstanding mistrust of the system for the administration of justice. The reasons for this mistrust include “the re-victimization that women experience when they attempt to report what they have suffered; the lack of protection 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 locale 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.”<sup>206</sup>

163. The Commission has also received information indicating that Prosecutor’s Offices, the police, and the tribunals tend to lack the necessary economic and human resources to conduct effective investigations and to process cases until the sentencing stage; a situation particularly critical in rural, marginalized, and low-income zones.<sup>207</sup>

164. As highlighted earlier, inter-American instruments have established a series of basic principles oriented to ensure the right to access an adequate judicial protection of sexual violence victims. The Commission reiterates that the duty of States to provide judicial recourses is not limited to making them formally available for victims, but also that States should guarantee that these recourses are adequate and effective; an obligation that entails the duty of States to organize all their state apparatus to prevent, investigate, and sanction all human rights violations.

#### **B. Deficiencies in the text and implementation of existing legislation**

165. The IACHR welcomes the enactment of laws adopted to prevent and punish sexual violence in educational institutions in the region.

166. The States have adopted several laws to sanction sexual violence in the education setting. For example, Law 1146 (2007) was enacted in Colombia so that government-run and private schools would have the necessary elements for prevention, self-protection, detection and reporting of sexual abuse within and outside the educational

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<sup>205</sup> Argentina, Colectiva Feminista La Revuelta. Available [in Spanish] at: <http://www.larevuelta.com.ar/>

<sup>206</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, para. 172.

<sup>207</sup> Center for Reproductive Rights, Women’s Link Worldwide, *Fundación para la Defensa y Restitución de los Derechos Humanos* (FUNDERES) and the *Instituto Tecnológico Autónomo de México* (ITAM), *Sexual Violence in Education Institutions: Mexico, Colombia, Ecuador and Bolivia* (2011); IACHR, *Rapporteurship on the Rights of Women, Meeting of Experts and Workshop: Access to Justice for Women Victims of Sexual Violence in the Area of Their Economic and Social Rights*, October 19, 2010.



institutions;<sup>208</sup> Costa Rica adopted a law prohibiting sexual harassment in the workplace and in school;<sup>209</sup> Belize also enacted the Protection against Sexual Harassment Act;<sup>210</sup> Uruguay promulgated a law for the prevention and punishment of sexual harassment in the workplace and in teacher-student relationships;<sup>211</sup> Decree 126 was also adopted amending El Salvador's Teaching Profession Law, and many other laws of this kind are clearly intended to address this problem.

167. However, only half the countries of the region have introduced laws prohibiting sexual harassment as a means of combating violence and discrimination against women.<sup>212</sup>

168. Despite the progress made, the Commission highlights that sexual violence in educational and health-care institutions requires special procedures for filing complaints and investigation; procedures which have not been introduced in most of the countries.<sup>213</sup> Apart from the problems typical of any case involving sexual violence, which the Commission described in its report on *Access to Justice for Women Victims of Violence in the Americas*,<sup>214</sup> the violence that happens in educational and health-care establishments poses its own unique set of problems. Because educational and health-care institutions are milieus in which the authority wielded by professors and physicians dictates the power relationships between professor and student and physician and patient, special regulations and procedures are needed to deal with violence in these settings; such regulations and procedures must take the gender perspective into account, as well as the particular needs of and dangers to the potential victims.

169. In the particular case of sexual violence in educational institutions, there are additional problems which can be traced to the failure to reconcile the administrative

<sup>208</sup> Colombia, Law 1146 (2007). Available [in Spanish] at: [www.secretariassenado.gov.co/.../ley/2007/ley\\_1146\\_2007.html](http://www.secretariassenado.gov.co/.../ley/2007/ley_1146_2007.html) -.

<sup>209</sup> Costa Rica, Law 7476. Available [in Spanish] at: [www.apse.or.cr/webapse/docum/docu02.htm](http://www.apse.or.cr/webapse/docum/docu02.htm)

<sup>210</sup> Belize, Protection Against Sexual Harassment. Available at: [http://www.ilocarib.org.tt/projects/cariblex/belize\\_act6.shtml](http://www.ilocarib.org.tt/projects/cariblex/belize_act6.shtml).

<sup>211</sup> Eastern Republic of Uruguay, Law 18561. Available [in Spanish] at: <http://www.parlamento.gub.uy/leves/AccesoTextoLev.asp?Lev=18561&Anchor=>.

<sup>212</sup> For more discussion, Inter-American Commission of Women, *Hemispheric Report*. Adopted at the Second Conference of States Parties, held in Caracas, Venezuela, July 9-10, 2008.

<sup>213</sup> As the IACHR wrote in the *Report on Corporal Punishment and Human Rights of Children and Adolescents*, "Article 19 of the American Convention provides that [e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state. This article establishes a sphere of special protection for the human rights of children and adolescents that entails special, complementary and additional obligations of protection incumbent upon States. That sphere of special protection is dictated by the special conditions of the child as a subject of rights; in other words, it is necessitated by the child's vulnerability and his or her dependence on adults in order to exercise certain rights, his or her maturity, progressive growth and development, and unawareness of his or her human rights and of the means by which to demand observance of those rights. Given all these factors and considerations, the situation of children cannot be likened to that of adults and thus warrants the adoption of special measures." Available at: <http://www.cidh.oas.org/Ninez/CastigoCorporal2009/CastigoCorporal.TOC.htm>.

<sup>214</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*.

proceeding for suspension and removal of an accused teacher, with the criminal process of investigation and punishment of a criminal offender. In some countries, a teacher accused of sexual harassment is not suspended while the administrative and criminal investigation is underway; in other countries, the period of suspension is so short that it can rarely accommodate the criminal proceedings. In some countries the principal objective of the administrative regulations is to protect the union, and not to protect the rights of the students to live free of violence and discrimination.

170. The Commission values that American States not only have recognized violence against women as a problem, but that many have modified their legislations and designed public policies to improve this situation. Notwithstanding these efforts, in the region there are still great obstacles in relation to the effective application of these norms; the effective access of women to justice; and the design and execution of norms and public policies destined to address the specific needs of sectors at particular risk to their human rights violations such as indigenous women, girls, and adolescents, and women who are victims of armed conflicts, among others. States have the obligation to address these challenges in a priority fashion and with due diligence.

### **C. Comprehensive medical and psychological support**

171. The CEDAW Committee has written that the States should ensure that laws against abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims in the form of specialized services, such as shelters, the use of specially trained health-care personnel, rehabilitation and counseling.<sup>215</sup> The IACHR has recommended that States assign more resources to those entities that are responsible for providing legal, psychological and social services to women and girls who are victims of violence.<sup>216</sup>

172. Based on the Istanbul Protocol, States are to ensure compliance with, among others, the following requirements to be followed for comprehensive medical and psychological treatment:

- i) Special psychological education and appropriate psychological support by the clinicians.
- ii) Avoid any treatment that would increase the psychological trauma of a survivor of sexual violence.
- iii) In clear and comprehensible language, the individual should be informed about the importance of the examination for purposes of the investigation, and eventual prosecution and punishment of the crime.

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<sup>215</sup> 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), paragraph 24.

<sup>216</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007. Recommendations.

iv) Before starting the examination, permission must be obtained from the individual for any kind of examination, and this should be confirmed by the victim before the more intimate parts of the examination. In such cases, physicians must obtain voluntary informed consent for the examination, record all medical findings of abuse and take samples for forensic examination.

v) When the physician is of a different gender from the victim, the latter should be offered the opportunity of having a physician of the same gender conduct the examination. The victim should also be offered the services of an interpreter if he or she does not speak the physician's language.

vi) Support, advice and, if appropriate, reassurance should be offered. This should cover issues such as sexually transmitted diseases, HIV, pregnancy if the victim is a woman, and permanent physical damage.<sup>217</sup>

173. In the case of sexual violence against children, the Protocol of Istanbul lists the following obligations which the States must guarantee:

If a child has been physically or sexually assaulted, it is important, if at all possible, for the child to be seen by an expert in child abuse. Genital examination of children, likely to be experienced as traumatic, should be performed by clinicians experienced in interpreting the findings. Sometimes it is appropriate to videotape the examination so that other experts can give opinions on the physical findings without the child having to be examined again. It may be inappropriate to perform a full genital or anal examination without a general anesthetic. Furthermore, the examiner should be aware that the examination itself may be reminiscent of the assault and it is possible that the child may make a spontaneous outcry or psychologically decompensate during the examination.<sup>218</sup>

174. Given the above provisions, the Commission considers that the States must pursue and promote policies to ensure that women and girls who are victims of sexual violence have some program or service designed to protect them from re-victimization and to help them become fully reintegrated into the community. These

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<sup>217</sup> Office of the United Nations High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or Istanbul Protocol, paras. 217, 219 and 220. Available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

<sup>218</sup> Office of the United Nations High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or Istanbul Protocol, 2004, para. 312. Available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

policies must combat the discrimination and stigmatization that women and girls who are victims of sexual violence so often suffer. The services and programs should be age appropriate and cater to the particular needs of each woman and girl, and should feature ways of involving their families and communities in their recovery.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

175. The IACHR emphatically reasserts its profound concern over the fact that sexual violence committed against women and girls in educational and health-care institutions still enjoys social acceptance and that the vast majority of these acts are never punished. It would therefore remind the States that in order to be in full compliance with their due diligence obligation, they must strengthen their laws and toughen the judicial response to this phenomenon. Even today, this kind of violence in these settings prevents many women across the Americas from fully exercising their rights to education and health, rights recognized in the Convention of Belém do Pará, the American Convention, the American Declaration and other international instruments for the protection of human rights.

176. This report has examined the States' obligations to ensure access to justice to women who are victims of sexual violence in educational and health-care institutions and has pointed up the principal challenges that the States still face to combat, with efficiency and resolve, the high incidence of violence and impunity that persists in the region to this day. The recommendations and framework of analysis in this report, are based on the regional obligations freely undertaken by the American States, mainly in the American Convention, the American Declaration and the Convention of Belém do Pará, which uphold the obligation of the States to exercise due diligence in order to prevent, investigate, punish and eradicate violence against women and ensure them access to suitable and effective remedies.

177. The following recommendations are for immediate implementation, as they are calculated to address an extreme form of discrimination –sexual violence- and to ensure the basic guarantee of access to justice. The recommendations aim to improve the judicial response to acts of violence committed against women in schools and health-care institutions. First, they urge the States to overcome lingering cultural and legal obstacles to prevent or –failing that- to investigate and punish acts of sexual violence committed against women and girls in these settings. Second, they are to encourage the States to create the conditions that enable women to use the justice systems to remedy the acts of violence they suffer and to be treated respectfully and decently by public officials. Third, they also call upon the States to adopt public policies intended to put a stop to cultural patterns that regard sexual violence as the norm or trivialize it, and to eradicate discriminatory socio-cultural patterns that impair or thwart access to justice for women who have been victims of this type of violence.

### General recommendations

1. The IACHR is troubled by the significant under-recording and under-reporting of acts of sexual violence committed against women and girls in educational and health-care institutions. It is therefore recommending to the States that they build up the institutional capacity of the ministries of education and health so that they have the means to produce analyses based on reliable statistics from which they can then design public policies and assess whether they are functioning properly. It is vital that the States take immediate steps to improve their systems for compiling the data and information needed to ascertain the true dimensions of sexual violence in education and health care and thereby be able to tackle sexual violence in those settings using suitable programs and policies tailored to the needs.

2. The IACHR reminds the States of their obligation to implement measures to better enable them to prevent, investigate and punish these crimes, as their international obligations require. States should devise protocols to make possible and encourage effective, standardized and uniform investigation of acts of sexual violence in the schools and health-care institutions. These should include a description of the procedures to be followed to provide special protection to the complainants, suspend and sanction the alleged assailant, and accelerate the proceedings.

3. One of the States' priorities should be to set up confidential systems so that women and girls who fall victim to sexual violence are able to report the violation of their rights in the educational or health-care institution. Lines of action to pursue, independent student and hospital counselors, and other confidential, secure and effective mechanisms should be introduced immediately to protect those who file complaints and ensure that victims will report the incidents. States that have not yet done so should introduce in their laws a rule requiring that a public official or member of the general public who has knowledge of a violation of rights within a school or health-care institution shall report the violation to the authorities. They should also institute measures to protect the informant by giving him or her immunity from legal retaliation.

4. The IACHR finds that violence and discrimination against women and girls in schools is accepted practice in some societies, as evidenced by the way in which school officials react to and treat cases of violence against women and girls. States, therefore, must devise and strengthen training programs to teach school staff and officials that violence against girls, adolescent girls and women is a serious violation of human rights. The States must take immediate decisions to train teachers and school officials so that they are better skilled in the application of domestic and international provisions and respect the integrity and dignity of the victims and their next of kin.

5. Impunity, violence and discrimination against women in school and health-care institutions are worse in rural and remote areas; hence, States must immediately establish suitable and effective judicial bodies and resources in rural and remote areas to ensure that all women have full access to effective judicial protection against acts of violence.

6. The States need to adopt policies to prevent acts of violence and discrimination against women and girls in the justice, education and health areas, and that address the various manifestations of violence and the settings in which it occurs.

7. States must also institutionalize training for public servants in the justice, health and education sectors that takes a comprehensive approach to women's right to live free of violence and discrimination and their right to have their physical and psychological integrity respected by public servants.

8. In this report, the IACHR observes that the problem of impunity that attends cases of sexual violence in educational institutions may be a function of the disparity between the administrative-law system and the criminal law system and the fact that in certain settings, administrative law takes precedence over criminal law. States, therefore, need to reconcile the disciplinary standards for teachers to bring them in line with the criminal laws that protect the sexual integrity of women and girls. Because criminal law and disciplinary law protect different rights, States must ensure that those responsible for sexual violence against women and girls in school settings answer to both systems. Thus, the provisions of the two systems must be reconciled and adapted so that both are based on the best interests of the child.

9. The IACHR observes that health services do not have provisions designed to protect female users of health services from gender discrimination and violence. Few laws in the region are intended to prevent abuses of women committed in health-care institutions, and no special mechanisms are in place to process complaints alleging conduct of this type. It is imperative, therefore, that States have provisions to ensure that health services are delivered in a manner that is respectful of women. In the case of indigenous and Afro-descendant women, the States must adapt both prevention and treatment services to be respectful of their expectations, traditions and beliefs, in consultation with them.

10. It is imperative that the States enact legislation on measures to prevent, investigate and punish conduct committed by health-care personnel in hospitals. Hospital codes of conduct, devised from a gender perspective, must be established along with effective and confidential reporting procedures and strict disciplinary measures for health-care workers who in any way abuse patients in health-care facilities.

11. Similarly, States must establish administrative, civil and criminal procedures to ensure that women have access to justice when their right to physical and psychological integrity is violated in the health-care services. States need to establish accountability mechanisms for personnel who do not comply with their duties to provide medical treatment to women who require it.

12. Finally, the IACHR has observed that women are unaware of their rights as patients and as students. Hence, States must design systems to apprise women of their rights as patients and as students.

13. The IACHR reminds States that when adopting legislation, public policy, programs and judicial protection systems to remedy acts of sexual violence, special attention must be devoted to those sectors that are particularly at risk of having their human rights violated – such as children, indigenous women, women with disabilities, and women living in conflict-affected areas – in the adoption of legislation, public policies, programs, and judicial protection mechanisms to remedy sexual violence acts, and to create spaces of participation and incidence for these groups in the design of policies to confront this problem.