

**IACHR**

# Access to Justice for Women Victims of Sexual Violence in Mesoamerica

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS



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American States**

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# ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE IN MESOAMERICA

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# ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE IN MESOAMERICA<sup>1</sup>

## EXECUTIVE SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) presents this thematic report in which it examines the dimensions of the problem of sexual violence in Mesoamerica. It examines the regulatory and jurisdictional dimensions of this issue, as well as the obstacles that women victims encounter in endeavoring to obtain an adequate access to justice, with particular emphasis on El Salvador, Guatemala, Honduras and Nicaragua. In this sense, the report focuses on the areas of prevention, investigation, prosecution, and the punishment of sexual violence cases, as well as the judicial protection system’s treatment of victims and their next of kin.

2. This initiative is being spearheaded by the IACHR and its current Rapporteur on the Rights of Women, Commissioner Luz Patricia Mejía Guerrero, thanks to support from the United Nations Population Fund (hereinafter “UNFPA”), and with the auspices of the *Agencia Española para la Cooperación Internacional al Desarrollo* [the Spanish Agency for International Development Cooperation] (hereinafter “AECID”). The IACHR has conducted this program to follow up on the recommendations it made in its report on *Access to Justice for Women Victims of Violence in the Americas*, published on March 7, 2007, which is a hemispheric analysis of the main obstacles that the women of the Americas encounter when attempting to avail themselves of the judicial remedies, guarantees and protections against acts of violence, including sexual violence. In that 2007 report, the Commission set out its findings and recommendations so that the States would act with due diligence to offer an effective and prompt response to these incidents.

3. In this report and elsewhere, the Commission has expressed its concern over the serious *de jure* and *de facto* obstacles that women victims of sexual violence encounter in endeavoring to get access to adequate and effective justice. These challenges are impediments to the full enjoyment and guarantee of women’s human rights, which are protected under inter-American and international human rights instruments; they also represent a failure on the part of the States to honor their obligation to act with the due diligence required to prevent, investigate, prosecute, punish and redress acts of violence committed against women.

4. A common thread that runs through the IACHR’s pronouncements on violence against women has been the nexus between the States’ obligation to act with the necessary due diligence, and the obligation to afford access to suitable and effective judicial remedies for various forms of violence against women,<sup>2</sup> inasmuch as the inter-American human rights system is built on the premise that access to suitable and effective judicial

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<sup>1</sup> The IACHR is grateful for the support that consultants Soraya Long, Roxana Arroyo and Rodrigo Jiménez provided in the preparation of this report.

<sup>2</sup> See, for example, IACHR, Merits Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007.

remedies is the first line of defense for basic rights. The Inter-American Court of Human Rights (hereinafter “the Court” or the “Inter-American Court”) has written that every person who is the victim of a violation of his or her human rights is entitled “to obtain clarification of the events that violated [his or her] human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention.”<sup>3</sup> The Court has also held that the right of access to justice must ensure, within a reasonable time, the right of the alleged victims or their next of kin to know that every necessary measure will be taken to ascertain the truth and that the responsible parties will be punished.<sup>4</sup>

5. In keeping with the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “the Convention of Belém do Pará”) and consistent with international case law, the Inter-American Court’s interpretation of what constitutes sexual violence is broad. According to the Inter-American Court’s interpretation, sexual violence consists of acts of a sexual nature committed against a person without his or her consent, which may involve physical penetration of the human body, but may also involve acts that do not imply penetration or even any physical contact.<sup>5</sup>

6. Following this same line of reasoning, the IACHR, too, has observed that sexual violence takes many forms. This creates comprehensive, multidimensional obligations for the State in order to prevent, investigate, prosecute and redress this serious human rights problem. The judicial branch is just one component of a State apparatus that must coordinate efforts in all sectors to respect and ensure women’s rights.

7. The inter-American human rights system has established a number of minimum standards –recognized in its laws, jurisprudence and literature- with which the States must comply in order to ensure that the judicial remedies available are adequate and effective when human rights violations occur. The IACHR has repeatedly made the point that these standards apply with equal force to women’s rights and their access to justice, and ultimately concern the need for the judicial branch to act swiftly, impartially and thoroughly in cases involving violence against women.

8. The right to judicial guarantees and the right to judicial protection are recognized in Articles 8(1) and 25 of the American Convention on Human Rights (hereinafter “the Convention”), and are basic pillars of the rule of law. These provisions are echoed in Article 7 of the Convention of Belém do Pará, which recognizes the critical link between women’s access to adequate judicial protection when filing complaints of acts of violence, and the elimination of violence and the discrimination that perpetuates that

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<sup>3</sup> I/A Court H.R., *Case of Barrios Altos v. Peru*. Judgment of March 14, 2001. Series C No. 75, para. 48.

<sup>4</sup> See I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, para. 382, citing *Case of Vargas Areco*; I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 289; and I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 171.

<sup>5</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006. Series C, No. 160, para. 306.

violence. The Convention of Belém do Pará establishes a set of immediate obligations in cases of violence against women, including the establishment of fair and effective legal procedures for women who have been subjected to violence; the adoption of criminal, civil and administrative laws to prevent, punish and eradicate violence against women; measures to protect women from imminent acts of violence; and measures to modify legal or customary practices that allow violence against women and tolerance of it to persist.

9. The obligations not to discriminate and to guarantee equality are fundamental corollaries of the right of access to justice for women victims of violence. Here, the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”)<sup>6</sup> is of particular relevance, as it was conceived for the purpose of ensuring universal recognition, in law and in fact, of the principle of equality of men and women in the exercise of their fundamental rights and freedoms.<sup>7</sup> The definition of discrimination that appears in Article 1 of that Convention is broad, and includes “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” The CEDAW Committee has also written that the definition of discrimination in the CEDAW extends to all forms of violence against women.<sup>8</sup> The obligation to respect, protect and comply with the CEDAW also means ensuring that women victims of violence have recourse to affordable, accessible and timely remedies.<sup>9</sup> Through its authoritative interpretations, its doctrine and case law, the Inter-American Court has systematically incorporated the CEDAW and the CEDAW Committee’s recommendations into its judgments on cases involving sexual violence and in the principles it has advanced regarding access to justice for victims.<sup>10</sup>

10. The Commission considers that the duty to act with the necessary due diligence requires a real commitment from the States to adopt measures aimed at preventing, investigating, punishing and redressing sexual violence; measures calculated to ensure women’s full enjoyment of their rights and their right to live free of discrimination. As part of this obligation, by ratifying international instruments like the Convention of Belém do Pará, which is even today the most ratified instrument within the inter-American human rights system, the States have acknowledged that the problem of sexual violence against women is a priority.

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<sup>6</sup> United Nations General Assembly, December 18, 1979, Resolution 34-180.

<sup>7</sup> United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation 25, Temporary Special Measures, U.N. Doc./CEDAW/C/2004/1/WP.1/Rev.1 (2004), Section II.

<sup>8</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 19, *Violence against Women*, U.N. Doc. HRI/GEN/1//Rev.1, para. 11 (1994).

<sup>9</sup> United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 28 *on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, October 19, 2010, para. 34.

<sup>10</sup> See, in this regard, mainly the judgment issued by the Court in the *Case of the Miguel Castro-Castro Prison v. Peru*, I/A Court H.R., Judgment of November 25, 2006. Series C No. 160.

11. The foregoing notwithstanding, the IACHR has observed and confirmed a pattern of judicial ineffectiveness vis-à-vis acts of sexual violence in Mesoamerica, a pattern that adversely affects the prosecution of cases of sexual violence at every stage in the proceedings with the justice system. This judicial ineffectiveness promotes and perpetuates impunity in the vast majority of cases involving sexual violence and breeds social tolerance of this phenomenon.

12. The difficulties that victims encounter begin right from the time they file their complaint. Even today, the conditions under which victims of sexual violence must file their complaints with the authorities are still inadequate. Their right to privacy is usually not guaranteed. The procedures and proceedings are extremely formal, complicated and lengthy. These factors and the high costs involved cause women to drop their complaints, a problem made all the worse by the lack of information and advisory assistance. Among the many reasons why women do not file complaints is that the protection measures are ineffective, particularly those intended to protect victims from imminent acts of violence; all too often these measures are never effectively implemented.

13. This combination of factors, as well as others that will be discussed in this report, make victims mistrustful of the system of justice and of its ability to offer effective judicial protection when these events occur. It also creates an environment in which victims and their next of kin largely refrain from reporting such events. A high percentage of women victims of sexual violence harbor a sense of fear, powerlessness, frustration and insecurity. This situation is all the worse when women are unaware of their rights. Then, too, when women victims of violence turn to either the police or a health service, they are often re-victimized. Officers of the court or law enforcement personnel, who are the victim's first contact when she files her complaint, can ask leading or suggestive questions, sometimes limit their analysis to lurid details, and issue biased and discriminatory opinions on the case. This pattern repeats itself as the complaint makes its way through the justice system. It is routine for the sexual violence suffered to be minimized.

14. Despite the significant progress made in the law, many important aspects are still lacking in the investigations that the States in the Mesoamerican region conduct into human rights violations. This problem is much more severe in cases involving violations of women's rights and incidents of sexual violence, given the patriarchal structure of the culture and the discrimination that, to a greater or lesser extent, influences the conduct of those responsible for the administration of justice. The vast majority of cases of sexual violence are never punished.

15. The IACHR has written that the investigative phase is critical in cases of sexual violence. Problems at this stage in the proceedings can become insurmountable when the time comes to identify, prosecute and punish those responsible for these crimes. Various elements of the investigative process are essential in order for States to comply with the duty to act with the necessary due diligence and guarantee the victims' access to justice. One of these elements in the investigative process is the duty to compile and preserve the material evidence in order to lay the foundation of the criminal investigation necessary to find the responsible parties, identify possible witnesses and obtain their statements; determine the cause, manner, place and time of the event under investigation;

protect and thoroughly investigate the crime scene; and guarantee the right of the victim or her next of kin to collaborate in the investigation process. These are some of the measures that are essential for the eventual punishment of those responsible. The authorities must also compile circumstantial evidence and consider the context in which a rape occurred, rather than confine themselves to direct evidence of physical resistance on the part of the victim.

16. The Inter-American Court has also established important guidelines on investigating cases of sexual violence, which the IACHR will point out. First, in the cases of *Inés Fernández Ortega* and *Valentina Rosendo Cantú*<sup>11</sup> the Inter-American Court emphasized that the authorities charged with investigating an act of sexual violence must conduct the investigation with a sense of resolve and in an effective manner, taking into account society's obligation to reject violence against women and the States' obligations to eliminate it and to give victims confidence in the State agencies charged with protecting them. Second, the Court has held that the investigation into cases of sexual violence must, insofar as possible, avoid re-victimizing the victim or forcing her to relive her profoundly traumatic experience. Finally, the Court has written that the victim's statement about an act of sexual violence is fundamental in the investigation, prosecution and punishment of the crimes.

17. Sexual violence is not an isolated phenomenon confined to the Mesoamerican region. It is instead a multidimensional problem that affects every country in the Americas. It is a product of a social environment in which violence is tolerated and is compounded in the case of women, as they are victims of generations of discrimination and inferior treatment owing to their sex. The result is that the State's response to these problems is deficient. The roles that the various institutions play are influenced by socio-cultural patterns that discriminate against women, patterns that are pervasive throughout society. This environment is conducive to a continuum of violence and discrimination against women, based on social practices that tend to belittle the serious nature of an act of sexual violence. The importance of sexual violence is minimized by the kind of social commentary that blames women for supposedly inviting the sexual violence because of her sexual history or because she has had some prior sexual activity; this belittlement of sexual violence is another reason why these crimes go unpunished by the justice system.

18. Discrimination against women provides the climate in which sexual violence is cultivated and flourishes. It is, therefore, imperative that the court authorities charged with prosecuting cases involving sexual violence are instructed about the link between this type violence and discrimination against women, and about the dimensions of this human rights problem. This is a basic obligation contained in specialized instruments like the Convention of Belém do Pará and the CEDAW.

19. Here, the IACHR must emphasize the importance and the nature of the reparations owed to victims of sexual violence. Reparations in cases of sexual violence

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<sup>11</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; 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.

must have a corrective purpose, with a view to changing the climate of discrimination that breeds sexual violence. A key measure of non-repetition is having a competent and impartial system for the administration of justice, instructed in the distinctive characteristics of the problem of sexual violence and equipped with the human and financial resources necessary to respond to cases of sexual violence promptly and effectively. The State's obligations are not confined to providing judicial services; instead, they include all other sectors of the State structure that are instrumental in dealing with and responding to the problem of sexual violence, such as the health sector and the education sector.

20. A priority challenge for the States of this hemisphere is having reliable data on the problem of sexual violence; that kind of data is not currently available, making it difficult to measure the true dimensions of the problem. The pervasive problems are ineffective data systems, under-reporting, and a lack of data broken down by sex, race, ethnicity and other variables that are the factors that expose women to increased risks of becoming victims of violence..

21. Another aspect of the problem of sexual violence in Mesoamerica that the Inter-American Commission should highlight is the fact that in their activities, the States must consider how the discrimination that women may experience by virtue of their sex combines with others factors like age, race, ethnicity, economic condition, immigration status and disability. For example, the IACHR has found that girls are the main victims of sexual violence and that the aggressors are generally males who are related to the victim either by kinship or other circumstance; they may be the victims' fathers, stepfathers, brothers, cousins, boyfriends or spouses. Thus, sexual violence against girls and women is one of the clearest manifestations of a patriarchal culture in which a woman's body and her sexuality are not hers to control. The degree of sexual violence and the level of impunity are discouraging among indigenous women, migrant women, and Afro-descendant women; the vast majority of the cases brought to the justice system have not been punished.

22. The IACHR recognizes that the road that a woman must travel to file a complaint of sexual violence is fraught with difficulty and will re-victimize her repeatedly. This road is all the more difficult for those women who suffer from various forms of discrimination at the same time. In prosecuting cases of sexual violence against women, the justice system must take account of women's diversity, the different life experiences they have had and their particular needs. This report emphasizes the particular risk that various sectors of women face, such as girls, indigenous women, Afro-descendant women, and migrant women when exercising their human rights. The States must take this risk into account when adopting policies, programs and measures related to women's access to justice.

23. The IACHR is also using this report as an opportunity to highlight the legislative and institutional efforts of the States to address the problem of sexual violence in the national sphere. All the Mesoamerican countries have laws on the books that prohibit and punish various manifestations of sexual violence. However, major challenges persist and important elements are still missing when it comes to knowledge, application and enforcement of the laws on violence against women. This makes the justice systems

ineffective in discharging their duty to protect the victims and punish the perpetrators of sexual violence and are some of the factors contributing to the impunity that attends crimes of sexual violence.

24. The IACHR welcomes the efforts the States have made, by way of their judicial branches of government, to deploy strategies aimed at developing general policies that, by creating specialized units, facilitate women's access to justice. A number of States in the region have policies and plans for that purpose, and have taken concrete steps by introducing training activities and mainstreaming the gender perspective into the judicial career service and the curriculums taught at the judiciary schools. Some have created special prosecutor's offices and special courts for sexual crimes or gender violence, have formed special units to investigate and prosecute sexual crimes, and have shifted toward greater inter-institutional coordination. As part of this trend, service protocols have been developed that can be regarded as best practices, incorporating concrete guidelines so that by their actions, those involved in the administration of justice are able to ensure the rights of the victims and access to justice without discrimination, thereby helping to guarantee substantive equality and the right to live free of violence.

25. As in other reports, the IACHR will also have a number of recommendations intended to encourage pro-active State measures to prevent, investigate, punish and redress acts of sexual violence promptly and thoroughly. Salient is the need to offer an effective, concrete response to the problems identified, that includes not only the justice system but also measures in the areas of health and education. It also highlights recommendations having to do with the needs of specific sectors of women, such as girls, indigenous women, Afro-descendant women and migrant women. The focus is on designing an organic system whose parts operate in unison, in order to improve the prosecution of cases of sexual violence in the countries of Mesoamerica.

26. The Inter-American Commission reiterates its commitment to collaborate with the American States in the quest for solutions to the problems identified.

## ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE IN MESOAMERICA

### INTRODUCTION

1. Through the various mechanisms the inter-American system offers for the protection of human rights, the Inter-American Commission on Human Rights has managed to compile information on the severity of the problem of sexual violence against the women of the hemisphere. By way of the Rapporteurship on the Rights of Women, the IACHR has conducted this project on access to justice for women victims of sexual violence in Mesoamerica, with special emphasis on El Salvador, Guatemala, Honduras and Nicaragua. The project was done in partnership with the United Nations Population Fund and with the auspices of the *Agencia Española para la Cooperación Internacional al Desarrollo* [Spanish Agency for International Development Cooperation].

2. The purpose of this subregional project (which encompasses Central America and Mexico) was to examine sexual violence as one manifestation of the multiple forms of violence that women experience. Its objective is to improve access to justice for women victims of crimes of this type, and to provide tools that States can use to implement activities aimed at facilitating women's access to justice in Mesoamerica.

3. This report is the product of that project. The analysis in this report focuses on women victims of sexual violence in the Mesoamerican countries. It examines, in detail and from a human rights perspective, how the administration of justice and the various bodies that are part of it<sup>12</sup> have responded to complaints and cases of sexual violence. The basic frame of reference for this report, were the findings, results, conclusions and recommendations contained in the IACHR's 2007 report on *Access to Justice for Women Victims of Violence in the Americas*.<sup>13</sup>

4. In that 2007 report, the IACHR repeatedly pointed to the problem of sexual violence as one of the most pervasive and pernicious manifestations of violence against women, and to the most important and persistent barriers to access to justice that women encounter when they attempt to report these acts. Despite the notable progress the States have made and the measures they have taken to address the problem and develop a framework of laws, public policies, institutions and services that are responsive to the problem of sexual violence, the Inter-American Commission indicated that the government response was still far from what it should be, that women were not fully protected, and that their rights, guarantees and judicial protections were not respected in practice.

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<sup>12</sup> In its regional report on *Access to Justice for Women Victims of Justice in the Americas*, the IACHR used a broad definition of the administration of justice, understood to include the judicial branch of government (in all its parts, the courts and administrative divisions), the police and forensic medicine, located in urban and/or rural areas, with nationwide and/or local jurisdiction. Included in that definition were the traditional and alterative systems of justice. See, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 6.

<sup>13</sup> See, in general, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007.



5. The following were among the major challenges the Commission identified:

- ❖ Discriminatory socio-cultural patterns and stereotypes about women's role in society, which prevent and obstruct proper enforcement of existing laws and that result in discriminatory treatment of victims when they turn to the organs of justice.
- ❖ The lack of a real commitment on the part of the States to preventing, investigating, punishing and properly redressing these acts. The States still fail to grasp the social and economic cost of the problem and the economic resources earmarked do not match its magnitude or severity.
- ❖ The problem of sexual violence against women is being rendered "invisible," as evidenced by the lack of studies or statistics on the prevalence of the problem, and by how little information there is on the magnitude of sexual crimes, whose victims are mainly women and that are committed in many different contexts, including the home.
- ❖ The police and other state institutions are reluctant to intervene and enforce restraining orders against aggressors, especially in a family context. The phenomenon of sexual violence is still perceived as a private matter, even though it is formally recognized as a public problem and a human rights issue both at the domestic and international levels.
- ❖ A severe problem of under-reporting and failure to file complaints of incidents involving sexual violence, because victims fear stigmatization by their communities and reprisals on the part of the assailant. They do not believe that the justice system can offer a prompt and effective remedy and are fearful of the discriminatory treatment to which the judicial system may subject them if they file complaints.

6. The IACHR concluded that while the States have formally and legally recognized that violence against women is a priority challenge, the judicial response to the problem has fallen far short of its severity and prevalence. While the Commission acknowledged efforts by the States to adopt a framework of laws and policies to address violence against women, it said that the gap between the availability of certain remedies in law and their implementation in practice is still very wide. This leaves the victims with a sense of insecurity, defenselessness and mistrust in the administration of justice. The impunity that attends these crimes merely perpetuates violence against women as an accepted practice in American societies, in contempt of women's human rights.<sup>14</sup>

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<sup>14</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007, paras. 294 *et seq.*

7. The Commission also had conclusions and recommendations calculated to encourage the States to act with due diligence in offering an effective and prompt judicial response to acts of violence committed against women.

8. Given the foregoing, the report now being presented will apply the IACHR's findings of its 2007 report to Mesoamerica, with particular emphasis on Honduras, El Salvador, Nicaragua and Guatemala. The scale of the phenomenon of sexual violence in the region will be examined, as will its treatment in the law and by the courts, and the obstacles that women victims of violence encounter in getting access to justice. This report will also examine the reasons why so few complaints of sexual violence are filed and why so few convictions are won.

9. This document will look at the investigation, prosecution and punishment of sexual violence and the treatment that victims should receive. It is clear that a State's due diligence obligation is not fully served by simply affording access to justice. Even so, this report will focus on access to justice as the first line of defense for human rights.

10. More specifically, this thematic report or analysis will endeavor to:

- Identify and examine the major advances achieved and challenges still posed in the investigation, prosecution and punishment of cases of sexual violence committed against women of different ages, races, ethnic origins and socioeconomic condition.
- Identify and examine the major advances achieved and challenges still posed in respect of public officials' treatment of victims of sexual violence when they seek the protection of the system for the administration of justice, which includes prosecutors, police, judges, court-appointed attorneys, clerical personnel, and forensic-medical professionals, among others
- Identify and examine best practices in the processing and prosecution of cases and complaints of sexual violence by the various judicial bodies, including: the public prosecutor's office, the police, the courts, the forensic medicine services, and others.
- Make recommendations that the States and their judicial bodies can use to better protect the rights of victims of sexual violence.

11. This study will also look at and interpret the legal standards established by the organs of the inter-American human rights system in the areas of: access to justice, effective judicial protection, violence against women, discrimination and sexual violence. It will also examine the fact that certain groups of women face a particular risk of having their human rights violated by virtue of their sex in combination with other factors such as their age, their economic circumstance, their race, their immigration status and others. These standards are basically reflected in the decisions, judgments and thematic and country report that the IACHR has issued.

12. The information that was the input for this study was obtained thanks to a special questionnaire that the IACHR circulated among the States in the Mesoamerican region,<sup>15</sup> civil society organizations, international agencies and experts on the topic of the project. Information was also obtained from a subregional seminar held in Guatemala on May 23 and 24, 2011, in which representatives of these sectors in the four priority countries participated. All this was coupled with secondary sources, which included precedents of the inter-American human rights system on the problem of sexual violence.

13. The first part of this report will be devoted to a legal and conceptual analysis, from the perspective of human rights and gender, of sexual violence as an expression of violence against women and of the effects that this violence has on the victims and on society. This report works from the premise that sexual violence against women is not an isolated phenomenon, but the product of discriminatory socio-cultural patterns that have historically worked to women's disadvantage.

14. The analysis will be done from the international standpoint, and will cover access to justice as a right of women victims of sexual violence, due diligence in the prevention of violence against women, and women's rights as victims of violence. It will also examine the States' obligations when addressing cases of sexual violence, with particular reference to due diligence in the investigation, the need for the approach to be multidisciplinary in nature, and the obligation to offer redress when such violations occur. The report will also compare the Mesoamerican States' implementation of those obligations in practice, with what the theory and the different laws on the books actually say regarding the various manifestations of sexual violence from which women are protected.

15. The second part of this report will discuss the States' challenges in actually addressing sexual violence. Those challenges are the obstacles or difficulties that women victims of sexual violence encounter in getting access to justice because of discriminatory socio-cultural patterns that obstruct effective investigation of cases of sexual violence and are the reasons why women are not treated with the respect and dignity they deserve. Four different types of obstacles will be examined: i) the difficulties that women encounter because they are women and because of the gender discrimination that is so pervasive within the region; ii) structural problems common to the administration of justice in the Mesoamerican countries, with the emphasis on Honduras, Nicaragua, Guatemala and El Salvador. When studying these structural problems, the report will examine more closely the absence of the conditions necessary to fully address the victims' needs and the

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<sup>15</sup> The questionnaire was sent to the following States on April 18, 2011: Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama. Responses were received from the States of Guatemala, Honduras, El Salvador and Mexico. A response was also received from Nicaragua presented by the Technical Secretariat on Gender Issues of the Supreme Court of Justice; the Gender Unit of the Public Prosecutor's Office; the General Direction of the Women's Commissaries of the National Police; and the National Institute of Legal Medicine. The Organizations Casa Alianza from Honduras; the Associations that integrate the International Planned Parenthood Federation ("IPPF") in Honduras, Nicaragua, and El Salvador; the *Instituto de Promoción Humana* (INPRHU); the *Centro de Derechos Humanos de las Mujeres* (CEDHM) of Chihuahua, Mexico; *Mujeres Transformando el Mundo* from Guatemala; and Eduardo Montes Manzano also presented responses. The text of the questionnaire has been included as an annex to this report.

impunity that attends these crimes because of the flawed practices employed in obtaining evidence, inadequate interrogations, conciliation or mediation, and the rescheduling of hearings; iii) obstacles related to redressing the harm done; and iv) the obstacles that some women encounter because of a confluence of various forms of discrimination where sex-based discrimination combines with discrimination based on age, race and ethnic origin. The study will thus specifically examine the difficulties that girls, indigenous women, Afro-descendant women and migrant women encounter in getting access to justice in cases of sexual violence.

16. The third part of this subregional report will identify the progress that the States have made in responding to the problem of sexual violence in Guatemala, Honduras, El Salvador and Nicaragua, as a function of what the victims require where justice is concerned.

17. The report ends with the Inter-American Commission's conclusions and recommendations. The latter focus in particular on possible measures the States can take to prevent, eradicate, prosecute and punish acts of sexual violence. Emphasis will be placed on the need to offer an effective, concrete response to the identified problems, which may encompass a wide range of sectors, such as justice, education and health. The Commission considers that these sectors can contribute from a human rights perspective to the adequate formulation of public policies and programs in Mesoamerican countries to improve the prevention, investigation, prosecution, and punishment of the problem of sexual violence.

18. With this subregional thematic report, the IACHR seeks to assist the States' efforts to better protect women's human rights by affording effective and adequate access to justice in cases of sexual violence through identification of the specific problems that the various institutions in the Mesoamerican administration of justice have in common.

**I. INTERNATIONAL FRAMEWORK OF LAWS AND STANDARDS REGARDING ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE AND THE OBLIGATIONS INCUMBENT UPON THE STATES**

**A. Legal and conceptual framework**

19. This section concerns the legal standards established by the inter-American and universal systems which underscore the States' human rights obligations vis-à-vis the problem of sexual violence against women. The analysis specifically deals with two sets of obligations: a) the obligation to act with the due diligence necessary to prevent, investigate, prosecute and redress acts of sexual violence, and b) the duty to ensure adequate and effective access to justice when acts of sexual violence occur. The analysis on access to justice, which the IACHR defines as "de jure and de facto access to judicial bodies and remedies for protection in cases of acts of violence, in keeping with the international

human rights standards”<sup>16</sup>, will address two fundamental issues: i) the right of access to justice, and ii) the nexus between access to justice and the States’ duty to act with the necessary due diligence.

20. This section will close with a discussion of the factors that cause and perpetuate sexual violence. These include discriminatory socio-cultural patterns and structural violence, both of which affect women and are the underpinnings of the social continuum of gender violence.

### **1. Access to justice**

21. Access to justice is the first line of defense for the human rights of women victims of sexual violence.<sup>17</sup> The minimum standards to guarantee these rights are recognized in a number of international instruments within both the regional and universal systems. For example, the American Declaration, the American Convention, the Convention of Belém do Pará, and the CEDAW all reaffirm a woman’s right to a simple and effective recourse and to have the necessary guarantees to protect her when she reports acts of violence. They also recognize the States’ obligation to act with due diligence to prevent, prosecute, punish and redress acts of sexual violence.

22. The Inter-American Court of Human rights has addressed the scope of this right on a number of occasions, and has written that every person whose human rights have been violated is entitled to “obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention.”<sup>18</sup> The Court has also written that the right of access to justice must ensure, within a reasonable time, the right of the alleged victims or their next of kin to know that every necessary measure will be taken to ascertain the truth and punish the responsible parties.<sup>19</sup>

23. The inter-American system has affirmed that the obligation of due diligence is not served merely by making those remedies available to victims on paper; instead, those remedies must be available and be adequate and effective in remedying human rights violations.<sup>20</sup> The Inter-American Court has observed that in accordance with

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<sup>16</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 5.

<sup>17</sup> In its 2007 report, the IACHR works from the premise that access to adequate and effective judicial remedies is the first line of defense in protecting women’s individual rights and freedoms. See, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 6.

<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 the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, para. 382, citing I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 289; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 171.

<sup>20</sup> See, IACHR, Report No. 81/10, Case 12.562, *Wayne Smith, Hugo Armendatriz et al.* (United States), July 12, 2010, para. 62; IACHR, Report No. 52/07, Petition 1490-05, *Jessica Gonzales et al.* (United States), July 24, 2007, para. 62. Continues...

generally recognized principles of international law, domestic remedies must be adequate, i.e., suitable to address an infringement of a legal right. But they must also be effective, that is, capable of producing the result for which they were designed.<sup>21</sup> The end sought is that there be no unwarranted delays, that justice not be denied, and that there be no recurrence of an event that obstructs access to a judicial remedy.<sup>22</sup>

24. In the case of the right that women victims of violence have to justice, the IACHR has written that the obligation of States in cases of violence against women includes the duties to prosecute and convict the responsible parties and “the obligation to prevent these degrading practices.”<sup>23</sup> Similarly, it has written that general and discriminatory judicial ineffectiveness also creates a climate that is conducive to domestic violence, since society sees no evidence of a willingness by the State, as the representative of society, to take effective action to punish such acts.<sup>24</sup>

25. In its decision on the case of *Raquel Martín de Mejía v. Peru*, the IACHR established that the right to an effective judicial recourse protected under Article 25 of the American Convention, interpreted in conjunction with the obligations set forth in Articles 1(1) and 2 thereof, must be understood as “the right of every individual to go to a tribunal when any of his rights have been violated (whether that right is 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>25</sup>

26. More recently, in the case of *Jessica Lenahan (Gonzales)*, the Commission reiterated the principle of the right of women victims of violence to access judicial protection and that judicial remedies include ensuring clarification of the truth of what has happened.<sup>26</sup> Investigations must be serious, prompt, thorough, and impartial, and must be

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2007, Annual Report of the IACHR, 2007, para. 42; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), para. 26; 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. 235.

<sup>21</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paras. 64-66.

<sup>22</sup> I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

<sup>23</sup> IACHR, Merits Report No. 54/01, Case 12.051, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

<sup>24</sup> IACHR, Merits Report No. 54/01, Case 12.051, *Maria Da Penha Fernandes* (Brazil), April 16, 2001, para. 56.

<sup>25</sup> IACHR, Merits Report No. 5/96, *Raquel Martín de Mejía* (Peru), March 1, 1996, p. 22.

<sup>26</sup> IACHR, Merits Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al. v. United States*, July 21, 2011, para. 181.

conducted in accordance with international standards in this area.<sup>27</sup> In addition, the IACHR has established that the State must show that the investigation “was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth.”<sup>28</sup> The State is ultimately the one responsible for ascertaining the truth on its own initiative, and this does not depend on the efforts of the victim or her next-of-kin.<sup>29</sup> When the State apparatus leaves human rights violations unpunished and the victim’s full enjoyment of human rights is not promptly restored, the State fails to comply with its positive duties under international human rights law.<sup>30</sup> The same principle applies when a State allows private persons to act freely and with impunity in violating the rights recognized in the governing instruments of the inter-American system.

27. In its Article 7, the Convention of Belém do Pará underscores the due diligence obligation of the States in cases involving violence against women and echoes the hemisphere’s great concern over the seriousness of this problem.<sup>31</sup> It provides that adequate judicial protection is essential to eradicate the problem of violence and discrimination against women. Article 7 concerns the State’s immediate obligations in cases of violence against women, which include judicial proceedings, mechanisms and legislation aimed at preventing impunity, including measures to protect women from imminent acts of violence. It also lists the following as obligations of the States:

- Include in their domestic legal systems, criminal, civil and administrative laws 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 measures, to amend or repeal existing laws and regulations or to modify legal or customary practices that allow tolerance of violence against women and sustain such tolerance.
- 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.
- Establish the necessary legal and administrative systems to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and

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<sup>27</sup> IACHR, Report No. 53/01, *Ana, Beatriz and Celia González Pérez* (Mexico), Case 11.565, April 4, 2001, paras. 84-88; IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 132.

<sup>28</sup> IACHR, Report No. 55/97, *Juan Carlos Abella et al.* (Argentina), November 18, 1997, para. 412.

<sup>29</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), para. 40; I/A Court H.R., *Godínez Cruz Case*. Judgment of January 20, 1989. Series C No. 5, para. 188.

<sup>30</sup> IACHR, Merits Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al. v. United States*, July 21, 2011, para. 173; IACHR, *The Situation of the Rights of Women in Ciudad Juárez*, OEA/Ser. L/V/II.117. Doc. 44 (March 7, 2003), para. 51.

<sup>31</sup> See, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, “Convention of Belém do Pará,” Article 7.

- Adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or from using any means that harms or endangers her life or integrity, or damages her property.

28. For its part, in a number of its key instruments the universal system for protection of human rights has established principles requiring that access to justice be guaranteed. These include the Universal Declaration of Human Rights, Article 8 of which states that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” For its part, Article 14 of the International Covenant on Civil and Political Rights provides that all persons shall be entitled “to a fair and public hearing by a competent, independent and impartial tribunal established by law.” Article 14 of the Covenant also provides that “[a]ll shall be equal before the courts and tribunals,” a provision that can be read in conjunction with the obligation set forth in Article 2 of the Covenant, which is that States must respect and ensure the rights recognized in the Covenant to all persons within their jurisdiction, without distinction of any kind, and the guarantee of equality set forth in Article 3 thereof.

29. Women’s right to effective judicial protection has been upheld in the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW is fundamental to ensuring women’s access to justice as it was designed specifically to promote the *de jure* and *de facto* equality of men and women in the exercise of their human rights and fundamental freedoms.<sup>32</sup> Article 1 of the CEDAW defines discrimination against women in broad terms:

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.

30. This definition includes any distinction based on sex that, either by intent or in practice, places women at a disadvantage and is an impediment to full recognition of their human rights in the public and private domains. The Committee that oversees compliance with the CEDAW has written that the definition of discrimination in the Convention includes violence against women.<sup>33</sup>

31. In its General Recommendation 28, the CEDAW Committee established that the States parties have an obligation to eliminate discrimination by any public or private actor, which includes “measures that: ensure that women are able to make

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<sup>32</sup> United Nations, Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation 25, Special temporary measures*, U.N. Doc./CEDAW/C/2004/1/WP.1/Rev.1 (2004), Section II.

<sup>33</sup> United Nations, Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation 19, Violence against women*, U.N. Doc. HRI/GEN/1/Rev.1 (1994), p. 84, para. 11.



complaints about violations of their rights under the Convention and to have access to effective remedies” and that “establish legal protection of the rights of women on an equal basis with men” and that “ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination ...”<sup>34</sup> The States parties also have an obligation to ensure that women are protected against discrimination committed by public authorities or the judiciary and that this protection shall be provided by competent tribunals and other public institutions and enforced by sanctions and remedies where appropriate.<sup>35</sup>

32. In its Recommendation 19, the CEDAW Committee asserted that States parties should ensure “that laws against family violence and 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. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.”<sup>36</sup>

33. This same need to protect the victims is echoed in General Recommendation 24, where the CEDAW Committee underscores that States Parties should promote women’s health throughout their lifespan. This will include interventions aimed at both the prevention and treatment of diseases and conditions affecting women, as well as responding to violence against women, and will ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services.<sup>37</sup>

34. The CEDAW Committee has issued a series of recommendations concerning access to justice for sectors of women who are at particular risk of having their human rights violated; women who tend to suffer from a confluence of various types of discrimination based on their sex, in combination with other factors such as age, race, ethnic origin, nationality, economic condition and others. In General Recommendation 26, the CEDAW Committee acknowledges that access to justice may be limited for women migrant workers who are victims of sexual violence, and identifies a number of legal and practical impediments that keep them away from the legal system, such as fear of deportation or cancellation of visas.<sup>38</sup> In the case of Afro-descendant women, the right of

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<sup>34</sup> United Nations, Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation 28, The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, December 16, 2010, para. 36.

<sup>35</sup> United Nations, Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation 28, The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, December 16, 2010, para. 34.

<sup>36</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), adopted at the 11<sup>th</sup> session in 1992, para. 24.

<sup>37</sup> United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 24, Women and Health*, 20<sup>th</sup> session (02/02/1999), para. 29.

<sup>38</sup> United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 26 on women migrant workers*, para. 21.

access to justice is reinforced by the International Convention on the Elimination of All Forms of Racial Discrimination, Article 6 of which provides that States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination. The right of girls to access to justice is protected by the Convention on the Rights of the Child. Articles 39 and 40 of that instrument address the issue of the justice system and how it must work to ensure that children have adequate access to its mechanisms.

35. Along these same lines, ILO Convention 169 is of fundamental importance to the protection of the rights of indigenous women, which includes their right of access to justice, while respecting their vision of the natural order, traditions, culture and languages. For its part, Article 3 of the Convention on the Rights of Persons with Disabilities provides that the States have an obligation to ensure that persons with disabilities have full and equal access to justice and to other spheres of their countries' public life.

36. International criminal law has also established important guidelines for addressing sexual violence and the care and treatment of victims and witnesses. In 1999, the international community approved the Rome Statute of the International Criminal Court<sup>39</sup> which prosecutes the most heinous crimes against humanity: genocide, crimes against humanity, war crimes and crimes of aggression. Among the crimes that the Statute lists as crimes against humanity are a number of acts involving sexual violence and associated with extermination, sexual enslavement, ethnic cleansing, forced prostitution, forced sterilization and forced abortion, among others. The Statute requires that all appropriate measures be taken to ensure effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, that the victim's interests and personal circumstances be respected, one of those circumstances being gender. The Statute creates the Victims and Witnesses Unit, which is to be staffed with persons having expertise in trauma, including trauma related to crimes of sexual violence.

## **2. Due diligence, prevention and eradication of violence and discrimination**

37. Article 2 of the American Convention on Human Rights provides that the States Parties undertake to adopt such legislative or other measures as may be necessary to give effect to the rights or freedoms protected by that instrument.

38. The content and scope of this article must be interpreted in conjunction with the duty to apply due diligence to prevent, investigate and punish violence against women, set forth in Article 7(b) of the Convention of Belém do Pará. It must also be interpreted in conjunction with Article 2 of the CEDAW, where States Parties undertake "[t]o establish legal protection of the rights of women on an equal basis with men and to

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<sup>39</sup> Adopted at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on July 17, 1998.

ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.”

39. States therefore have an obligation to offer effective judicial protection to women victims of violence on an equal basis with men and free from any form of discrimination.

40. A fundamental aspect of the guarantee of access to justice on an equal basis with men is the States’ fulfillment of their obligation to act with the necessary due diligence in cases involving acts of violence committed against women. The Inter-American Court has held that this duty involves four obligations: prevention, investigation, punishment and redress of any human rights violation, in order to prevent impunity.<sup>40</sup> The universal and regional human rights systems have also addressed the close nexus that exists between discrimination, violence and due diligence, emphasizing that the State’s failure to act with due diligence to protect women from violence is a form of discrimination and a denial of their right to equal protection of the law and of the duty to guarantee access to justice.<sup>41</sup>

41. The Commission has addressed the meaning of the duty to act with diligence in response to acts of violence against women.<sup>42</sup> Recently, in the case of *Jessica Lenahan* (Gonzales), the IACHR discussed how the international community has consistently referenced the due diligence standard as a way of understanding what State’s human rights obligations mean in practice when it comes to violence perpetrated against women of varying ages and in different contexts.<sup>43</sup> This standard has also been critical in establishing the circumstances under which the State may be obligated to prevent actions or omissions by private persons and answer for them. This duty includes the obligation to organize the structure of the State –including the laws, public policy, organs charged with enforcing the law, like the police, and the judicial system- so that it is capable of adequately and effectively preventing and responding to these problems.<sup>44</sup> Both the Inter-American

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<sup>40</sup> See I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4.

<sup>41</sup> See, in general, CEDAW Communication 2/2003, *Mrs. A.T. v. Hungary*, January 26, 2005; European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, June 9, 2009; IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette González et al.*, Merits Report (Mexico), March 9, 2007; Inter-American Court of Human Rights, *Case of González et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009.

<sup>42</sup> See, in general, IACHR, *Report on Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser L/V II. Doc 68, January 20, 2007.

<sup>43</sup> IACHR, Merits Report, Nº 80/11, *Case of 12.626, Jessica Lenahan (Gonzales) et al.*, United States, July 21, 2011, paras. 125-128.

<sup>44</sup> See, for example, United Nations General Assembly resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, June 16, 2010, paras. 1-16; United Nations, *Declaration on the elimination of violence against women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994, Article 4; United Nations General Assembly resolution, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/63/155, January 30, 2009, paras. 8-16; CEDAW, General Recommendation 19: *Violence against women*, (11<sup>th</sup> session 1992), UN Doc. A/47/38, 1 (1993), paras. 1-23.

Commission and the Inter-American Court have invoked the principle of due diligence as a reference for deciding cases and situations involving violence perpetrated against women by private persons, including violence against girls and women who suffer multiple forms of discrimination, such as indigenous and Afro-descendant women.<sup>45</sup>

42. The evolving law and practice related to the application of the due diligence standard in cases of violence against women highlights four principles.<sup>46</sup> First, a State's international responsibility may be engaged by its failing to act with due diligence to prevent, investigate, sanction and offer reparations for acts of violence against women, a duty which may apply to actions committed by private actors in certain circumstances.<sup>47</sup> Second, there is a link between discrimination, violence against women and due diligence; hence, it is the States' duty to confront and respond to violence against women, which involves taking measures to prevent the discrimination that perpetuates this problem.<sup>48</sup> States must adopt the necessary measures to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and other practices based on the idea of the inferiority or superiority of either sex, and on stereotyped roles for men and women.

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See also, IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette González et al.* (Mexico), March 9, 2007; IACHR, Report No. 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, IACHR, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007); 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.

For references to the European and African systems, see European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, June 9, 2009; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, approved at the second ordinary session of the Assembly of the Union, Maputo, July 11, 2003, Article 4.

<sup>45</sup> See, for example, IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette Gonzalez et al.* (Mexico), March 9, 2007, paras. 160-255; Report No. 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001, paras. 55-58; *Access to justice for women victims of violence in the Americas*, IACHR, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), paras. 26-58; IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 104; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. 124/Doc.6, October 18, 2006, para. 24; IACHR, *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134, Doc. 63, March 20, 2009, para. 44; IACHR, *The Right of Women in Haiti to Be Free from Violence and Discrimination*, OEA/Ser.L/V/II, Doc. 64, March 10, 2009, para. 80. See also, in general, 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>46</sup> For a discussion of this topic, see IACHR, Merits Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, paras. 125-128.

<sup>47</sup> See, generally, IACHR, Report No. 28/07, Cases 12.496-12.498, *Claudia Ivette González et al.* (Mexico), March 9, 2007; European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, 9 June 2009; CEDAW Committee, Views on Communication 6/2005, *Fatma Yildirim v. Austria* (July 21, 2004).

<sup>48</sup> See, e.g., United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994, Articles 3 and 4; 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), paras. 1, 11, and 23; IACHR, Report No. 4/01, *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 44.

43. Third, the evolving law and practice emphasize the link between the duty to act with due diligence and the obligation of States to guarantee access to adequate and effective judicial remedies for victims and their family members when they suffer acts of violence.<sup>49</sup> Fourth, the international and regional systems have identified certain groups of women as being at particular risk for acts of violence due to having been subjected to discrimination based on more than one factor, among these are girls and women belonging to certain ethnic, racial, and minority groups. This is a factor that States have to consider when adopting measures to prevent all forms of violence.<sup>50</sup>

44. These principles will be discussed at greater length later in this report.

### **3. Sexual violence**

#### **a. Sexual violence as an expression of discrimination against women**

45. Sexual violence against women is not a phenomenon unique to Mesoamerica: it is the result of a structural gender violence and of socio-cultural patterns that discriminate against women. The structural gender violence is the product of a system that justifies male domination on the grounds of women's supposed biological inferiority. The system and the violence it breeds can be traced to the family, and spreads throughout the social, economic, cultural, religious and political order, rendering the entire apparatus of the State and society as a whole incapable of ensuring women's exercise of their human rights. Socio-cultural patterns are reflected in sexual violence, promote it, and send a message of control and power over women.

46. The socialization process and cultural practices that discriminate against women play a key role in compounding the violence and discrimination against women and creating the perception that it is the natural order of things. They thus become the principal means by which that violence is bred.<sup>51</sup>

47. This systemic social discrimination manifests itself in various ways in every sphere. Institutions like the family, language, advertising, education, the mass media and others, use a discourse and convey an ideological message that influences the behavior of

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<sup>49</sup> See, e.g., United Nations General Assembly Resolution, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/63/155, January 30, 2009, paras. 11, 14, 15 and 16; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, IACHR, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), paras. 123-216; IACHR, Report No. 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001, paras. 36-44.

<sup>50</sup> United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010, para. 10; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II.124/Doc.6, October 18, 2006, para. 140; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, IACHR, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), para. 272; CEDAW Committee, General Recommendation 25, *Temporary Special Measures*, U.N. Doc./CEDAW/C/2004/I/WP.1/Rev.1 (2004), section II, para. 12.

<sup>51</sup> Laverde, María Cristina and Sanchez, Luz Helena. *Voces insurgents* [Insurgent Voices]. Editorial Guadalupe, Bogotá, Colombia, 1988.

men and women so that they conform to established cultural patterns that promote inequality. It also reinforces the roles and stereotypes that are detrimental to women. The IACHR reminds the States that the Convention of Belém do Pará provides that the right of every woman to live free from violence includes, *inter alia*, her right to be free from all forms of discrimination and to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination. That same principle appears in Article 5 of the CEDAW.

48. One example of the influence that these discriminatory socio-cultural patterns have is the evolution of the protected legal interests under the criminal codes of the region. Historically, honor was the core interest at stake in crimes related to sexual violence. Today, most criminal laws take other legal rights and interests into account; in the case of the countries that are the priorities in this report, the core interests at stake are personal security/integrity and sexual self-determination. In Nicaragua,<sup>52</sup> the law protects one's physical security/integrity; in El Salvador,<sup>53</sup> the legal interest or right at stake is sexual self-determination; in Guatemala,<sup>54</sup> the legal interests or rights at stake are sexual self-determination, sexual security, and discretion; and in Honduras,<sup>55</sup> the law protects sexual self-determination and decency.

49. Judicial institutions mirror these socio-cultural patterns in the conduct of their business. Police, prosecutors, judges, lawyers and others involved in law enforcement and the administration of justice are influenced by stereotypes, practices, and assumptions, which detracts from the importance that acts of sexual violence deserve. For example, they may examine a case involving sexual violence by focusing on the woman's sexual history and life, the implication being that the victim may have somehow provoked or invited the acts committed against her, and the fact that she is not a virgin. The IACHR believes that allowing these stereotypes inside the judicial branch serves to legitimize and aids and abets impunity.

50. The State of Mexico told the CEDAW Committee the following: *"one has to recognize that a culture deeply rooted in stereotypes, based on the underlying assumption that women are inferior, cannot be changed overnight. Changing cultural patterns is a difficult task for any government, even more so when the emerging problems of modern society — alcoholism, drug addiction and trafficking, gang crime, sex tourism, etc. — serve to exacerbate the discrimination suffered by various sectors of society, in particular those that are already disadvantaged, such as women, children and indigenous peoples."*<sup>56</sup>

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<sup>52</sup> Nicaraguan Criminal Code, Book II, Title.

<sup>53</sup> Criminal Code of El Salvador, Title IV.

<sup>54</sup> Guatemalan Criminal Code, Title III.

<sup>55</sup> Honduran Criminal Code, Title II.

<sup>56</sup> Cited in 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. 132.

51. Hence, forms of sexual violence such as abuse, harassment, pornography, sexual exploitation, forced sterilization, forced maternity, negligence with respect to girls, rape and others, are direct manifestations of the longstanding social discrimination that women have suffered and still do suffer: *“they are the culmination of a situation characterized by the reiterated and systematic violation of human rights.”*<sup>57</sup>

52. It is important to understand how discriminatory socio-cultural patterns can be decisive in determining whether the problem of sexual violence, in all its dimensions, is effectively addressed. The IACHR will elaborate upon this point later in this report. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions made the following observation:

The arrogant behaviour and obvious indifference shown by some state officials [...] leave the impression that many of the crimes were deliberately never investigated for the sole reason that the victims were “only” young girls with no particular social status and who therefore were regarded as expendable. It is to be feared that a lot of valuable time and information may have been lost because of the delays and irregularities.<sup>58</sup>

53. Compounding this problem is the scarce and unreliable information that the States of the region have on the subject of sexual violence. The IACHR must emphasize how important it is that the States conduct specific research into the problem of sexual violence, thereby getting timely, reliable and accurate information on the problem of sexual violence and its relationship to discrimination against women.

54. The Commission also observes with concern that the States become the principal parties responsible for practicing and tolerating this serious form of discrimination against women, especially by their failure to act with due diligence to prevent violence and discrimination against women.

55. The IACHR believes that this violation of women’s human rights, which is the product of socio-cultural patterns, must be exposed, analyzed and corrected using a framework of ethics and law that is based on the instruments for protection of human rights. This will expose the *de facto* and *de jure* situations that violate the right of access to justice in the case of women victims of sexual violence and will require an exercise in ownership and acknowledgement, interpretation, creativity and a re-conceptualization of those instruments so that they are perceived as effective and efficient means of protecting women’s rights.

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<sup>57</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. 128.

<sup>58</sup> Cf. United Nations, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, submitted pursuant to Commission on Human Rights resolution 1999/35, E/CN.4/2000/3, Add.3, November 25, 1999.

## b. Sexual violence and its manifestations

56. Violence against women manifests itself in multiple ways. However, not every human right violation committed against a woman implies necessarily a violation of the provisions of the Convention of Belém do Pará.<sup>59</sup> In order for a human rights violation to be a violation of the Convention of Belém do Pará it must be based on gender discrimination; in other words, it must be a product of gender stereotyping. The latter refers to a preconception of the attributes, characteristics or roles that men or women either play or are expected to play.<sup>60</sup> They are socially dominant and socially persistent stereotypes, which are implicitly or explicitly expressed, and are both a cause and consequence of gender violence against women.<sup>61</sup>

57. Given these criteria, violence against women constitutes not only a violation of human rights, but also “an offense against human dignity and a manifestation of the historically unequal power relations between women and men.”<sup>62</sup> It “pervades every sector of society, regardless of class, race, or ethnic group, income, culture, level of education, age or religion, and strikes at its very foundation.”<sup>63</sup>

58. In Mesoamerica, violence against women is the main hidden face of citizen insecurity, to the point that the public perceives it as part of the “problem of crime.” Although limited, the existing data reveal that about half of all Central American women have been subjected to violence during their adult lives.<sup>64</sup>

59. Consistent with the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and in line with international case law, the Inter-American Court has interpreted sexual violence as consisting 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>

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<sup>59</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. 227

<sup>60</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. 401.

<sup>61</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. 401.

<sup>62</sup> I/A Court H.R. *Case of Inés Fernández et al. v. Mexico*, Judgment of August 30, 2010. Series C No. 215, para. 118.

<sup>63</sup> I/A Court H.R. *Case of Inés Fernández et al. v. Mexico*, Judgment of August 30, 2010. Series C No. 215, para. 118.

<sup>64</sup> United Nations Development Programme (UNDP), Human Development Report for Central America 2009-2010, Opening spaces to citizen security and human development, October 2009, p. 133.

<sup>65</sup> I/A Court H.R. *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006. Series C No. 160, para. 306.



60. The domestic laws of the Mesoamerican countries are more explicit. For example, in Costa Rica sexual violence is any action in which a person is forced to maintain sexual contact –whether physical or verbal- or to engage in other sexual contact by force, intimidation, coercion, blackmail, bribery, manipulation, threat or any other means whose effect is to nullify or restrict a person’s free will,<sup>66</sup> or any conduct that threatens or violates the woman’s right to decide of her own free will what her sexual life will be.<sup>67</sup>

61. According to the World Health Organization (WHO), sexual violence includes coerced sexual relations in marriage and in dating relationships; rape by a stranger; systematic rape during armed conflict; unwanted sexual advances or sexual harassment, including demanding sex in return for work or school grades; sexual abuse of children; forced marriage or cohabitation; forced prostitution and human trafficking; marriage of children; violent acts against the sexual integrity of women, including female genital mutilation and obligatory inspections for virginity.<sup>68</sup>

62. Other forms of sexual violence identified by the international community include sexual slavery, forced pregnancy and forced sterilization, which are regarded as crimes against humanity.<sup>69</sup> Under the domestic laws of the Mesoamerican countries the following, in addition to rape and statutory rape, are listed as crimes of a sexual nature: criminal sexual contact, incest, pornography, promotion of tourism for prostitution purposes, procuring, abduction and displays of obscenity.<sup>70</sup> The IACHR does not pretend that this is an exhaustive list of the manifestations of sexual violence; to the contrary, it believes that sexual violence comes in multiple, diverse forms.

63. Sexual violence is an assault upon human dignity and a violation of the right to humane treatment, recognized in Article 5 of the American Convention on Human Rights. For a proper appreciation of the magnitude and nature of the human rights violations that an act of sexual violence involves, the circumstances surrounding the event need to be examined. For example an act of sexual violence can be a violation of a number of rights recognized in the American Convention and the Convention of Belém do Pará, but it can also lead to a homicide, a violation of the victim’s right to life.

64. For many women, sexual violence begins in childhood and adolescence, and occurs in a wide variety of settings, the most common being the home, the school and the community. One of the most common forms of sexual violence that women suffer is rape. Rape is a paradigmatic form of violence against women, whose consequences transcend the victim’s personhood.<sup>71</sup>

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<sup>66</sup> Anti-Domestic Violence Law, Costa Rica, 1996, Article 2(d).

<sup>67</sup> Special Comprehensive Law for a Violence-Free Life for Women, Costa Rica, Article 9(f).

<sup>68</sup> World Health Organization, World Report on Violence and Health, Washington, D.C., 2002, p. 21.

<sup>69</sup> Statute of the International Criminal Court, Article 7.

<sup>70</sup> Response to the questionnaire received from the states of El Salvador, Guatemala, Honduras and the one sent by the Supreme Court of Justice of Nicaragua.

<sup>71</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, para. 119.

65. The Inter-American Court held that rape does not necessarily imply nonconsensual vaginal sex, as was traditionally thought. Rape can also be nonconsensual acts involving vaginal or anal penetration of the victim. In the commission of this crime, the assailant may use other parts of his body or even objects; oral penetration with the male organ is also classified as rape.<sup>72</sup> Physical resistance by the victim is not one of the elements of the crime of rape; the behavior need only involve coercion of some sort.<sup>73</sup> When an agent of the State rapes a women in custody, the act is particularly serious and reprehensible, given the victim's vulnerability and the abuse of authority on the part of the agent.<sup>74</sup>

66. The IACHR's decisions in the cases of *Raquel Martín de Mejía*<sup>75</sup> and *Ana, Beatriz and Celia Gonzalez Perez*<sup>76</sup> were the first individual cases in which it addressed the concept of rape as torture, and the features that characterize access to justice for the victims of these types of crimes.

67. In the particular case of *Raquel Martín de Mejía*, the Commission found the Peruvian State responsible for violations of the right to humane treatment, protected under Article 5 of the American Convention and the Inter-American Convention to Prevent and Punish Torture.<sup>77</sup> The petitioners alleged that on June 15, 1989, a group of armed persons dressed in Peruvian Army uniforms raided the home of Raquel Martín and Fernando Mejía in Oxapampa accusing them of being subversives and members of the *Tupac Amaru Revolutionary Movement*. After beating Fernando Mejía and putting him into a government truck in his wife's presence, the armed group left. Moments later, however, the person in command of the operation returned to the house twice, raping Raquel Martín de Mejía each time. Raquel Martín de Mejía and her attorney reported these events but once the investigations were underway at the orders of the Oxapampa Provincial Prosecutor, the victim received anonymous threats that she would be killed if she pursued the investigation.

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<sup>72</sup> I/A Court H.R. *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006. Series C No. 160, para. 310

<sup>73</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, para. 105.

<sup>74</sup> I/A Court H.R. *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006. Series C No. 160, para. 311.

<sup>75</sup> IACHR, Merits Report No. 5/96, Case 10.970, *Raquel Martín de Mejía* (Peru), March 1, 1996.

<sup>76</sup> IACHR, Merits Report No. 53/01, Case 11.565, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 2, 2001.

<sup>77</sup> In the end, the IACHR concluded that the Peruvian State was responsible for a number of violations of the American Convention, to the detriment of Raquel Martín de Mejía, including a violation of the general obligation to respect and ensure the rights contained in the Convention (Article 1(1)); the right to humane treatment (Article 5); the right to have one's honor and dignity protected (Article 11); the right to due process of law (Article 8), and the right to an effective remedy (Article 25). IACHR, *Raquel Martín de Mejía v. Peru*, Case. 10.970, IACHR, Merits Report 5/96, OEA/Ser.L./V/II.91, doc. 7 rev. (1996). Section VI. Conclusions.

68. When it addressed the matter of the rape, the Commission found in its decision that the three elements that the Inter-American Convention to Prevent and Punish Torture requires for torture to be proved, were in fact all present: “(1) it must be an intentional act through which physical and mental pain and suffering is inflicted on a person; (2) it must be committed with a purpose; and (3) it must be committed by a public official or by a private person acting at the instigation of the former.” When examining these elements, the Commission considered the physical and psychological suffering that the rape had caused, the possibility that the victim might suffer “public ostracism” if she reported these events, and the fact that the violation could have been perpetrated with the intention of punishing and intimidating the victim. In the case of *Raquel Martín de Mejía* the Commission wrote that the right to judicial protection recognized in Article 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” and “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>78</sup>

69. The Inter-American Court has observed that rape is an extremely traumatic experience that may have serious consequences and it causes great physical and psychological damage that leaves the victim “physically and emotionally humiliated”, a situation difficult to overcome with time, contrary to what happens with other traumatic experiences. The Inter-American Court has found therefore, that based on Article 2 of the Inter-American Convention to Prevent and Punish Torture and because of its effects, rape can constitute torture.<sup>79</sup>

70. For the Court, the severe suffering of the victim is inherent in rape, even when there is no evidence of physical injuries or disease. Indeed, the aftereffects of rape will not always be physical injuries or disease. Women victims of rape also experience complex consequences of a psychological and social nature.<sup>80</sup> Thus, in general terms, rape, like torture, is intended, *inter alia*, to intimidate, degrade, humiliate, punish or control the victim.<sup>81</sup>

71. The Inter-American Court also held that rape is a violation of the right to privacy, provided for in Article 11 of the American Convention. It wrote that the concept of a private life is a wide-ranging term, which cannot be defined exhaustively, but that includes, among other protected spheres, a person’s sexual life and the right to establish and develop relationships with other human beings. Thus, rape violates essential aspects and values of private life, represents an intrusion in a person’s sexual life, and annuls the

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<sup>78</sup> IACHR, Merits Report No. 5/96, Case 10.970, *Raquel Martín de Mejía* (Peru). March 1, 1996. Section V. General Considerations, B. Considerations on the substance of the matter. 3. Analysis.

<sup>79</sup> I/A Court H.R. *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006. Series C No. 160, para. 312.

<sup>80</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, para. 124.

<sup>81</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, para.127.

victim's right to decide freely with whom to have intimate relations, causing her to lose total control over these most personal and intimate decisions and over her basic bodily functions.<sup>82</sup>

72. Although classified as a crime in every country of the region, the elements of the crime of rape are not standard throughout it. It is among the least-reported crimes, so that the reliability of the figures or statistics available is very poor.<sup>83</sup> Compounding the problem is the shame and fear, which is even more pronounced in cultures that discriminate against women. If the rapist is a relative or family friend or someone who lives under the same roof, the crime is even less likely to be reported.

### c. Sexual violence in Mesoamerica

73. The IACHR will be highlighting some research studies on sexual violence, which revealed some important findings about the characteristics and manifestations of sexual violence in the countries of Mesoamerica, with special reference to Honduras, El Salvador, Guatemala and Nicaragua.

74. In the case of El Salvador, statistics collected by the Observatory of Gender Violence ("ORMUSA") reveals that girls between 12 and 18 years old, are the population most affected by sexual violence, followed by women between 18 and 25 years of age.

75. In the case of Guatemala, a nationwide study<sup>84</sup> conducted in 15 municipalities on the subject of women's access to justice found that 68% of the complaints filed were of intra-family violence; 16% were battery complaints; and 9% were rape complaints. Of 256 women interviewed, 72% were the aggrieved parties, and 28% were defendants, accused mainly of misdemeanors.

76. In Honduras<sup>85</sup> between January and December 2009, the Technical Unit on Reform of the Public Prosecutor's Office registered 16,492 complaints of violence against women; of these 61.3% were complaints of domestic violence; 17.1% were complaints of sexual violence; 13.2% were complaints of intra-family violence, 4.2% were complaints reporting the violent deaths of women; the remaining 4.2% were complaints of other crimes. Although complaints of domestic violence in Honduras outnumber the complaints alleging sexual violence, the figures show that in 11 departments, sexual violence accounts

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<sup>82</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, para. 129.

<sup>83</sup> United Nations Development Programme (UNDP), Human Development Report for Central America 2009-2010, Opening spaces to citizen security and human development, October 2009, p. 132.

<sup>84</sup> *Equipo Nizkor, Informe Sombra sobre la situación de los Derechos Humanos de las Mujeres en Guatemala* [Shadow report on the situation of women's human rights in Guatemala], s/a. Available [in Spanish] at <http://www.derechos.org/nizkor/guatemala/doc/sombra.html>.

<sup>85</sup> *Feministas en Resistencia, Ni golpes de Estado ni golpes a las Mujeres*, Honduras: Situación de la Violencia contra las Mujeres en 2009 Honduras [Violence against Women in 2009, Honduras], 2010.

for a larger percentage of the complaints than domestic violence does. In most cases, rape is the form of sexual violence most often reported. Although the available data is not broken down by age, if crimes involving a minor under the age of 18 are added together, it may be that in at least 35.2% of the complaints, the victim was an adolescent female.

77. In Nicaragua,<sup>86</sup> of the total number of acts of sexual violence reported between 2003 and 2008 at the Special Police Stations for Women and Girls, 70.5% were complaints of rape, attempted rape, criminal sexual contact and statutory rape; rapes account for the largest share, at 31.6%. In 2008, the Special Police Stations for Women and Girls reported that in the first quarter, they received 1,097 complaints of sexual crimes. In over half of these (57%), the victims were girls, boys and adolescents.<sup>87</sup>

78. Despite the under-reporting and the lack of reliable official statistics, the data researched show that sexual violence against women, and especially against girls, is a serious social problem; nevertheless, the cases reported are not getting the judicial response they deserve. In Guatemala, there was only one conviction in 2010 on a charge of sexual violence.<sup>88</sup> In El Salvador that same year there were 1,305 complaints of violations of sexual self-determination between January and July, and only 47 resulted in convictions.<sup>89</sup>

## **B. The States' obligations in addressing cases of sexual violence**

79. As a consequence of the legal obligations emanating from international human rights law, the States are obligated to organize the structure of the State—and all the work of the government- to prevent, investigate, prosecute and punish acts of sexual violence and ensure access to justice to the victims. The judicial branch plays a

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<sup>86</sup> National Police, Office of the Director of the Special Police Stations for Women and Girls, *Diagnóstico de la Violencia Intrafamiliar y Sexual en Nicaragua* [Analysis of Intra-family and Sexual Violence in Nicaragua], Managua, December 2008, p. 38.

<sup>87</sup> *Puntos de Encuentro*, Movimiento contra el abuso sexual exige justicia al Ministerio Público y Policía [Anti-sexual abuse movement demands justice from Public Prosecutor's Office and Police], available [in Spanish] at <http://www.puntos.org.ni/servicios/actividades/noticias/default.php?acti=1807>.

<sup>88</sup> Response received from the Guatemalan State to the IACHR's questionnaire. In its response, the State uses a chart to illustrate the convictions in 2009 and 2010, which it labels as "tried in the Guatemalan criminal courts for offenses criminalized under the Law against Femicide and Other Forms of Violence against Women."

<sup>89</sup> Response from the Salvadoran State to the IACHR's questionnaire, based on data that the Office of the Attorney General of the Republic presented to the Committee on Legislation and Constitutional Issues in August 2010. For its part, the Salvadoran Institute for Women's Development [Instituto Salvadoreño para el Desarrollo de la Mujer] said that the data from the Attorney General's Office showed that in the period from 2008 to July 2010, a total of 8,108 complaints were filed for crimes against sexual self-determination; 3,493 were prosecuted, which is 43% of the complaints received. Of these complaints, 2,432 ended in temporary or definitive dismissals, which is 30% of the total number of complaints. 1,111 cases got as far as the trial hearing; of these, 628 ended in acquittals, which is 7.7% of the total number of complaints; 483 ended in convictions, representing a trifling 5.9% for the three years. See *Instituto Salvadoreño para el Desarrollo de la Mujer, Segundo Informe Nacional sobre la Situación de la Violencia contra las Mujeres en El Salvador* [Second National Report on Violence against Women in El Salvador], 2010.

fundamental role in discharging the State's responsibility to act with the necessary due diligence and send a social message to the effect that sexual violence will not be tolerated.

80. The following is a discussion of the States' various obligations when addressing sexual violence, which include: a) the duty to act with due diligence in the investigation of cases of sexual violence and its components; b) the necessary multidisciplinary approach; and c) the duty to make reparations to the victims of sexual violence through a commitment to change the discriminatory socio-cultural practices that still beset women. The IACHR will then undertake an analysis of the Mesoamerican framework of laws for dealing with sexual violence committed against women, and how they compare to international standards. This will serve as an introduction to a detailed analysis of the problems with the way in which cases of sexual violence are processed and prosecuted in the Mesoamerican region.

### 1. Due diligence in the investigation of cases of sexual violence

81. As far back as its earliest case law, the Inter-American Court has held that: "The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention."<sup>90</sup>

82. For the Inter-American Court, the obligation to investigate human rights violations is one of the positive measures that States must take to ensure the rights recognized in the American Convention on Human Rights. Although the duty to investigate is one of means and not results, it must be undertaken by the State as an inherent juridical obligation and not as a mere formality preordained to be ineffective, or as a step taken by private interests that depends upon the procedural initiative of the victims or their next of kin, or upon their offer of proof.<sup>91</sup> In light of this obligation, once State authorities are aware of an incident, they should initiate *ex officio* and without delay, a serious, impartial, and effective investigation. This investigation must be carried out using all available legal means with the aim of ascertaining the truth.<sup>92</sup>

83. The Inter-American Court has also written that the obligation to investigate effectively has a wider scope when dealing with cases of violence against

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<sup>90</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 176.

<sup>91</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, para. 191.

<sup>92</sup> I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215, para. 191.

women.<sup>93</sup> Moreover, it has also held that if it is to be effective, such an investigation must include a gender perspective.<sup>94</sup> In order to comply with the obligation to investigate and punish, the State must remove all the obstacles and mechanisms *de facto* and *de jure* that maintain impunity; it must grant sufficient guarantees of security to witnesses, judicial authorities, prosecutors, other judicial agents, and the next of kin of the victims, and use all possible measures to advance the proceedings.<sup>95</sup>

84. For its part, the Inter-American Commission has written that in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.<sup>96</sup> The investigation must pursue all possible leads that might identify the perpetrators of the crime, so that they can be prosecuted and punished. The investigative phase is of fundamental importance and the State can be held accountable for failing to order, conduct or evaluate tests that may be essential to solving the case.<sup>97</sup>

85. As for cases of sexual violence that also involve murder, the Inter-American Court has established the guiding principles that investigations into violent deaths must follow. The State authorities who conduct an investigation of this type must try, at the very least, *inter alia*: (i) to identify the victim; (ii) to recover and preserve the probative material related to the death in order to assist in any potential criminal investigation of those responsible; (iii) to identify possible witnesses and obtain their statements in relation to the death under investigation; (iv) to determine the cause, manner, place and time of death, as well as any pattern or practice that could have caused the death, and (v) to distinguish between natural death, accidental death, suicide and homicide.<sup>98</sup> The crime scene must be thoroughly investigated, autopsies conducted and the human remains rigorously analyzed by competent professionals using the most appropriate techniques.<sup>99</sup> In

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<sup>93</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. 293.

<sup>94</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. 455.

<sup>95</sup> I/A Court H.R., *Case of Carpio Nicolle et al. v. Guatemala*. Judgment of November 22, 2004. Series C No. 117, para. 134.

<sup>96</sup> IACHR, Merits Report No. 55/97, *Juan Carlos Abella et al.* (Argentina), November 18, 1997, para. 412.

<sup>97</sup> 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. 230.

<sup>98</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. 300; IACHR, Report No. 10/95, *Manuel Stalin Bolaños* (Ecuador), September 12, 1995, paras. 32 - 34; Report No. 55/97, *Juan Carlos Abella et al.* (Argentina), November 18, 1997, paras. 413 to 424; Report No. 48/97, *Ejido Morelia* (Mexico), April 13, 1996. Paragraphs 109 – 112; IACHR, *Access to Justice for Women Victims of Violence in the Americas* OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 47.

<sup>99</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. 300; I/A Court H.R. *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 127; I/A Court H.R., *Case of Escué Zapata v. Colombia*. Merits, Reparations and Costs.

the case of homicide, specific evidence must be preserved where sexual violence is suspected.<sup>100</sup>

86. The Inter-American Court has also held that according to international standards where the crime scene is concerned, investigators must, at the very least: photograph the scene and any other physical evidence, and the body as it was found and after it has been moved; gather and conserve the samples of blood, hair, fibers, threads and other clues; examine the area to look for footprints or any other traces that could be used as evidence, and prepare a detailed report with any observations regarding the scene, the measures taken by the investigators, and the assigned storage for all the evidence collected.<sup>101</sup> The requirements set out in the Minnesota Protocol establish that, when investigating a crime scene, the area around the body must be closed off, and entry into it prohibited, except for the investigator and his or her team.<sup>102</sup>

87. In criminal investigations into human rights violations, the evidentiary material must be recovered and preserved in order to assist in any potential criminal investigation into the perpetrators. This includes identifying possible witnesses and obtaining their statements, and determining the cause, manner, place and time of the act under investigation. In addition, the scene of the crime should be examined thoroughly, and rigorous tests should be performed by competent professionals, using the most appropriate procedures.<sup>103</sup>

88. Among these principles, the IACHR observes that the participation of the victim or her next of kin in the investigation process is of fundamental importance; they should have ample opportunity to be heard and take part in the corresponding proceedings in order to help clarify the facts, punish those responsible and seek proper redress.<sup>104</sup>

89. The duty to investigate does not follow exclusively from the obligations set forth in the American Convention, the Convention of Belém do Pará or any other international instruments; it also follows from the domestic laws pertaining to the State's duty to investigate certain unlawful acts at its own initiative, and from the regulations and

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Judgment of July 4, 2007. Series C No. 165, para. 106; I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 102.

<sup>100</sup> The victim's oral, vaginal and rectal fluids must be preserved, as must foreign and pubic hairs. United Nations, *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, U.N. Doc. E/ST/CSDHA/.12 (1991), paras. 29-30.

<sup>101</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. 301. The Court is referring to the United Nations *Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions*, UN Doc. E/ST/CSDHA/.12 (1991).

<sup>102</sup> Cf. *Manual on the Effective Prevention and Investigation of Extralegal Executions, Arbitrary and Summary Executions* *supra* note 103.

<sup>103</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, para. 194.

<sup>104</sup> See in this regard, 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, para. 192.



laws that allow victims or their next of kin to file complaints, offer evidence, make requests or take any other measure to participate in the criminal investigation aimed at ascertaining the facts.<sup>105</sup>

90. A number of the Court's recent judgments have established important guidelines regarding the duty to investigate –promptly, exhaustively and without delay– cases involving violence against women that occur in different contexts.

91. Thus, in its judgment in the *Case of the Dos Erres Massacre v. Guatemala*,<sup>106</sup> the Court held that the failure to investigate serious violations of personal integrity, such as torture and sexual violence committed in the context of armed conflicts and/or as systematic patterns, are a breach of the State's obligations with respect to serious human rights violations.

92. In its judgment in the *Case of González et al ("Cotton Field") v. Mexico*, the Court observed that when the State learns of a situation in which women are being abused and raped, its due diligence obligation requires that the police, prosecutors and officers of the court take swift and immediate action. Proper procedures must be in place for filing missing persons' complaints, and such complaints must trigger effective investigations from the beginning. The authorities should presume that the missing person is being deprived of her liberty, that she is still alive until there is no longer any doubt about the fate that befell her.<sup>107</sup>

93. More explicitly, in its judgments in the cases of *Inés Fernández Ortega and Valentina Rosendo Cantú v. Mexico*<sup>108</sup> the Court held that in a criminal investigation of sexual violence, the following is required: i) the victim's statement should be taken in a safe and comfortable environment, providing privacy and inspiring confidence; ii) the victim's statement should be recorded to avoid or limit the need to repeat it; iii) the victim should be provided with medical, psychological and hygienic treatment, both on an emergency basis, and continuously if required, under a treatment protocol aimed at reducing the consequences of the rape; iv) a complete and detailed medical and psychological examination should be done immediately by appropriate, trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she can be accompanied by a person of confidence if she so wishes; v) the investigative measures should be coordinated and documented and the evidence handled with care,

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<sup>105</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, para. 192.

<sup>106</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, paras. 140 and 141.

<sup>107</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. 283.

<sup>108</sup> See, in general, 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; 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.

including taking sufficient samples and performing all possible tests to determine the possible perpetrator of the act, and obtaining other evidence such as the victim's clothes, immediate examination of the scene of the incident, and the proper chain of custody of the evidence, and vi) access to advisory services or, if applicable, free legal assistance at all stages of the proceedings should be provided.

94. The Court also underscored the probative value of the victim's statement in a case of sexual violence, even though some details in her recollection of the facts may change. It is not unusual to find discrepancies in the victim's retelling of acts of this nature.<sup>109</sup> The Court continues to regard rape as torture when it is intentional, when it causes severe physical or mental suffering, and when its purpose is to intimidate, degrade, humiliate, punish or control the person being raped.<sup>110</sup> The Court also was clear in pointing out that a rape may constitute torture even when it is just one instance or takes place outside State facilities, in the victim's home, for example. This is because the subjective and objective elements that classify an act as torture are not a question of numbers or the scene of the event; instead, the elements are intentionality, the severity of the suffering caused and the purpose.<sup>111</sup>

95. The Court also wrote that in cases of sexual violence, the investigation must endeavor, insofar as possible, to avoid re-victimizing the victim or forcing her to re-live the deeply traumatic experience every time she recollects it or retells what happened.<sup>112</sup> In other words, the Court advocates a comprehensive approach to women victims of sexual violence that includes both medical and psychological care and effective access to justice.

96. For its part, in its report on *Access to Justice for Women Victims of Violence in the Americas*,<sup>113</sup> the Inter-American Commission observes that the Rules of Procedure and Evidence of the International Criminal Court can be used to steer investigations into cases of sexual violence. The Rules of Procedure and Evidence of the International Criminal Court provide that gender-sensitive measures are to be taken to enable victims of sexual violence to participate and testify at all stages of the proceedings; victims of sexual violence are also to have complete access to information on the proceedings. As for the kind of evidence that is admissible, the Rules point out that the victim's consent cannot be inferred in rape cases, as the atmosphere of coercion that the assailant can create and a variety of factors can be reasons why a victim may be unable to

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<sup>109</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, para. 104.

<sup>110</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, paras. 120 et seq.

<sup>111</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, para. 128.

<sup>112</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, para. 196.

<sup>113</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, 2007, pp. 24 and 57.

physically resist her assailant.<sup>114</sup> Evidence of a victim's prior sexual conduct is also inadmissible.<sup>115</sup>

97. The Inter-American Commission echoes the principle established by the European Court of Human Rights to the effect that in order to properly investigate, prosecute and punish cases of sexual violence, States must consider both the body of evidence and the context in which the sexual assault occurred, and not confine themselves to direct evidence of physical resistance on the part of the victim.<sup>116</sup> In the case of *M.C. v. Bulgaria*, the European Court found that the State of Bulgaria's international responsibility had been engaged because it had closed a criminal investigation into the rape of a 14-year old minor when no evidence of the use of force or of physical resistance during the rape was found.<sup>117</sup> The Court reasoned that the authorities had failed to consider all the circumstances that might have prevented physical resistance on the part of the victim in this case, given the particular vulnerability of a minor in cases of rape and the environment of coercion created by the assailant. The Court wrote that:

[w]hile in practice it may sometimes be difficult to prove lack of consent in the absence of "direct" proof of rape, such as traces of violence or direct witnesses, the authorities must nevertheless explore all the facts and decide on the basis of an assessment of all the surrounding circumstances. The investigations and its conclusions must be centred on the issue of non-consent.<sup>118</sup>

98. International human rights instruments provide that physical evidence must be gathered by specialists trained in the type of violence being investigated, and preferably should be the same sex as the victim. The victim's culture and the context in which the assault occurred must be taken into consideration. If necessary, an interpreter should be made available and must not be a government official.<sup>119</sup>

99. Based on these principles, when an act of violence against a woman occurs, it is particularly important that the authorities in charge of the investigation conduct

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<sup>114</sup> International Criminal Court, Rules of Procedure and Evidence, Rule 70, Principles of evidence in cases of sexual violence. To support its argument, the IACHR cites the judgment of the European Court of Human Rights in the *Case of M.C. v. Bulgaria*, Eur. Ct. H.R., app. No. 39272/98, Judgment of March 4, 2004.

<sup>115</sup> United Nations, International Criminal Court, *Rules of Procedure and Evidence*, U.N. Doc. PCNICC/2000/1/Add.1 (2000), Rule 71.

<sup>116</sup> *M.C. v. Bulgaria*, Eur. Ct. H.R., app. No. 39272/98, Judgment of March 4, 2004.

<sup>117</sup> *M.C. v. Bulgaria*, Eur. Ct. H.R., app. No. 39272/98, Judgment of March 4, 2004, paras. 178-184.

<sup>118</sup> *M.C. v. Bulgaria*, Eur. Ct. H.R., app. No. 39272/98, Judgment of March 4, 2004, para. 181.

<sup>119</sup> United Nations, United Nations Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations General Assembly Resolution 55/89, December 4, 2000, U.N. Doc. A/RES/55/89, para. 6(a); Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Istanbul Protocol submitted to the United Nations High Commissioner for Human Rights, U.N. Doc. HR/P/PT/8 (1999), paras. 153, 218, 261, 273.

it in a determined and effective manner, taking into account society's obligation to reject violence against women and the State's obligations to eliminate it and to ensure that victims have confidence in the State institutions for their protection.<sup>120</sup>

100. Nevertheless, as this report will show, despite the important strides that the countries of the Mesoamerican region have made, many important aspects are still lacking in the investigations that the States in the Mesoamerican region conduct into human rights violations. This problem is much more acute in cases involving violations of women's rights, given the patriarchal structure of the culture and discrimination that, to a greater or lesser extent, is present among those responsible for the administration of justice.

## **2. The multidisciplinary approach to the problem of sexual violence**

101. The IACHR must emphasize that sexual violence is one of the most compelling manifestations of violence against women. It is a very serious violation of women's human rights, and yet it is also a grave public health problem that requires the States' immediate attention. This means that the States' duty to protect women from sexual violence is multi-faceted, and because it is both a public health issue and a legal matter, the approach to it must span both perspectives.

102. A public health approach to sexual violence is not just a question of medical treatment. Sexual violence requires collective, multi-institutional and multi-disciplinary measures that work to get the health, education, justice and political sectors, the community and society working in unison and partnership. The legal approach requires the existence of laws that make sexual violence a punishable offense; but it also involves the victim's full recovery and the perpetrator's rehabilitation.<sup>121</sup> The measures undertaken have to be effective and serve to prevent and eradicate sexual violence and be responsive to the victims' needs, which means effectively tackling the physical and psychological consequences of sexual violence. So, one has to assume that the victims of this type of violence are invisible and, by extension, that no one is being made to answer for the violence. While significant progress has been made on both fronts, many challenges remain.

## **3. The obligation to make reparations**

103. For the Inter-American Court of Human Rights, "Reparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation

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<sup>120</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, para. 193.

<sup>121</sup> See Comprehensive Treatment Model Focused on the Victim/Survivor of Sexual Violence (conceptual part), El Salvador, n/n.

of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm.”<sup>122</sup>

104. For its part, the IACHR has written that victims of human rights violations have a right to obtain comprehensive remedies that are “adequate, effective, prompt and appropriate” for the acts perpetrated and proportional to the harm suffered.<sup>123</sup> The remedy must be comprehensive and must include guarantees of restitution, compensation, rehabilitation, satisfaction and non-repetition.<sup>124</sup> The IACHR has also observed that measures of reparation for acts of violence against women must take account of the beneficiaries’ specific needs and perspectives.<sup>125</sup> Therefore, a State’s future efforts to redress the next of kin of such victims must be implemented in accordance with these international principles and include guarantees of restitution, compensation, rehabilitation, satisfaction and non-repetition.

105. In the *Cotton Field* judgment, the Court for the first time took up the issue of what the remedies should be, from a gender perspective, for victims of violence against women, in terms of satisfaction, rehabilitation, guarantees of non-repetition and compensation. The Court ordered a series of important measures for the State, including investigations conducted from a gender perspective; investigating, prosecuting and punishing not just those responsible for the violations but also the officials involved in the irregularities; creating a national database to facilitate the search for missing women; establishing training courses for public officials on the subject of human rights and gender; and standardization of the protocols and other manuals and guidebooks used to investigate crimes of violence against women.

106. The Court was innovative in that it introduced a new concept that must be a consideration when granting reparations with a gender perspective. The Court wrote that reparations in cases of this type must always be designed to bring about change, so that their effect is not just restitution, but also the rectification that is so critical to tackling

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<sup>122</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Reparations and Costs (Art. 63(1) American Convention on Human Rights), Judgment of July 21, 1989, Series C No. 7, paras. 25-26. I/A Court H.R., *Case of Godínez Cruz v. Honduras*, Reparations and Costs (Art. 63(1) American Convention on Human Rights), Judgment of July 21, 1989, Series C No. 8, paras. 23-24.

<sup>123</sup> United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (19 April 2005); *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005); *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147 (2006).

<sup>124</sup> United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), paras. 19-23.

<sup>125</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, Recommendation 63.

the structural violence and discrimination that has been the enabling environment for the facts of the case. The Court describes this concept as follows:

The Court recalls that the concept of “integral reparation” (*restitutio in integrum*) entails the re-establishment of the previous situation and the elimination of the effects produced by the violation, as well as the payment of compensation for the damage caused. However, bearing in mind the context of structural discrimination in which the facts of this case occurred, which was acknowledged by the State (*supra* paras. 129 and 152), the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification.<sup>126</sup>

107. Thus, for the IACHR the concept of reparations from a gender perspective requires a twofold approach:

- a. From the State’s standpoint, reparation is the opportunity to give the victim security and justice, so that she regains her trust in the system and in society. It must also take measures to ensure that the events do not recur.
- b. From the victim’s standpoint, reparations represent the efforts that the State and society are making to remedy the harm she has suffered. There will also be a subjective element to the value and significance that a victim attaches to the measures of reparation, and it is the State’s duty to respect and appreciate that subjectivity in order to ensure reparations. This is why the victim’s participation is so important, as it is from her involvement that the State learns what the victim’s needs are and what she is expecting by way of reparations.

108. As the IACHR observed, reparations must be comprehensive. The measures taken must be cohesive and mutually reinforcing. They must be a set of measures aimed at restoring the victim’s rights, while taking into account the damage or harm sustained. In general, when reparations are made to a victim, the focus tends to be on the pecuniary damages to the exclusion of full reparation for the victim, which implies:<sup>127</sup>

- a. Restitution: re-establishing the victim’s prior situation and her rights. Restitution is not always possible, especially when the harm affects the victim’s physical, emotional and sexual integrity;

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<sup>126</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. 450.

<sup>127</sup> These measures are part of the Indemnification Program for victims of the armed conflict in Guatemala.

- b. Compensation: is the pecuniary acknowledgment of the damages and injuries caused.
- c. Rehabilitation: medical and psychosocial treatment that helps the victim carry on with her life in society.
- d. Guarantees of non-repetition: the guarantee that the victims will never again suffer the harm caused.
- e. Measures of satisfaction: public acknowledgment of the truth and public apologies.

109. Reparations must be proportional, i.e., they must be commensurate with the violations' impact and the harm caused. For the IACHR, reparations should have a causal nexus to the case, the violations and harm established, and the measures requested to redress that harm.<sup>128</sup> In order then to determine what reparations are required, the damage and/or harm caused must be assessed.

110. As a party to the remedial process, the victim's opinion also has to be considered; this helps the victim regain the sense that she controls her life. It is a decisive factor in enabling the victim to regain her dignity, her personality and her self-esteem, which have sustained a severe blow as a result of the pain and suffering she experienced.

111. This means for the Commission that in determining the scope of reparations, the State should consider the victim's culture and the set of values, behaviors, experiences, and knowledge that identify her or her cultural group. The Commission considers key that her view of the natural order, life perspective, and the concept of justice are taken into account. In a proceeding where the content of reparations is being determined, these cultural differences have to be taken into account and assessed according to the principle of equality, breaking with prejudices and stereotypes, especially those biased against indigenous and Afro-American cultures.<sup>129</sup> This is why it is so important that the victim is asked about her own concept of reparations, her needs, and the impact that the events have had according to her view of the natural order of things.<sup>130</sup>

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<sup>128</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, para. 227.

<sup>129</sup> Jiménez Sandoval, Rodrigo. *Módulo de Reparación Integral en Casos de Tortura Sexual* [Comprehensive Reparations Module for Cases of Sexual Torture]. *Instituto de Estudios Comparados en Ciencias Penales de Guatemala* [Guatemalan Institute of Comparative Studies in the Criminal Sciences], s/a, p. 74.

<sup>130</sup> Expert testimony of Augusto Willemsen-Díaz, attorney, international expert on the subject of indigenous peoples' rights: "The culture of the indigenous people of Guatemala was different at the time of the initial contact and has remained different from the culture that came from abroad and which now predominates in the country. The possessors of that culture have made great efforts to keep it distinct, reproducing it and transmitting it to others, particularly their descendants. The Maya have had to resist several centuries of diverse types of pressure to abandon their different and differentiated culture and to adopt the other one, which is said to be preferable." I/A Court H.R. *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs. Judgment of November 19, 2004. Series C No. 116, p. 18.

112. An adequate consideration of all the dimensions of the reparations process requires a justice system that develops a coordinated set of measures. It also means ensuring reparations while also eradicating re-victimization; ensuring that the victim is able to fully exercise and enjoy her human rights. The institutions of the State must be properly orchestrated to provide the services that the victim requires if the State is to fully comply with the reparations ordered.

113. These measures will be present throughout the entire judicial process: from the first visit that the victim of sexual violence makes to file her complaint, to the final resolution of the complaint. They also extend to the out-of-court services that the victim requires in order to obtain reparations, which will mean that State institutions will have to establish mechanisms to orchestrate the services to the person to whom reparations have been made. Within the Mesoamerican region, these services are not working in unison; a key obstacle for victims to receive reparations that are comprehensive for the acts suffered.

114. Furthermore, the reparations system within the region is up against a complicated dialectic, where the victim's private interests have to be reconciled with the public order that ensures legal certainty and the rights of the person on trial. This is still an unresolved problem for the domestic justice system when dealing with cases of sexual violence.

115. The following are some of the factors that explain this situation:
- a. The patriarchal system is pervasive throughout all the services that plays a role in the way the victim is treated; it also reflected in the laws, expert opinions, the assessment of the reparations owed and the decisions handed down.
  - b. Throughout the process, the myths and patriarchal stereotypes that blame women are projected onto the victim of sexual violence.
  - c. The patriarchal practices are played out over and over again by all the actors of the system –male and female alike: in their marriages and family relationships. Although unjust and discriminatory, they are perceived as “natural” and socially accepted practices.
  - d. The patriarchal values trap men and women into thinking that this is how things ought to be, which only serves to perpetuate the violence; acts of violence and discrimination are minimized, since from the patriarchal perspective this is the natural order of things.
  - e. In the case of sexual violence, victims suffer very profound effects. Their emotions are drained, and they often lose the will to live. Their self-esteem is severely undermined, as is their trust in the system and in society. Their will to fight is weakened. These are all aspects of the problem that judicial services are not prepared to address during the proceedings.



116. The Commission observes that these factors combine to re-victimize women and do not take into consideration the harm caused by sexual violence, which takes its toll on the physical body, the mind and one's sexuality. The justice system in the region confines itself to proving the existence of a crime and ignores the harm that the crime caused, which has a direct, adverse effect on the decision regarding reparations.

#### **4. Domestic protection**

117. The States within the region have developed laws to prevent, punish and eradicate violence against women. For example, special provisions have been enacted whose purpose is to grant restraining orders and other measures of protection to avoid intra-family violence. Laws have also been enacted to criminalize intra-family violence. Another set of provisions seeks to prevent, punish and eradicate other forms of violence that occur in the public domain, such as sexual harassment laws, laws criminalizing violence against women, laws to prevent femicide, and others.

118. The IACHR observes with concern that Nicaragua is the only country in the region that has not adopted specific legislation regarding violence against women. It is the only country in the region that has not. Measures to prevent, punish and eradicate violence against women are integrated throughout Nicaragua's system of laws. The Constitution of Nicaragua recognizes the right to life; the Criminal Code, or Law 150, deals with crimes against sexual self-determination and physical security, including rape, sexual assaults and trafficking in persons for sexual purposes; Law 230, which amended the Criminal Code, added to it measures of security or protection for cases of violence among family members. Nicaragua also has a Child and Adolescent Code (Law 287) and the Ministry of Health Decree No. 67-96 recognizes intra-family violence as a public health problem, and seeks the prevention, vigilance, and attention for women victims of violence in the health system.

119. In analyzing the issue of national protection, the IACHR will begin by examining the national constitutions and then turn its attention to general, specific, and procedural laws.

##### **a. Constitutional law**

120. All the constitutions of the countries in this region recognize the right to life,<sup>131</sup> the right to the security and integrity of one's persons,<sup>132</sup> the right to liberty,<sup>133</sup> and the right to equality and non-discrimination.<sup>134</sup> While none of the constitutions makes

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<sup>131</sup> This right is recognized in Article 65 of the Honduran Constitution; Article 3 of the Guatemalan Constitution; Article 23 of the Nicaraguan Constitution, and Article 2 of the Salvadoran Constitution.

<sup>132</sup> The right to personal security and integrity is recognized in Article 68 of the Honduran Constitution; Article 25 of the Nicaraguan Constitution, and Article 2 of the Salvadoran Constitution.

<sup>133</sup> The constitutions of Honduras, Guatemala, Nicaragua and El Salvador recognize the right to liberty in Articles 69, 4, 25 and 2, respectively.

<sup>134</sup> This right is protected under Article 4 of the Guatemalan Constitution; Article 27 of the Nicaraguan Constitution, and Article 3 of the Salvadoran Constitution.

explicit reference to the prevention, punishment and eradication of sexual violence against women, when viewed and interpreted in the light of international human rights law all these constitutions imply respect for women's dignity and implicitly recognize their right to a life free of violence.

**b. Criminal law**

121. The Convention of Belém do Pará was a positive force for change in bringing about amendment of the existing laws and the enactment of new laws to advance the observance and exercise of the human rights of victims of sexual violence.

122. The IACHR has pointed out that the influence of discriminatory socio-cultural patterns within the region meant that acts of sexual violence were initially classified as crimes against decency and not as a violation of a woman's right to bodily integrity.<sup>135</sup> Thus, "In many criminal codes, values such as honor, social decency, virginity, chastity, and good morals prevail over values such as the mental and physical integrity of the woman and her sexual self-determination, thereby impeding the due protection under the law of victims of such crimes, or compelling them to prove that they resisted in the case of the crime of rape, or subjecting them to interminable procedures that perpetuate victimization."<sup>136</sup> This anachronistic legislation, with discriminatory provisions based on stereotypical concepts about women's role in society and values like the honor, decency and the chastity of the victim, became obstacles to effective investigation, punishment and redress.

123. Outdated laws on sexual violence meant that if an assailant agreed to marry his victim or if the latter pardoned her assailant, then he was relieved of any criminal responsibility; it also meant that many of these crimes were settled out-of-court or through civil suits.<sup>137</sup> Even today, these discriminatory elements still crop up in the criminal laws of the region or in judicial practice.

124. Today, however, thanks to the approval of the Convention of Belém do Pará, the social change that has come about and the struggle waged by the women's movement, and because violence against women has increased, the criminal laws in the region that concern sexual violence have been changed. The new laws factor in the need to develop policies on State prosecution and general provisions on crimes and misdemeanors and the penalties they carry. These changes are departures from the socio-cultural patterns that discriminate against women and violate their rights. Nowadays, as the IACHR has observed, the right being protected is sexual self-determination and sexual security. Crimes

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<sup>135</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 221.

<sup>136</sup> IACHR, *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*, OEA/SER.L/V/II.98, doc. 17, October 13, 1998, Section IV, Conclusions. Cited by the IACHR in *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 221.

<sup>137</sup> Criminal Code, Free State of Veracruz: Statutory Rape, Article 185. Erotic Sexual Abuse, Article 188. Sexual Harassment, Article 190. Veracruz State Congress.

are prosecuted by the State, and the victim's forgiveness will not relieve the perpetrator of his culpability.

125. The Commission observes that each country has established its own procedures for introducing the needed changes. One example is the Guatemalan legislation, where a number of improvements have been made to the provisions that were detrimental to women's right to personal integrity; Title II of the Criminal Code, is now called 'Crimes against Sexual Self-Determination and Decency.'<sup>138</sup> In El Salvador, new criminal offenses have been established such as nonconsensual artificial insemination,<sup>139</sup> sexual harassment,<sup>140</sup> and forced prostitution,<sup>141</sup> among others. Through Decree 234-2005, Honduras approved the amendment to the Criminal Code that concerns sexual crimes and commercial sexual exploitation. The decree increases certain penalties for sexual crimes and creates new offenses such as those related to commercial sexual exploitation.

126. Intra-family violence was also criminalized and measures to prevent and punish the crime were introduced. In general, the aggravating circumstances with crimes of this type are the assailant's clear advantage or hierarchical superiority *vis-à-vis* the woman. Thus, provisions contained in the Convention on the Elimination of All Forms of Discrimination against Women<sup>142</sup> and the Convention of Belém do Pará<sup>143</sup> are being enforced as domestic laws.

127. Articles are being added under which State institutions could be held culpable. For example, the Salvadoran Criminal Code<sup>144</sup> provides that any public official or employee, agent with authority or public authority who, for reasons of nationality, race, sex, religion, or any other condition, denies someone his or her individual rights under the

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<sup>138</sup> See Amendments to the Guatemalan Criminal Code, 1997. But Title II continues to make reference to the legal interest of decency, which is associated with the patriarchal system.

<sup>139</sup> NONCONSENSUAL ARTIFICIAL INSEMINATION. Art. 156.- Anyone who artificially inseminates a woman without her consent shall face imprisonment for two to four years. Anyone who inseminates a single female minor shall face imprisonment for three to six years." The protected rights are: personal autonomy, personal integrity and sexual self-determination.

<sup>140</sup> "SEXUAL HARASSMENT. Art. 165.- Anyone who engages in sexual conduct unwelcome by the person who receives it, involving remarks, touching, gestures or other conduct that is unmistakably sexual in nature or content and which does not constitute a more serious crime, shall face imprisonment for three to five years. Sexual harassment of a minor under the age of 15 shall be punishable by imprisonment for four to eight years. If the sexual harassment is done by taking advantage of a position of superiority of any nature, a fine shall also be imposed consisting of one hundred to two hundred days' fine." Contemplated in Articles 1 and 2b of the Convention of Belém do Pará.

<sup>141</sup> ENFORCED PROSTITUTION. Article 170.- Anyone who, by coercion or by taking advantage of a person's need, requires that person to prostitute himself or herself or to continue to do so, shall face a penalty of imprisonment for six to ten years. The penalty shall be eight to twelve years' imprisonment when the victim is a minor under the age of 18. When this prostitution is enforced by the person's position of superiority over the victim, whatever its nature, the penalty shall be increased by as much as one third of the maximum sentence.

<sup>142</sup> Convention on the Elimination of All forms of Discrimination against Women, Article 5 a).

<sup>143</sup> Convention of Belém do Pará, Article 2 b)

<sup>144</sup> Salvadoran Criminal Code, Article 292.

Constitution, shall face a penalty of imprisonment. The purpose of this provision is to avoid discrimination and promote the due diligence recognized in international treaties.

128. Despite these amendments, the IACHR observes that the Criminal Codes still contain inadequate provisions, whose logic and structure are a reflection of discriminatory societies that turn a blind eye to impunity and re-victimization in cases of sexual violence. Such is the case with the so-called “heat of passion”<sup>145</sup> defense as a mitigating circumstance for purposes of penalty, or the abuse of one’s superior position<sup>146</sup> as an aggravating circumstance that does not take into account the psychological subordination/submission that the woman experiences, which is true of so many crimes involving violence against women. It also happens that some circumstances can be taken either way: for example, a family relationship can be either an extenuating or aggravating circumstance,<sup>147</sup> without taking into account the violence in the relationship.

**c. Special laws against sexual violence**

129. In the history of the enactment of specific laws prohibiting violence against women, various periods stand out during which those laws were conceived and developed. It began in the 1990s, with enactment of laws to regulate intra-family or domestic violence, and was in response to an inadequate system unable to deal with the problem. This was followed by the discussion and passage of laws criminalizing violence against women. The Mesoamerican region is still in the early stages of this process, whose purpose is to criminalize a number of acts of violence committed against women so that perpetrators can be criminally prosecuted and face penalties.

**i. Laws on intra-family or domestic violence**

130. In general, the countries of the region have approved laws to prevent, punish and eradicate intra-family violence. To cite an example, Article 3 of El Salvador’s Decree Law 902 on intra-family violence defines sexual violence as any act whereby a person is compelled to have physically or verbally sexual contact or to participate in it, by force, intimidation, coercion, blackmail, bribery, manipulation, threat or some other mechanism that has the effect of taking away or limiting free will. If the assailant forces the offended party to perform any of these acts with third parties, this, too, shall be deemed sexual violence.

131. The laws on intra-family violence in the Mesoamerican countries have the following in common:

a. Intra-family violence is regarded as a social problem and as a violation of human rights.

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<sup>145</sup> Article 29. Salvadoran Criminal Code, Legislative Body 26/4/97, Decree 745.

<sup>146</sup> Article 30, Salvadoran Criminal Code, Legislative Body 26/4/97, Decree 745.

<sup>147</sup> Article 31, Salvadoran Criminal Code, Legislative Body 26/4/97, Decree 745.

b. The laws develop a series of public policies and institutions responsible for their enforcement, thereby strengthening due diligence.

c. The laws require that the different institutions involved carry statistics on the problem.

d. They establish the discrimination/violence connection and underscore the fact that violence occurs in public and in private.

e. They criminalize intra-family violence<sup>148</sup> and other forms of violence under the heading of sexual harassment<sup>149</sup> and contempt of a court order by the aggressor in a case of intra-family violence.<sup>150</sup> They largely rely on the concept of violence established in the Convention of Belém do Pará, in that it can be physical, psychological and sexual.

f. They establish a list of measures of protection.

132. Another feature of these laws is that they are preventive in nature. Hence, they commonly call for measures like the following:

a. Campaigns to make society more aware of the problem of violence, to publicize the law and its consequences, and to crusade against acts of violence.

b. Studies and research into the causes and consequences of intra-family violence, the indicators of intra-family violence and its dynamics are encouraged.

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<sup>148</sup> For example, Honduras approved Decree 191-96, which amends the Criminal Code. Intra-family violence is defined in Article 179 A as follows: "Anyone who uses force or intimidation against or persecutes his/her spouse or former spouse, the person with whom he/she co-habits or lives in concubinage, or the person who is the mother/father of his/her child, in order to inflict physical or emotional harm upon that person or damage his/her property, shall face imprisonment for one to three years, aside from any penalties he or she may face by virtue of the injury or damage caused. The same penalties shall apply when the violence is inflicted upon the children the two have in common, or the children of the victim who are under the assailant's parental authority, or upon a disabled minor under that person's protection or in his/her care, or upon the victim's parents, grandparents, and so on."

<sup>149</sup> Honduras defines sexual harassment in Article 147 of the Criminal Code as follows: "Anyone who takes advantage of his/her hierarchical superiority in the workplace, administration, school or elsewhere to cause a victim job instability, give the victim a poor job performance rating or otherwise disqualify the victim for promotions, or denies the victim access to a job in retaliation for the victim's rejection of his/her improper advances in the form of suggestive comments or solicitation of sexual favors, either for him/herself or for a third party, shall face imprisonment for a period of one to three years or disqualification for that same period, when appropriate, and provided the suggestive comments and solicitations of sexual favors were refused in the presence of the person who made them, or have been promptly brought to the attention of a higher authority in the workplace or union to which the passive subject belongs."

<sup>150</sup> Honduran Decree 191-96, Amendment of the Criminal Code, Article 338-A: "Anyone who disobeys an order or restraining order or other precautionary or preventive measure issued by a public authority in application of the Law against Intra-Family Violence shall face imprisonment for one to three years." It is important to note here that when it describes the crime of Intra-Family Violence, the criminal code does not list the following among the protected subjects: former spouses, former partners, the parents or grandparents of the victim, collateral relatives, adopted kin, or any other interpersonal relationship.

c. Measures should be taken to set up effective legal systems that provide victims a simple and swift recourse, without needless formalities, so that precautionary measures can be ordered.

133. While these laws are an important step in the strategy to eradicate violence against women, they fail to address the structural violence and other forms of violence that women in patriarchal societies suffer; hence, their impact may be limited.

**ii. Criminal laws for a life free of violence for women**

134. One positive step taken by the States to eradicate violence against women has been their approval of these types of laws, which send a firm social message that violence against women will not be tolerated and will be punished when it happens.

135. The first law of this type was Costa Rica's Law Criminalizing Violence against Women (2007)<sup>151</sup> which clearly identifies women as passive subjects. The law classifies the following as sexual crimes against women: rape,<sup>152</sup> abusive sexual behavior<sup>153</sup> and sexual exploitation.<sup>154</sup> However, for the law to apply, the perpetrator and his victim must be either married or in a *de facto* union.

136. In 2008, Guatemala passed a law against femicide and other forms of violence against women. Its purpose is to guarantee women's fundamental rights to life, to personal integrity and security, dignity, protection and equality in the face of discrimination and violence. It identifies women as the passive subjects of the law, and criminalizes femicide and other forms of violence against women. This law defines sexual violence as those acts of physical and psychological violence intended to violate the woman's sexual self-determination and integrity, which includes sexual humiliation, forced prostitution and denial of her right to use family planning methods, both natural and artificial, or to take measures to protect herself against sexually transmitted diseases.

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<sup>151</sup> In vote 08-15447 of October 15, 2008, Costa Rica's Constitutional Chamber declared Articles 22 and 25 of this law unconstitutional. As a result, on November 18, 2009, the Costa Rican Legislative Assembly passed Law 8589, which adds to and amends the law and approves new language for the amended articles.

<sup>152</sup> Defined in Article 29 as follows: "Anyone who puts his penis into the mouth, anus or vagina of a woman with whom he is married or living in a *de facto* union, declared or otherwise, against her will shall face imprisonment for twelve to eighteen years. The same penalty shall apply to anyone who introduces any object, animal or other body part into the victim's anus or vagina or forces the victim to put any body part or object into either the perpetrator's or her own anus or vagina."

<sup>153</sup> On abusive sexual behaviors, Article 30 of the law reads as follows: "Anyone who forces a woman with whom he is married or in a *de facto* union, declared or otherwise, to tolerate during sexual relations acts that cause her pain or humiliation, to perform or watch acts of exhibitionism, to watch or listen to pornographic material or to view or listen to acts with sexual content shall face a penalty of imprisonment for three to six years."

<sup>154</sup> Concerning this crime, Article 31 provides that: "Anyone who forces a woman with whom he is married or in a *de facto union*, declared or otherwise, to have sexual relations with third persons, in return for nothing, shall face imprisonment for two to five years."

137. It recognizes that victims have multiple rights, such as the right to information, to the assistance of legal counsel and to reparations. The law also creates agencies whose purpose is to prevent, punish and eradicate violence against women, such as the specialized assistance agencies, centers that provide comprehensive support to women who survive the violence and that, in general, promote stronger institutions.<sup>155</sup>

138. The creation of Guatemala's Specialized Courts to prosecute cases of femicide and other forms of violence against women is unique in the criminal justice system in the Americas. The process of setting up these courts involved a strategic process, which included, *inter alia*, the development of profiles of suitable personnel, determining what resources would be needed, and planning training activities. It is still too soon to assess how effective these courts have been and what impact they have had on the prevention, punishment and eradication of sexual violence against women.

139. In November 2010, El Salvador also passed the Special Comprehensive Law for a Violence-Free Life for Women. This is the most recent piece of legislation to regulate this problem. Its objectives include the following: establishing, recognizing and guaranteeing women's right to a violence-free life through public policies geared to detecting, preventing, and treating violence against women and to protecting them from that violence, while ensuring reparations and punishing the perpetrators. All of this is to protect Salvadoran women's rights to life, to physical and moral integrity, to liberty, to non-discrimination, to dignity, to effective protection of their rights, their person security, their true equality and equity.

140. Such law also criminalizes and establishes the penalties for femicide, inducement to commit, promotion of and propagandizement of sexual or erotic acts via the information or electronic media, obstruction of access to justice, encouraging noncompliance with alimony obligations, embezzlement of the property or the wife or common-law partner, and other manifestations of violence against women.

141. That law recently approved in El Salvador has become a model because of the comprehensive approach it takes to the question of violence against women, unlike other laws enacted in Costa Rica and Guatemala. The law establishes a series of measures to ensure that women enjoy a violence-free life through public policy guidelines. Some of its provisions: recognize an extensive catalogue of victims' rights; criminalize a number of offenses related to sexual violence and other forms of violence; establish the standards of legal interpretation based on women's human rights; establish the foundation of a public policy to prevent, punish and eradicate violence against women; point up the need for statistical data to be used in decision-making; establish a financial fund for reparations; and grant a number of procedural guarantees for victims of violence.

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<sup>155</sup> Law against femicide and other forms of violence against women. DECREE NUMBER 22-2008. CONGRESS OF THE REPUBLIC OF GUATEMALA, 2008.

**d. Victim and witness protection laws**

142. The Commission observes that the countries in the Mesoamerican region have enacted special laws to create programs to protect women victims of violence.<sup>156</sup> This protection may extend to relatives or other persons close to the victims and who are threatened in the course of a case; such threats are common in prostitution cases.<sup>157</sup> These are important laws because they are tools with which to protect the lives and integrity of a woman victim of sexual violence, her family members and witnesses to the facts.

143. The Public Prosecutor's Office is responsible for ordering the necessary protective measures, with the support of the corresponding law-enforcement bodies.<sup>158</sup>

144. A number of conditions are established upfront to guarantee that the victim's identity is kept confidential; one example is the total or partial prohibition against revealing the victim's identity and whereabouts.<sup>159</sup>

145. When the situation so warrants, a number of protection measures are established for victims or witnesses, such as assignment of bodyguards to protect them and their closest family members; a change of domicile (relocation); a change of identity; covering the living expenses of the victim and her next of kin when they have to relocate; and the use of video links and other communications technologies to enable victims and/or witnesses to give testimony.<sup>160</sup>

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<sup>156</sup> Law for the Protection of the Parties to the Proceedings and Persons Associated with the Administration of Criminal Justice in Guatemala, Article 2; the Costa Rican Law for the protection of victims, witnesses and other parties to criminal proceedings, Article 4; Honduran Law for the Protection of Witnesses in Criminal Cases, Article 1.

<sup>157</sup> Law for the Protection of the Parties to the Proceedings and Persons Associated with the Administration of Criminal Justice in Guatemala, Article 3; the Costa Rican Law for the protection of victims, witnesses and other parties to criminal proceedings, Article 11; Honduran Law for the Protection of Witnesses in Criminal Cases, Article 3.

<sup>158</sup> Law for the Protection of the Parties to the Proceedings and Persons Associated with the Administration of Criminal Justice in Guatemala, Article 3; the Costa Rican Law for the protection of victims, witnesses and other parties to criminal proceedings, Article 6; Honduran Law for the Protection of Witnesses in Criminal Cases, Article 1; El Salvador's Special Law for the Protection of Victims and Witnesses, Articles 5 and 6.

<sup>159</sup> Law for the Protection of the Parties to the Proceedings and Persons Associated with the Administration of Criminal Justice in Guatemala, Article 17; the Costa Rican Law for the protection of victims, witnesses and other parties to criminal proceedings, Article 12; Honduran Law for the Protection of Witnesses in Criminal Cases, Article 3; El Salvador's Special Law for the Protection of Victims and Witnesses, Article 28.

<sup>160</sup> Law for the Protection of the Parties to the Proceedings and Persons Associated with the Administration of Criminal Justice in Guatemala, Article 8; the Costa Rican Law for the protection of victims, witnesses and other parties to criminal proceedings, Article 11; Honduran Law for the Protection of Witnesses in Criminal Cases, Articles 11 and 12; El Salvador's Special Law for the Protection of Victims and Witnesses, Articles 10 and 12.



146. The protection and the measures will end when the protected person expressly waives that protection<sup>161</sup> or on the basis of a reasoned decision issued by the corresponding authority.<sup>162</sup>

147. Failure to comply with these obligations by officials or personnel in the system, and the disclosure of confidential information, carry administrative penalties, one of which is dismissal. Failure to comply with the law also carries criminal penalties of up to eight years in prison.<sup>163</sup>

148. Lastly, these laws contain provisions under which systems are established to enable international cooperation for purposes of witness and victim protection, such as bilateral agreements to relocate victims and witnesses, technical assistance, sharing of experiences, training and reciprocal assistance.<sup>164</sup>

149. Clearly, these laws do not cast victims in the role of active parties to proceedings; instead, victims are perceived as witnesses and/or as evidence<sup>165</sup> that is useful to the proceedings. Occasionally, the victim is never even mentioned; instead she comes under the category of a witness.

#### **e. Procedural rules**

150. The rules of criminal procedure are changing within the region, transitioning from an inquisitorial system to an accusatory system. As a result of this change, a woman victim of sexual violence who decides to turn to the courts, will find that criminal proceedings within the region are very similar and are the avenue she must pursue, inasmuch as there are no separate avenues for prosecuting cases of sexual violence.<sup>166</sup> The stages of that process are as follows:

- a. The complaint: the phase in the process during which certain conditions must be met to take the victim's complaint, such as private places

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<sup>161</sup> The party waiving this protection must first consult a psychologist. Article 12 of the Costa Rican Law for the protection of victims, witnesses and other parties to criminal proceedings.

<sup>162</sup> Law for the Protection of the Parties to the Proceedings and Persons Associated with the Administration of Criminal Justice in Guatemala, Article 23; the Costa Rican Law for the protection of victims, witnesses and other parties to criminal proceedings, Article 12; El Salvador's Special Law for the Protection of Victims and Witnesses, Article 14.

<sup>163</sup> Law for the Protection of the Parties to the Proceedings and Persons Associated with the Administration of Criminal Justice in Guatemala, Article 17; the Costa Rican Law for the protection of victims, witnesses and other parties to criminal proceedings, Article 21; Honduran Law for the Protection of Witnesses in Criminal Cases, Article 3.

<sup>164</sup> The Costa Rican Law for the protection of victims, witnesses and other parties to criminal proceedings, Article 6; Honduran Law for the Protection of Witnesses in Criminal Cases, Article 14; El Salvador's Special Law for the Protection of Victims and Witnesses, Article 8.

<sup>165</sup> Article 195.- Protection of evidence. The appropriate authority shall take the necessary steps to protect witnesses, experts and other evidence whenever necessary. Nicaraguan Code of Criminal Procedure.

<sup>166</sup> See, in general, responses to the questionnaire circulated by the IACHR.

accessible to the victims, staffed with interdisciplinary personnel who have expertise in assisting victims of sexual violence.

- b. Initial investigation: conducted by the prosecutor's office and led by the police from the moment it learns of the commission of a punishable offense.
- c. Prosecution's request seeking a finding of probable cause: This is the request that the prosecutor files asking the competent authority to begin criminal proceedings and to declare probable cause based on the findings of the initial investigation.
- d. Initial hearing: This is the oral hearing convoked by the judge within the period that the law prescribes, once the prosecution's probable cause request has been received.
- e. Preliminary Statement: The accused party's statement concerning the facts of which he is accused. As a general rule it is made during the initial hearing.
- f. Examining phase: this is the phase of the process during which preparations are made for the public hearing. Information is compiled to support the prosecutor's charge or the suit, and the accused' defense is prepared.
- g. Preliminary hearing: This is the meeting that examining judge holds once the indictment or any other relevant request has been presented. The evidence that will be taken to trial is presented, and each side supports the arguments it will make at trial. The question of whether the accused should or should not stand trial is discussed.
- h. Public hearing: This is an oral proceeding in which the defendant makes his or her statement; testimony is taken from witnesses; experts take the stand, etc. Then, all the expert evidence, testimony and other evidence is compiled. The prosecutor's arguments are presented, as are those of the private party to the action and the defense. If the defendant wishes to make a statement, he or she does so at this stage in the proceedings. Finally, once the oral arguments have been concluded, the judges deliberate, vote and issue the verdict and sentence.

151. The criminal justice systems in the Mesoamerican region make provision for other proceedings, such as a special abbreviated proceeding, with no oral arguments. Certain requirements must be met before such proceedings can be held. For example, the penalty sought must be a lesser penalty; the defendant must admit to having committed the act in question and give his/her consent to the use of this abbreviated proceeding; the defense counsel must ensure that both he and the defendant have freely consented, in other words, that no pressure was exerted.

152. A settlement (conciliation) is another alternative often used. It is an agreement between the parties, who mutually decide to drop the litigation or dispute. Settlements or conciliation is not allowed when the crimes involved are sexual in nature; in practice, however, such settlements still happen.

153. In all the countries, the basic parties to the proceedings are: the judges, the defense counsel, and the public prosecutor's office; gradually, the laws are beginning to recognize the victims as parties to the proceedings, as in the case of El Salvador's Special Comprehensive Law for a Violence-Free Life for Women, where a distinction is made between the prosecutor's procedural activity and that of the victim. This system is still in its early phase, because of the scarcity of attorneys to represent victims.

154. The trend within the region is that sexual crimes are prosecuted by either the State or by private suit, depending on the age of the victim, the type of crime and/or the circumstances attending it. For example, Honduras' Criminal Code states (Article 152) that this type of crime will be litigated through a complaint or suit filed by the victim, unless the victim is a minor under the age of 14 or the crime accused is rape. In Guatemala (Article 197 of the Criminal Code), such crimes can only be prosecuted if the victim or her family members file a complaint; however, the State shall prosecute on its own initiative if the crime is committed by the father, mother, or guardian of the victim or by the person charged, either *de jure* or *de facto*, with the victim's protection or custody; or in a case of rape or violent sexual abuse, if the victim is under the age of 15. Nevertheless, the law prohibiting femicide and other forms of violence against women changes the situation and signals that all crimes contemplated therein, which includes sexual crimes, are to be prosecuted by the State on its own initiative (Article 5).

155. For procedural purposes, a number of precautionary measures are established, such as: detention for purposes of questioning; detention when caught *in flagrante*; alternatives to detention pending trial; house arrest; custody or surveillance by a person or institution; the obligation to appear before the judge; a prohibition to prevent the person from leaving the country; a prohibition whereby the person is not permitted to go to certain places; a ban prohibiting the person from speaking with certain persons (provided this does not affect the accused' right of defense) and bail. All these measures reinforce the protection measures established under certain laws on intra-family violence.

## **II. OBSTACLES IN ACCESS TO JUSTICE IN THE CASE OF WOMEN VICTIMS OF SEXUAL VIOLENCE**

156. The IACHR's report on *Access to Justice for Women Victims of Violence in the Americas* provides a detailed description of the principal obstacles that women encounter when they try to avail themselves of judicial remedies that provide adequate guarantees. The vast majority of the violations that women suffer go unpunished, with the result that the victims' rights are not protected. In its report, the IACHR underscores the fact that in some countries of this hemisphere, a pattern of systematic impunity exists because little is done to investigate these crimes, much less bring them to trial. Women victims of violence tend not to turn to the justice system; they and their family members are often mistreated when attempting to avail themselves of judicial remedies; victims and

their family members have no confidence in the justice system's ability to right the wrongs done. As the Commission sees it, this situation leaves the victims with a sense of insecurity, defenselessness and distrust in the administration of justice; but this kind of impunity also perpetuates violence against women as an accepted practice in American societies, in contempt of women's human rights.<sup>167</sup>

157. In that report, the IACHR discusses at length the structural problems within the systems for the administration of justice in this hemisphere. These structural problems tend to be more consequential for women because of the discrimination they have historically suffered. This report will identify the structural problems in the Mesoamerican countries.

158. The IACHR observes that the Mesoamerican countries share some of the same problems where the investigation and prosecution of sexual violence are concerned,<sup>168</sup> although each has its own set of problems with actual enforcement of the laws, with the actual conduct of judicial proceedings in practice, with the agencies and authorities involved, and with the assigned economic and human resources. Overall, sexual violence goes unpunished. On the one hand, many women victims of sexual violence do not file complaints for a variety of reasons; on the other hand, the justice one obtains through these court proceedings is not of a high standard of quality, is inefficient and uneven, especially when one considers that the system is not equally accessible to all persons. That unequal protection affects women especially, given the patterns of discrimination that are so deeply rooted in the society and culture.

159. The IACHR will now examine a range of difficulties and obstacles that obstruct the access that women victims of sexual violence have to justice. These problems are found in all the Mesoamerican countries, although the Commission's observations will focus on Honduras, Nicaragua, El Salvador and Guatemala

#### **A. Obstacles that obstruct the access that women victims of sexual violence have to the justice system**

160. The IACHR is troubled by the fact that there are no reliable data on the magnitude of the problem of sexual violence in Mesoamerican society, due to under-

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<sup>167</sup> See, in general, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007.

<sup>168</sup> See, in general, National Police, Office of the Director of the Special Police Stations for Women and Girls, *Diagnóstico de la Violencia Intrafamiliar y Sexual en Nicaragua* [Analysis of Intra-family and Sexual Violence in Nicaragua], Managua, December 2008. Centro de Derechos de Mujeres [Center for Women's Rights] (CDM), *Violencia contra las Mujeres en Honduras: Una reflexión en el camino* [Violence against Women in Honduras: reflections along the way], First Edition, Honduras, 2005. Available [in Spanish] at: <http://pdba.georgetown.edu/Security/citizenssecurity/honduras/documentos/centro.pdf> See also ORMUSA, *Boletín Bernarda, Acceso a la Justicia para las mujeres víctimas de violencia* [Access to Justice for Women Victims of Violence], No. 6, November-December 2008. Available [in Spanish] at: [http://observatoriolaboral.ormusa.org/bernardas/2008\\_1112\\_NoviembreDiciembre.pdf](http://observatoriolaboral.ormusa.org/bernardas/2008_1112_NoviembreDiciembre.pdf).

reporting and ineffective data systems. However, a review of various national statistics<sup>169</sup> reveals that sexual violence is second only to domestic violence among the many manifestations of violence against women in the countries of the region. Rape is one of the most common expressions of that sexual violence.

161. Another important fact that the IACHR has confirmed is that girls are the principal victims. Thus, for example, according to the 2010 figures from El Salvador's Observatory on the Rights of Children and Adolescents, a total of 2,079 cases of sexual violence nationwide were reported by El Salvador's National Civil Police; 54% of that total were crimes committed against girls and adolescents under the age of 18. For its part, the Attorney General's Office reported that in 2009, 67% of the victims reported were under 17 years of age.<sup>170</sup>

162. The sources checked also indicate that the assailants are generally male, with some degree of kinship or relationship to the victims: fathers, stepfathers, brothers, cousins, boyfriends or spouses. A national survey in Costa Rica<sup>171</sup> found that the principal perpetrators of the most severe forms of violence, like rape or attempted rape, are men in close contact with the victim.

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<sup>169</sup> *Feministas en Resistencia, Ni golpes de Estado ni golpes a las Mujeres*, Honduras: Situación de la Violencia contra las Mujeres en 2009 Honduras [Violence against Women in 2009, Honduras], 2010; Equipo Nizkor, Informe Sombra sobre la Situación de los Derechos Humanos de las Mujeres en Guatemala [Shadow Report on the Human Rights Situation of Guatemalan Women] available [in Spanish] at: <http://www.derechos.org/nizkor/guatemala/doc/sombra.html>; *Católicas por el Derecho a Decidir en Nicaragua, Análisis cuantitativo de los artículos periodísticos sobre violencia sexual del año 2008* [Quantitative analysis of news articles on sexual violence in 2008], Nicaragua, 2008; *El Mundo, Nicaragua: Miles de niñas sufren el horror de la violencia sexual en silencio* [Thousands of girls suffer the horror of sexual violence in silence], 2010 available in Spanish at <http://www.elmundo.es/elmundo/2010/11/25/solidaridad/1290674532.html>. See also: Amnesty International: Fact Sheet: *Violencia Sexual Como Violación a los DD.HH* [Sexual violence as a human rights violation], available [in Spanish] at <http://www.amnestyusa.org/derechos-humanos-de-la-mujer/hojas-de-datos-sobre-los-derechos-humanos-de-la-mujer/violencia-sexual/page.do?id=1107458>. *Fundación Puntos de Encuentro, para transformar la vida cotidiana, Movimiento contra el Abuso Sexual [Anti-Sexual Abuse Movement]*, 2011, available [in Spanish] at <http://www.puntos.org.ni/servicios/actividades/noticias/default.php?acti=1807>. National Police, *Diagnóstico de la Violencia Intrafamiliar y Sexual en Nicaragua* [Analysis of Intra-family and Sexual Violence in Nicaragua], Managua, December 2008. OCAVI, *Delitos contra la Libertad Sexual registrados en El Salvador durante el 2008* [Crimes against Sexual Self-Determination recorded in El Salvador in 2008], available [in Spanish] at: [http://www.ocavi.com/docs\\_files/file\\_701.pdf](http://www.ocavi.com/docs_files/file_701.pdf); Instituto Salvadoreño para el Desarrollo de la Mujer [Salvadoran Institute for Women's Development](ISDEMU), *Segundo Informe Nacional sobre la Situación de la Violencia contra las Mujeres en El Salvador* [Second National Report on the Situation of Violence against Women in El Salvador], El Salvador, 2010. ORMUSA, *Observatorio de la Violencia de Género contra las Mujeres* [Observatory on Gender Violence against Women], available [in Spanish] at: <http://observatoriodeviolencia.ormusa.org/violenciasexual.php>. *Centro Nacional de Información, Incidencia Delictiva del Fuero Común, mayo* [Incidence of Common Crime in May], Mexico 2011.

<sup>170</sup> See Comprehensive Treatment Model Focused on the Victim/Survivor of Sexual Violence (conceptual part), Version cleared by institutions in the justice and health sectors in El Salvador, a sample copy, p. 11.

<sup>171</sup> Survey conducted by the University of Costa Rica in 2003 as part of an international project between the National Women's Institute (Costa Rica), the University of Western Ontario, and Statistics Canada, cited in IPAS, *Servicios de Salud para víctimas/sobrevivientes de Violencia Sexual: Buenas Prácticas* [Health Services for Victims/Survivors of Sexual Violence: Best Practices], Costa Rica, p. 9.

163. Thus, sexual violence against girls and women is one of the most unequivocal manifestations of a patriarchal society that encourages men to believe that they are entitled to control women's body and sexuality. This violence has negative consequences for the victim's health and for development of her affective, family and social relationships. It can even result in her murder.

164. Harassment, sexual abuse, trafficking in children and forced prostitution are other examples of sexual violence.<sup>172</sup> Sexual violence takes place in a wide variety of environments, the most common being the home, the school and the community.

165. Despite the steady increase in sexual violence, the IACHR observes that economic, social, cultural and even technical obstacles still prevent many women and girls from revealing the incidents of which they are victim. It is even less likely that their cases will end up in court. These obstacles, which will be examined later, can be attributed to a variety of factors, among them the following: women are ashamed to report certain acts, do not have access to information, are without legal assistance and do not have the courts' protection; the public authorities do too little to address sexual violence; educational means of combating sexist stereotypes are lacking; and the States are not genuinely committed to combating the impunity that attends sexual violence against women.

166. The uneven division of power between men and women will require a profound cultural transformation in every realm of Mesoamerican society. This uneven distribution of power directly affects women's access to the administration of justice, as the prevailing cultural norm is that men are superior to women. This gives a man the right to punish "his woman". Indeed, many women who report sexual violence are shunned by their communities, which blame them for the sexual violence they suffered. They are socially mistreated when they report their husband or partner, as society believes that women should tolerate the situation with obedience and resignation.<sup>173</sup>

167. Women who are victims of sexual violence are fearful and ashamed, which makes them hesitant about filing a complaint. They are filled with a sense of impotence, frustration and insecurity. This situation is made all the worse when women are unaware of their rights. While it is true that the States of the region wage specific campaigns to publicize the rights of women victims of violence, the information is either limited or imparted in a language and from academic standpoint that makes it virtually inaccessible to certain groups. These limitations are particularly acute among women in

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<sup>172</sup> For the World Health Organization, sexual violence includes: coerced sexual relations in marriage and in dating relationships; rape by a stranger; systematic rape during armed conflict; unwanted sexual advances or sexual harassment; demanding sex in return for favors; forced marriage or forced cohabitation; marriage of children and minors; denial of the right to use contraceptives or to take measures to protect oneself against sexually transmitted diseases; forced abortions; acts of violence against a woman's sexual integrity; obligatory inspections for virginity; prostitution and trafficking in persons for sexual exploitation. See Amnesty International, Fact Sheet: *La Violencia Sexual Como Violación a los DD.HH* [sexual violence as a human rights violation]. Available [in Spanish] at: <http://www.amnestyusa.org/derechos-humanos-de-la-mujer/hojas-de-datos-sobre-los-derechos-humanos-de-la-mujer/violencia-sexual/page.do?id=1107458>.

<sup>173</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011, in Guatemala City, Guatemala.

rural areas, migrant women, indigenous women, Afro-descendant women, and poor women. Given the prevailing socio-cultural patterns, women who are unaware of their rights do not even understand that what is happening to them constitutes a crime.

168. Women who do reveal their experiences with sexual violence frequently tell a family member first (like the mother), a friend, a neighbor or a religious counselor. Thus, women who have been the victims of sexual violence may end up getting no support from their families, friends and their environment; it is thus very unlikely that such a woman would file an official complaint. Estimates are that only about 5% of the adult victims of sexual violence in the region actually report the incident to the police.<sup>174</sup>

169. In cases of sexual violence within the family, the IACHR compiled information that showed that the difficulties that women face when the time comes to decide whether to report incidents of sexual violence are greater, irrespective of whether they or their sons/daughters are the victims. In addition to their fear of their husband or partner, they are afraid of the economic reprisals and even the loss of custody of their children. In many cases, they have to contend with pressure from the family to keep the relationship with the assailant intact; they face recrimination and blame if they decide to separate from their husband or partner and thus leave their children fatherless.<sup>175</sup>

170. Furthermore, when women are sexually assaulted, they look for help from the police or a health service, where they frequently end up being re-victimized. The persons who take the complaint or treat the woman may ask suggestive questions; or they may entertain themselves by asking for lurid details and issue machista, discriminatory and moralistic opinions. The violence the woman suffer is often downplayed. The woman reacts by not filing a complaint or, having filed a complaint, does not follow through.<sup>176</sup> Thus, the main obstacles that women encounter when they turn to the justice system is a lack of sensitivity on the part of members of law enforcement and officers of the court when they hear the testimony or statements made by the victim and/or survivor or sexual violence, and the stigmatization and labeling of women who are sexually abused.<sup>177</sup>

171. The Inter-American Court<sup>178</sup> has addressed similar circumstances, and observed that some authorities described women victims as “flighty” or said that “they had run away with their boyfriends.” Such comments, when added to a State’s inaction at the start of an investigation, allow one to conclude that this indifference has very real

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<sup>174</sup> Sexual Violence Research Initiative, *Sexual Violence in Latin America and the Caribbean: a desk review*, March 2010, p. 38.

<sup>175</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City, Guatemala.

<sup>176</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City, Guatemala.

<sup>177</sup> In general, all responses to the questionnaire received by the IACHR, identify as a common denominator the lack of sensitivity of justice officials in the attention of sexual violence cases. See for example, responses presented by the *Centro de Derechos Humanos de las Mujeres* (CEDHM) of Chihuahua, Mexico; the States of El Salvador and Honduras; *Mujeres Transformando el Mundo* from Guatemala; and others.

<sup>178</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. 400.

consequences in that it serves to enable impunity and thus perpetuates the very violence that it claims to be countering. Furthermore, such indifference constitutes discrimination in access to justice.

172. For the Inter-American Court, allowing crimes to go unpunished sends a message to the effect that violence against women is tolerated, which serves to perpetuate that violence and reinforces social acceptance of it; at the same time, it also reinforces women's sense of insecurity and their abiding mistrust in the justice system.<sup>179</sup>

173. The traumatic experience that they have suffered leave some victims of sexual violence bewildered by the situation and unconscious or unable to clearly remember what happened to them. The result is that their stories are not very credible to public officials, which can make women fearful or inhibited and even cause them to drop their complaint.

174. Another reason why women victims of sexual violence may not file complaints against their assailants is the lack of an effective response on the part of the authorities. The Commission finds it disturbing that over half the verdicts delivered in cases of violence against women are acquittals.<sup>180</sup>

175. A scarcity of financial resources or their economic dependence are other reasons why women victims of violence do not report the abuses committed against them. For example, victims may not have the money to get to the cities where they would file their complaints.<sup>181</sup>

176. In other instances, they may not have identification papers, which is one of the formal requirements that the authorities demand before any complaint can be filed. This is particularly problematic for migrant women. While this report will examine migrant women's access to justice, the fact is that there are virtually no legal remedies available to migrant women. There are practically no protective measures or social services for them.<sup>182</sup>

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<sup>179</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. 400.

<sup>180</sup> Supreme Court of Justice of Nicaragua, and Spanish Agency for International Cooperation, Legal analysis of verdicts delivered in cases involving intra-family and domestic violence and civil suits in family law, p. 45. Available [in Spanish] at: [http://www.americalatinagenera.org/es/index.php?option=com\\_content&task=view&id=905&pub\\_id=1796&ml=1&mlt=system&tmpl=component](http://www.americalatinagenera.org/es/index.php?option=com_content&task=view&id=905&pub_id=1796&ml=1&mlt=system&tmpl=component)

<sup>181</sup> The Guatemalan organization *Mujeres Transformando el Mundo*, in its response to the IACHR's questionnaire, observed that the approximate cost of a trial for a crime of violence is one hundred thousand quetzales (almost \$13,000), based on the experience of one NGO that filed a complaint in a court case and covered all the expenses.

<sup>182</sup> In its Handbook for the Protection of Women and Girls (2008), the UNHCR pointed out that displacement not only exposes women and girls to a greater risk of violations of their rights, but also increases the inequalities and discrimination they encounter from the justice system. Therefore, they have few if any options for redress of violations of their rights. The impunity that frequently attends displacement leaves women and girls at a greater risk of suffering violations of their rights.



177. Where trafficking in women is concerned, the victim has to contend with police and court-ordered measures that, rather than working to get the human traffickers convicted, focus instead on deporting the victim. The latter thus have no chance of filing a complaint; if they do manage to get a complaint filed, they will not be able to rely on witnesses, as they have been deported. As a result of all these factors, traffickers are never made to answer for their crimes. The response to human trafficking for purposes of sexual exploitation is still deficient in the region, despite the magnitude of the problem. Women victims of trafficking are abducted mainly in El Salvador, Honduras and Nicaragua, then taken to Guatemala, Mexico, Belize or the United States. The majority of the victims are young women between the ages of 19 and 25, although the abduction of minors by human trafficking networks has increased as well.<sup>183</sup> Although there are no reliable figures that reflect the scale of this problem, estimates are that in Guatemala alone, approximately 2,000 girls and teenage girls from El Salvador and Honduras are being prostituted.<sup>184</sup>

178. Sexual violence against girls will be examined separately, later in this report. However, it should be noted here that most cases involve sexual abuse by the persons under whose protection and care the girls live. This is why many cases stay within the privacy of the home. The Commission has received statistics indicating that In Costa Rica, 19.5% of the sexual abuse of girls is committed by the father or stepfather, and 37% by some other man in the family.<sup>185</sup>

179. Faced with these problems and in order to help battle impunity, some civil society women's organizations have incorporated in their mandate the provision of assistance and support services to women victims of sexual violence, both with filing the complaint and during the court proceedings. They provide them with full legal aid, legal counsel, support in compiling evidence, and psychological support. They also send them to shelters and tackle any other pressing need the victim might have.

## **B. Structural problems in the administration of justice that challenge an effective response to cases of sexual violence**

### **1. Prevalence of discriminatory cultural patterns in the conduct of law enforcement personnel and officers of the court**

180. The IACHR has established that the process of filing a complaint of sexual violence is difficult, and will re-victimize the victim over and over again.

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<sup>183</sup> Bustamante (Jorge), Special Rapporteur on the human rights of migrants, Human Rights Council, Mission to Mexico, A/HRC/11/7/Add.2, March 2009.

<sup>184</sup> Monzon (Ana Silvia), *Las Viajeras Invisibles: Mujeres Migrantes en la región de Centroamérica y sur de México* [The Invisible Travelers: Migrant Women in the Central American Region and Southern Mexico], Guatemala, 2006, p. 29. Available [in Spanish] at <http://www.pcslatin.org/drupal/files/LibroLasviajeres.pdf>.

<sup>185</sup> IPAS, *Servicios de Salud para víctimas/sobrevivientes de Violencia Sexual: Buenas Prácticas* [Health services for victims/survivors of sexual violence: best practices], Costa Rica, p. 10.

181. Therefore, when victims turn to the state institutions with which complaints are to be filed –mainly the police or prosecutors- they generally encounter an atmosphere of gender-based discrimination. Because of the stereotypes and biases that members of law enforcement and officers of the court harbor, they give little credence to the victim’s version of what happened, put the blame on her, justify what happened by pointing to the victim’s attitude or behavior or her previous relationships, question the woman’s honor, or use a sexist vocabulary. The discrimination is often a function of the victim’s sexual preference, the color of her skin, her ethnic origins, her low level of education, her nationality, and other factors.

182. For example, in the case of *María Isabel Veliz Franco v. Guatemala*, which is now in process with the IACHR,<sup>186</sup> the petitioners alleged that following the teenager’s murder, the justice system did not respond to the demand for investigation and punishment because of the atmosphere of impunity that takes a disproportionate toll on women as a group and thus encourages recurrences of such acts. This pattern of impunity is partly attributable to the attitudes of officers of the court, whose discriminatory socio-cultural concepts mainly affect women.<sup>187</sup> In the case of *Valentina Rosendo Cantú v. Mexico*, which concerned the rape of a young indigenous woman by soldiers, the Inter-American Court commented on the complete absence of determination, sensitivity, and capacity on the part of several of the public servants who initially intervened in the complaint.<sup>188</sup>

183. The common denominator in the Mesoamerican countries is that the blame is pinned on the women who are the victims of sexual violence. Hence, the judicial response is biased. A report prepared by a Guatemalan organization Family Members and Women Survivors of Violence<sup>189</sup> points out that the majority of those charged with enforcing the law –police, prosecutors, family court judges and criminal court judges- think according to the social mindset in which sexist stereotypes is ingrained: the mindset that portrays women as those who provoke or are to blame for the violence, or that believes that such disputes have to be settled between the couples themselves and that the women victims can find their own strategies to stop or redirect the violence (for example, cooking what her husband likes, dressing well, staying quiet, acceding to the husband’s indiscriminate sexual demands). Thus, a research study done in Guatemala found that the National Civil Police and Deputy Prosecutors have sexually harassed teenage girls and mothers who turn to them to report cases of violence; they have even gone so far as to

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<sup>186</sup> IACHR, Admissibility Report No. 92/06, Petition 95-04, *María Isabel Veliz Franco (Guatemala)*, October 21, 2006, para. 52.

<sup>187</sup> IACHR, Admissibility Report No. 92/06, Petition 95-04, *María Isabel Veliz Franco (Guatemala)*, October 21, 2006, October 21, 2006.

<sup>188</sup> 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. 181.

<sup>189</sup> Relatives and Women Survivors of Violence, *Análisis de la situación de la violencia en contra de la mujer en Guatemala* [Analysis of violence against women in Guatemala], s/a. See [in Spanish] at <http://www.sobrevivientes.org/docs/AnalisisSitMi.pdf>

blackmail them to obtain sexual favors in exchange for supporting and expediting their case.<sup>190</sup>

184. Because of these sexist and discriminatory stereotypes, the gravity of a male sexual aggressor's conduct is minimized and his own explanation of why he assaulted a woman carries more weight than the victim, her statement and the legal right and interest at stake. A clear example is the recent judgment of the Nicaraguan Supreme Court on a rape case, where it decided to reduce the penalty imposed by the trial court on the grounds that: "*The deed itself aside, the extenuating circumstances present lessened the criminal culpability, such as his state of anger: "The powerful influences and stimuli he was operating under produced rage and a blind obstinacy." Prior to the events he had several beers, which triggered in him a state of "fury," a fit of passion that caused sexual excitement; feeding that fit of passion and sexual excitement was the victim's permissive cooperation, as can be inferred from her own account: I said to him, 'FARINTON, leave me alone'; and he never stopped hitting me. I tried to close my legs; he was on me all night, he was all over me; he ripped my clothes and brutally forced himself into me.*"<sup>191</sup> This judgment was presented by civil society organizations during a thematic hearing before the IACHR as an example of persistent obstacles that women face in Nicaragua to access justice when they report acts of sexual violence.

185. In most countries of the region, the police station is the place where women go first to file complaints.<sup>192</sup> However, the Commission has received consistent information indicating that it is also in these places where the victims have the least support, and where gender-sensitive attitudes and the disposition to support them are scarce.<sup>193</sup> For example, a National Police study done on Intra-family and Sexual Violence in Nicaragua (2008)<sup>194</sup> highlights how the lack of training to offer specialized attention tends to provoke that police officials consider the cases as simple family conflicts. They will even advise women to try to patch things up with their husbands or partners.

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<sup>190</sup> López (Miguel Angel), *La Ruta Crítica de la Denuncia para la Protección Integral de la Niñez y Adolescencia vulnerada en sus derechos. Reflexiones sobre el proceso de la ruta crítica no institucional y aportes para la homogenización de criterios para la ruta crítica institucional* [The Critical Path for a Complaint Seeking Comprehensive Protection of a Child or Adolescent Whose Rights Have Been Violated. Reflections on the non-institutional critical path and contributions to standardizing criteria for the institutional critical path], Guatemala, 2009.

<sup>191</sup> Supreme Court of Justice, Managua, July 21, 2011, pp. 20 and 21. See also, IACHR, Thematic Hearing, 143<sup>o</sup> Regular Period of Sessions, *Situation of the Rights of Women in Nicaragua*, October 24, 2011.

<sup>192</sup> See UNFPA, *Salud y Justicia para Mujeres ante la Violencia Sexual en Centroamérica. El Salvador, Guatemala, Honduras y Nicaragua* [Health and Justice for Women in Cases of Sexual Violence in Central America. El Salvador, Guatemala, Honduras and Nicaragua], p. 12. According to this document, the National Police in the four countries was the source of assistance to which women victims of sexual violence most often turned..

<sup>193</sup> Sexual Violence Research Initiative, *Sexual Violence in Latin America and the Caribbean: A desk review*, March 2010, p. 52.

<sup>194</sup> National Police, Office of the Director of the Special Police Stations for Women and Girls, *Diagnóstico de la Violencia Intrafamiliar y Sexual en Nicaragua* [Analysis of Intra-family and Sexual Violence in Nicaragua], Managua, December 2008, p. 74.

186. The Public Prosecutor's Office is not immune to this problem. The Commission observes that in some situations, personnel have not been sensitized to the plight of women victims of sexual and domestic violence or instructed in how to respond to such cases.<sup>195</sup> Victims are not well advised about what their rights are and what the available legal precautions are, taking into account such factors as the woman's age, education, disability and other considerations. Instead, legal precautionary measures are taken indiscriminately, without considering the relations within the family. This is so because not every country in the region has protocols that must be followed when responding to victims of sexual violence.

187. In Guatemala, for example, not one of the institutions that would receive complaints of sexual crimes –which includes the Permanent Service Office [*Oficina de Atención Permanente*], the Office of the Prosecutor for Women's Issues and the District Prosecutor's Offices- have service protocols or protocols to follow when a person who has been the victim of sexual violence is first interviewed. In other words, the service the victim receives is the same, whether she were reporting a theft or a rape. The only office that does have a service protocol is the Victim Service Office in the Public Prosecutor's Office.<sup>196</sup>

188. In countries that have general instructions or protocols to follow to avoid secondary re-victimization in cases of sexual violence, these recommendations are frequently ignored by the officers in charge of responding to the victim or those in charge of the investigation.<sup>197</sup> In the investigation process, protocols tend to be disregarded, mainly for the sake of a prompt determination of causality, the time and place of the event and how it transpired, as criminal procedure requires.<sup>198</sup>

189. Thus, these protocols are not mandatory and no monitoring mechanism is in place to ensure that the protocols are being followed. Here, the Inter-American Court has held that when medical personnel and officials from the Public Prosecutor's Office who initially attend the victim fail to follow protocols, the consequences are especially serious in terms of the attention that the victim receives and the legal investigation of the rape.<sup>199</sup>

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<sup>195</sup> Relatives and Women Survivors of Violence, *Análisis de la situación de la violencia en contra de la mujer en Guatemala* [Analysis of violence against women in Guatemala]; see also, Bernarda, Salvadoran Women's Organization for Peace [*Organización de mujeres salvadoreñas por la Paz*], Observatory on Gender Violence against Women, El Salvador, 2008.

<sup>196</sup> Diez (Andrea), Coordinator of the 'Violence against Women' Project. Tratamiento por parte de la Justicia Penal de Guatemala [Treatment by the Guatemalan Criminal Justice System], s/a, p. 34. Available [in Spanish] at [http://www.cejamerica.org/portal/index.php/es/biblioteca/biblioteca-virtual/cat\\_view/43-documentos/67-informes-locales](http://www.cejamerica.org/portal/index.php/es/biblioteca/biblioteca-virtual/cat_view/43-documentos/67-informes-locales).

<sup>197</sup> For example, the Technical Secretariat for Gender Issues of the Supreme Court of Justice of Nicaragua, in its response to the questionnaire sent out by the IACHR, stated that although the Supreme Court had issued a decision confirming the mandatory nature of the provisions of the Protocol of Proceedings at Trial, few judges follow the protocol.

<sup>198</sup> Response to the questionnaire submitted by *Mujeres Transformando el Mundo* from Guatemala.

<sup>199</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, para. 197.

Furthermore, the public is unaware that these protocols exist, and therefore does not demand that they be followed.<sup>200</sup>

190. Based on these considerations the Commission can conclude that in general, the enforcement of the law by the Public Prosecutor's Office and the courts is seriously flawed, in part because of discriminatory cultural patterns. One very serious manifestation of this problem is the fact that the State is unlikely to take the initiative in prosecuting cases of violence against women, even though these are crimes that are to be prosecuted by the State at its own initiative. To the contrary, more often than not the criterion followed is that is up to the victim of sexual violence to seek or expedite judicial proceedings; for example, the mistaken belief is that it is the victim's responsibility to produce the evidence of the crime committed against her.<sup>201</sup>

191. The officers of the court and law enforcement are therefore very reluctant to make the gender perspective part of their approach in dealing with cases of sexual violence. They make no effort to understand the reasons why laws have been enacted to protect women and do not even consider the possibility of making equity a factor in the enforcement of those laws.

## **2. Lack of enforcement and ignorance of the domestic and international laws that protect women's rights**

192. The Commission observes that a problem associated with discriminatory socio-cultural patterns which foster the re-victimization of women who report these crimes, is that justice officials do not possess knowledge of the women's rights embodied in domestic and international law. Therefore, they do not vigorously prosecute their cases, with the result that the crime goes unpunished and the victim is not protected.

193. While the IACHR knows of a number of programs given on gender, women's rights and their access to justice, that training is not internalized among the personnel who actually respond to these cases, since it is generally reserved for the office heads and the content of the course is not passed on to subordinates. Another factor behind this phenomenon is that trained personnel are rotated to other offices and positions. So, notwithstanding the efforts made to sensitize and train law enforcement personnel and officers of the court, specialized training is still lacking, particularly training for cases of intra-family and sexual violence, with the result that patriarchal cultural concepts are still ingrained in institutional practices.<sup>202</sup>

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<sup>200</sup> See, in general, responses to the questionnaire sent by the IACHR, and information obtained from the Regional Meeting held by the IACHR on May 22 and 23, 2011 in Guatemala City.

<sup>201</sup> Centro de Derechos de Mujeres (CDM) [Center for Women's Rights], *Violencia contra las Mujeres en Honduras: Una reflexión en el camino* [Violence against women in Honduras: reflections along the way], Honduras, 2005.

<sup>202</sup> Subregional Meeting convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.

194. A study done in Mexico<sup>203</sup> that covered eight states in that country –the Federal District, Nuevo León, Zacatecas, Yucatán, Oaxaca, Mexico, Querétaro and Tamaulipas– found that bureaucrats had virtually no knowledge of international laws on women’s rights. While anywhere from 70% to 90% of government employees in Nuevo León and Mexico City are familiar with the international treaties, that figure drops to 20% in Oaxaca, Querétaro and Yucatán.

195. This pattern is present throughout Central America. In Nicaragua, a study done of criminal convictions<sup>204</sup> found that in citing the legal grounds for a conviction, no reference is made to international laws like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) or the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), despite the fact that these international conventions contain provisions that have important consequences for the protection of women’s rights. According to that study, this may be due to a failure to incorporate the provisions of these treaties into domestic law or poor legal education on this subject. However, it also frequently happens that no reference is made to the specific domestic laws for the protection of women, such as laws criminalizing violence. The main sources of law are general provisions like the Criminal Code or the Code of Criminal Procedure.

196. Ignorance of international or domestic instruments for the prevention of gender violence and the failure to enforce those instruments both have far-reaching negative consequences when dealing with lesser known forms of sexual violence, such as trafficking and forced prostitution. These crimes –like the other forms of sexual violence discussed in this report- have particular connotations that require the participation of persons with technical expertise in these subjects. The IACHR is recommending that continual training be provided to judicial personnel on these forms of sexual violence, and that accountability mechanisms be in place to ensure that the knowledge imparted is being applied to the fullest.

197. In general, the countries of the region are facing important challenges and deficits with respect to knowledge, application and compliance with the laws on violence against women, which means that the justice systems are ineffective in discharging their duty of protecting women victims and punishing the perpetrators of sexual violence. This merely contributes to impunity.

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<sup>203</sup> La Jornada, *Desdeñan en Mexico problema de violencia sexual contra mujeres* [Contempt for the problem of sexual violence in Mexico], September 9, 2007. Available [in Spanish] at <http://www.jornada.unam.mx/2007/09/09/index.php?section=sociedad&article=035n1soc>.

<sup>204</sup> Supreme Court of Justice of Nicaragua and Spanish Agency for International Cooperation, *Análisis Jurídico de sentencias relativas a delitos de violencia intrafamiliar y sexual y demandas civiles en materia de familia* [Legal analysis of verdicts delivered in cases involving intra-family and domestic violence and civil suits in family law], p. 73.

### 3. Inadequate conditions for receiving complaints and a lack of resources to process them

198. As observed earlier, the police stations are the most accessible places woman can go to file complaints of sexual violence. Women also routinely go to the Public Prosecutor's Office, which is the institution charged with initiating the investigation. Honduras, Costa Rica and Guatemala have prosecutor's offices or units that specialize in sexual violence and domestic violence crimes. However, they are only available in the principal cities. Nicaragua also has a system of Special Police Stations for Women and Children that receive and investigate complaints.

199. A key deficiency identified by the IACHR in the process of receiving complaints, is that many of the places do not guarantee the privacy of the victims when they render their statements. Frequently, the declarations are heard by other public officials and persons that visit the public prosecutors' offices,<sup>205</sup> which inhibit victims from speaking openly. In Nicaragua specifically,<sup>206</sup> although efforts have been made at the Special Police Stations for Women and Children to provide individualized, specialized attention in cases of sexual crimes, the space set aside for providing service to women victims is very small. The original design did not make allowance for the demand that these police stations are now seeing, with the result that they do not now afford the conditions necessary for a victim of rape to discuss in private the acts committed against her.

200. Although some of these police stations in Nicaragua have been remodeled, the physical space is still not large enough. The partitions are moveable, creating a casual atmosphere that does not allow for privacy between the victim and the person attending her.<sup>207</sup> All this makes the situation that much more difficult for the victim, who took the decision to file a complaint about an act of violence but who may not return, whether because proper attention was not paid to her complaint, or because officials mistreated her, or because she was ashamed to go public with her complaint.

201. The persons responsible for receiving the complaint and investigating it do not take the victim's particular circumstances into account, as in the case of indigenous women, migrant women, or Afro-descendant women.<sup>208</sup> Although there are laws that afford special protection to children and adolescents, in practice most countries make no

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<sup>205</sup> Diez (Andrea), Coordinator of the 'Violence against Women' Project. *Tratamiento por parte de la Justicia Penal de Guatemala* [Treatment by the Guatemalan Criminal Justice System], s/a, p. 34. Available [in Spanish] at [http://www.cejamericas.org/portal/index.php/es/biblioteca/biblioteca-virtual/cat\\_view/43-documentos/67-informes-locales](http://www.cejamericas.org/portal/index.php/es/biblioteca/biblioteca-virtual/cat_view/43-documentos/67-informes-locales).

<sup>206</sup> National Police, Office of the Director of the Special Police Stations for Women and Girls, *Diagnóstico de la Violencia Intrafamiliar y Sexual en Nicaragua* [Analysis of Intra-family and Sexual Violence in Nicaragua], Managua, December 2008, p. 74

<sup>207</sup> National Police, Office of the Director of the Special Police Stations for Women and Girls, *Diagnóstico de la Violencia Intrafamiliar y Sexual en Nicaragua* [Analysis of Intra-family and Sexual Violence in Nicaragua], Managua, December 2008, p. 74

<sup>208</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City and responses to the questionnaire sent out by the IACHR.

provision for that specialized attention. No distinction is made between girls and teenage girls, or even between teenage girls and adult women.

202. Once women victims file their complaint, they are then re-victimized by being forced to repeat their testimony over and over in the presence of various officers of the court. In Guatemala, the complaint has to be confirmed, and veracity and coherence are demanded. An estimated nine persons intervene in the process before an investigation even gets underway.<sup>209</sup>

203. In their dealings with police, prosecutors, investigators and judges, women encounter religious beliefs and discriminatory concepts that belittle the violence done to them and that humiliate them. Such women can end up becoming victims of the system or of the very institutions that are supposed to punish the aggressors.<sup>210</sup> Worse still is the fact that many officials become inured to these cases (the so-called “burnout” syndrome) and to the woman victim’s perspective. She becomes an object, described as a “raped woman,” just one more statistic.<sup>211</sup>

204. The IACHR has received information to the effect that the States of the region are not earmarking the resources needed to modernize the justice system and to be in compliance with the obligations created by the international conventions they have ratified on the rights of women and girls. In many cases, the service that women victims of violence receive from State institutions is maintained thanks to the support received through international cooperation<sup>212</sup> and many of the States’ responsibilities continue to be undertaken by social organizations, especially organized women’s groups.<sup>213</sup>

205. As a direct consequence of this lack of resources, there are an insufficient number of offices where to receive complaints, and to investigate and judicially process cases, at the national level. The lack of places where to file complaints discourages victims and witnesses to continue with the processing of their cases until the sanction of the aggressor is achieved. For example, in Nicaragua, the institutions in the justice system are more developed in some places than in others; only the judicial branch and the National Police have a physical infrastructure in place in many areas of the country; the public

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<sup>209</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City and responses to the questionnaire sent out by the IACHR.

<sup>210</sup> See *Red de Mujeres contra la Violencia* [Network of Women against Violence], *Para mí...no se hizo justicia, Historias de vida de mujeres en búsqueda de justicia ante situaciones de violencia vivida* [In my case... justice wasn’t done. Life stories of women in search of justice for the violence they have experienced], Nicaragua, 2008, p. 77.

<sup>211</sup> See *Red de Mujeres contra la Violencia* [Network of Women against Violence], *Para mí...no se hizo justicia, Historias de vida de mujeres en búsqueda de justicia ante situaciones de violencia vivida* [In my case... justice wasn’t done. Life stories of women in search of justice for the violence they have experienced], Nicaragua, 2008, p. 77.

<sup>212</sup> Response of the Technical Secretariat for Gender Issues of the Supreme Court of Justice of Nicaragua to the questionnaire sent out by the IACHR.

<sup>213</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City and responses to the questionnaire sent out by the IACHR.



prosecutor's office, on the other hand, has a significant infrastructure deficit, as it does not have a sufficient number of its own offices and instead has to spend a sizeable portion of its budget to lease space; in many places in the country, the Public Prosecutor's Office operates its Prosecution Services Center [Centros de Atención Fiscal] (CAF) out of the facilities of the National Police.<sup>214</sup>

206. Then, too, the National Police and the Public Prosecutor's Office in Mesoamerican countries tend to lack the needed resources – including those human, technical, and scientific – necessary to undertake an exhaustive investigation; factor with negative repercussions in the ability to introduce evidence, to go to a trial, and to collect the elements necessary to sanction the aggressor. Qualified forensic medical personnel are not available everywhere in the country, which means that victims often have to travel to the main cities to have access to this service,<sup>215</sup> with all the difficulties this involves. The States also do not have a sufficient number of professionals in psychology to do the necessary evaluations.

207. Even though the number of complaints of sexual violence increases by the day, the staff of the public prosecutors' offices and specialized judicial institutions does not, which means that they cannot possibly keep pace with the demands on the justice system.<sup>216</sup> In Guatemala, for example, one factor delaying judicial proceedings instituted in cases involving violence against women is "the backlog of cases in the public prosecutor's office and in the courts; with so many cases and so few officers of the court, the process moves very slowly, even for the most routine procedures like taking depositions and the like."<sup>217</sup>

208. In conclusion, the Commission has verified that although there are laws and proceedings to punish intra-family and sexual violence, in practice the States do not have the resources necessary to enforce those laws and conduct the necessary court proceedings. This lack of resources thus has negative consequences for women's access to justice. But considerations involving financial and human resources aside, law enforcement and officers of the court do not have the commitment and sensitivity needed to combat violence against women. This leaves women victims of violence frustrated at their lack of access to justice and, above all, alienates them from the institutions of the State because they have no confidence in the authorities. In the end, they often drop their cases.

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<sup>214</sup> National Police, Office of the Director of the Special Police Stations for Women and Girls, *Diagnóstico de la Violencia Intrafamiliar y Sexual en Nicaragua* [Analysis of Intra-family and Sexual Violence in Nicaragua], Managua, December 2008, pp. 57 *et seq.*

<sup>215</sup> See, in general, responses to the questionnaire and Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.

<sup>216</sup> See Relatives and Women Survivors of Violence, *Análisis de la situación de la violencia en contra de la mujer en Guatemala* [Analysis of violence against women in Guatemala].

<sup>217</sup> Response from the Guatemalan State to the questionnaire sent out by the IACHR.

#### 4. Complicated and time-consuming formalities

209. The Commission considers that in Mesoamerica one of the main reasons why women are reluctant to file complaints or, having filed them, drop the case, are the complicated and tiresome procedures that often require the women to make lengthy trips, over and over, to file the complaint and follow up. For example, the Nicaraguan State<sup>218</sup> observed that one factor that deters women from pursuing their complaint is the length of the criminal case and the procedure that has to be followed, which tends to be complicated. El Salvador<sup>219</sup> described the process as “tedious”. In other words, a premium is placed on procedure rather than results.<sup>220</sup>

210. Because of the formalities of the process and fact that the case must be written down in a formal brief, it is hardly likely that the victim will be able to participate without the advice of an attorney. This involves expenses that she frequently cannot cover, which means she has to forego her rights. In Nicaragua, for example, the inquisitorial system is deeply ingrained in the officers of the court, even though the new law on criminal procedure has been in force for almost six years. This is another factor obstructing real access to justice for women victims of intra-family and sexual violence.<sup>221</sup>

211. The IACHR is concerned by the fact that the more formal and complicated the process is, the more costly it is for the victim. Having to travel in order to file a complaint and to be present for the proceedings implies added expenses for the woman. The cost of the process is a form of victimization and one reason why women drop the complaint.<sup>222</sup> In some countries of the region, the victim has to complete preliminary formalities prior to the criminal complaint, making it all the more unlikely that cases of sexual violence will ultimately be criminally prosecuted. In El Salvador, for example, according to the rules governing cases of domestic violence, a precondition for prosecution of a sexual crime committed within the family is exhaustion of the proceedings under the Law on Intrafamily Violence.-

212. On the other hand, there is a tendency to divide the complaint up among several institutions, requiring the victim to repeat her story over and over. The situation is compounded when the prosecutor or judge assigned to the case is changed; this moves the victim further away from the events and needlessly protracts the proceedings. In Honduras,<sup>223</sup> the victim is questioned separately by the police, the prosecutor on duty, the

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<sup>218</sup> Response of the Technical Secretariat for Gender Issues of the Supreme Court of Justice of Nicaragua to the questionnaire sent out by the IACHR.

<sup>219</sup> Response from the Salvadoran State to the questionnaire sent out by the IACHR.

<sup>220</sup> Response to the questionnaire *Mujeres Transformando el Mundo* from Guatemala.

<sup>221</sup> National Police, Office of the Director of the Special Police Stations for Women and Girls, *Diagnóstico de la Violencia Intrafamiliar y Sexual en Nicaragua* [Analysis of Intra-family and Sexual Violence in Nicaragua], Managua, December 2008, p. 17.

<sup>222</sup> Response from the State of El Salvador to the questionnaire.

<sup>223</sup> Response from the State of Honduras to the questionnaire circulated by the IACHR.

various experts who evaluate her (the forensic physician, psychiatrist, psychologist), the prosecutor permanently assigned to the case, the judge who hears the preliminary proceedings, and finally the court that decides the case. In the process, the victim gives at least five depositions on the event, which the Commission considers represents a serious form of re-victimization.

213. Compounding the problem are the serious shortcomings in the coordination mechanisms between the institution that receives the complaint, the institution that investigates it, the institution that prosecutes it,<sup>224</sup> and the medical service,<sup>225</sup> which means that the same case has to go to three or four institutions.

214. In addition to their complexity and formality, these proceedings take time. In Guatemala, most cases last two years from the date the trial begins to the actual conviction; three or four years are needed to get a final conviction not subject to appeal. While the penalties range between six and eight years, they can be reduced for good behavior. Then, too, in legal cases like these, the defense files any number of objections and motions to delay the proceedings, which is an even greater mental drain on the victim and her family and can result in the case being dropped.<sup>226</sup>

## **5. The absence of the conditions necessary to provide comprehensive service and care to a woman victim of sexual violence**

215. From the information compiled in its research, the IACHR was troubled to learn that while the justice system gathers and weighs the evidence in order to be able to punish the sexual crime, it does nothing to restore the rights of the victimized women; no provision is made to treat the after-effects or consequences of the sexual violence. While in some countries protocols have been approved for the treatment of victims, their application is not being monitored and evaluated to determine what and how much of an impact they are having. Such situations leave the women victims all the more vulnerable, and point up the lack of comprehensive attention, based on a full grasp of what access to justice means for such women.

### **a. The lack of information and advisory assistance**

216. A significant challenge that women victims of sexual violence face in their access to the administration of justice system is the lack of knowledge of their rights. This problem is compounded by the lack of information necessary to exercise these rights. Even in the presence of specific norms that address this issue specifically, victims generally do

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<sup>224</sup> Economic Commission for Latin America and the Caribbean (ECLAC), XI Session of the Regional Conference on Women of Latin America and the Caribbean, Brasilia, Brazil, July 13 to 16, 2010, Excerpts from the Country Reports, Papers, First Regional Meeting, "Women's Access in Cases of Gender Violence, with emphasis on sexual violence," Central American Court of Justice-Guatemalan Supreme Court – UNFPA, IACHR and CLADEM documents, Antigua, Guatemala, August 19 and 20, 2010.

<sup>225</sup> See in this regard IPAS, *Servicios de Salud para víctimas/sobrevivientes de Violencia Sexual: Buenas Prácticas* [Health Services for Victims/Survivors of Sexual Violence: Best Practices], Costa Rica, p. 22

<sup>226</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.

not receive the necessary information regarding judicial processes in which they are involved. For example, the personnel from the health and justice systems tends to lack the necessary training to offer information on the available justice mechanisms to sexual violence survivors<sup>227</sup>.

217. According to the responses received by the Commission to the questionnaire circulated in the context of this project, there is an absence of specialized infrastructure and personnel to offer the needed attention to the victims, which challenges their access to information. Judicial processes also tend to prolong themselves, which provokes that victims cease engaging in them. The dissemination of information in cases of violence is oriented particularly to promote the reporting of these cases. With frequency, victims do not receive an explanation of their right to become plaintiffs, and to have legal assistance as appropriate.

218. Therefore, the woman victim ends up confused; she does not know what active role she will have in the case. This despite the fact that the studies have shown that for a victim of sexual violence, part of the recovery process is the opportunity to undertake her own judicial process..

219. In 2003, the Nicaraguan Supreme Court published a Protocol of Procedure in Crimes Involving Family Abuse and Sexual Aggression, a guide for police, prosecutors, forensic physicians and judicial personnel. The idea is that law enforcement and officers of the court should inform and advise victims of sexual violence of the procedures and services available. In practice, however, there is no way of ensuring that law enforcement and officers of the court actually use this protocol.<sup>228</sup>

220. On the other hand and with frequency, victims of sexual violence are not notified that a request to commence proceedings has been filed, that the public prosecutor's has dismissed the case or dropped the charges, or of any other decision rendered in the case.<sup>229</sup>

221. The IACHR has also received information indicating that in every country of the region, what typically happens when the State fails to advise the victim as it should is that civil society women's organizations take it upon themselves to assist victims of sexual violence and make certain that they get timely information and legal advice.<sup>230</sup>

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<sup>227</sup> Sexual Violence Research Initiative, *Sexual Violence in Latin America and the Caribbean: a desk review*, March 2010, p. 52.

<sup>228</sup> Response of the Technical Secretariat for Gender Issues of the Supreme Court of Justice of Nicaragua to the questionnaire sent out by the IACHR.

<sup>229</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.

<sup>230</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.

**b. Existence of shelters: scarce or insufficient**

222. The Commission has observed the scarcity of shelters where women can go once they have left home. Mexico, with a population of over 100 million, has fewer than 100 State-run shelters for battered women. At least one per municipality would be needed, which would be almost 2,000 shelters nationwide.<sup>231</sup>

223. It is important to note that when a woman musters up the courage to file a complaint, it is unsafe for her to return home and continue living “with the enemy”, given the reprisals that he might take. This has very serious consequences, since women do not travel alone, but in the company of their children.

224. Without a support structure, women are faced with two alternatives: either not to file a complaint about the acts of violence because they know there are no shelters where they can go, or to withdraw their complaint and reach some agreement with their assailant. In other words, the lack of shelters is one factor that greatly increases the risk of violence that women victims face.

225. Shelters must be there to provide women complainants with an immediate solution; to escape the danger that returning home would mean. But they must also be a multidisciplinary service facility that provides for women’s physical and psychological health care, legal advisory services, sex education, and companionship for the women and her children. The objective is to support these women as they rebuild their self-esteem and move beyond the violence they have experienced, which in turn will enhance their determination to persist in the complaint. Therefore, what shelters must provide is a model of comprehensive care that seeks to stimulate women’s sense of empowerment by knowing their rights, exercising their free will, and identifying the alternatives they have to deal with the violence with which they are contending.<sup>232</sup>

**c. The ineffectiveness of the protection mechanisms**

226. Protection measures are premised on the existence of a threat to the victim and/or her next of kin.<sup>233</sup> The European Court has considered the obligation to protect as one of reasonable means, and not results, holding the State responsible when it failed to take reasonable measures that had a real prospect of altering the outcome or mitigating the harm. The European Court held that authorities should consider the prevalence of domestic violence, its hidden nature and the casualties of this phenomenon

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<sup>231</sup> *México no llega a 100 refugios para mujeres maltratadas* [Mexico has fewer than 100 shelters for battered women], 2011. See [in Spanish] at <http://www.radioformula.com.mx/notas.asp?Idn=151404>.

<sup>232</sup> Response from the Guatemalan State to the questionnaire sent out by the IACHR.

<sup>233</sup> IACHR, Merits Report No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al. (United States)*, July 21, 2011, para. 132.

in the adoption of protection measures; an obligation which may be applicable even in cases where victims have withdrawn their complaints.<sup>234</sup>

227. In countries like El Salvador, Guatemala and Costa Rica, laws have been approved to protect victims and witnesses. However, the data shows that implementation of those laws is not what it should be; it is unreliable, and does not serve to duly protect victims and witnesses which results in that they prefer to retract their complaints or their testimony because they are often threatened.<sup>235</sup> These laws are also for general application and therefore do not take the distinctive features of gender violence into account, much less the circumstances of victims of sexual violence.

228. Protection measures also figure in special laws on the protection of women and the prevention of gender violence. These are specific lists of protection measures which must be ordered by a judge and as a rule provide immediate and effective protection to the victim and her children who are in imminent danger. Such measures can be ordered without the need to institute civil or criminal proceedings. The purpose is to get the assailant to leave the home, to prevent him from having any contact with the victim, and prohibit him from caring for or educating children who are minors; these laws would also take away any weapons he has in his possession and require him to pay child support and to cover the family's medical expenses, as well as make reparations for any property his violence may have damaged.

229. The Commission, however, has verified key obstacles in the adequate application of protection measures by justice officials and those entrusted with the enforcement of the law; a group which may include prosecutors, police officers, and judges, among others. At one level, there might be a problem with the assessment, election and selection of measures that should be granted. Another significant obstacle is that these protection measures contained in special laws to address violence are precautionary, not coercive measures; in other words, no preventive detention can be ordered. The result is that hundreds of women who benefited from these measures were then murdered by their assailants, which exposes how ineffective these measures can be.

230. On the other hand, the measures ordered in the course of criminal proceedings are precautionary measures, but are those least applied in cases of violence against women. The judges take too long to order them, or let the measures ordered expire, leaving the victims unprotected.<sup>236</sup> In some cases, it is the law itself that fails. For example, in Mexico, the General Law on Women's Access to a Violence-free Life states that

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<sup>234</sup> See European Court of Human Rights, *Case of Opuz v. Turkey*, Application No. 33401/02, June 9, 2009, cited by the Inter-American Commission in the *Case of Jessica Lenahan (Gonzales) et al. v. the United States*, Case 12.626, Merits Report No. 80/11, July 21, 2011, para. 134.

<sup>235</sup> Economic Commission for Latin America and the Caribbean (ECLAC), XI Session of the Regional Conference on Women of Latin America and the Caribbean, Brasilia, Brazil, July 13 to 16, 2010, Excerpts from the Country Reports, Papers, First Regional Meeting, "Women's Access in Cases of Gender Violence, with emphasis on sexual violence," Central American Court of Justice-Guatemalan Supreme Court – UNFPA, IACHR and CLADEM documents, Antigua, Guatemala, August 19 and 20, 2010.

<sup>236</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.

protection orders will last only 72 hours. The duration of the measures calls into question how effective the law is in putting an end to the vicious circle of violence, in others words, its effectiveness in triggering action in an emergency and protecting the person who files the complaint. “Everything suggests that the goal is to dissuade the victim from filing the complaint,”<sup>237</sup> especially when one considers that in 2009, only 2,500 complaints of violence were filed in the Federal District, which has a population of 8.8 million.

231. In general, the IACHR has highlighted that in light of the existing risk and of the corresponding need for protection that women victims of violence have, the State is obligated to ensure that its structure responds effectively and in a coordinated fashion to enforce the terms of a court restraining order issued to protect the victims from harm. This means that the authorities entrusted with the enforcement of a restraining order are aware of its existence and its terms; that they understand that a protection order represents a judicial determination of risk and what their responsibilities are in light of this determination; that they understand the characteristics of the problem of domestic violence; and are trained to respond to reports of potential violations. A proper response requires the existence of protocols or directives and training on how to implement restraining orders, and how to respond to emergency calls from victims.<sup>238</sup>

232. However, that are factors in the countries of this region that render protection measures ineffective, such as:<sup>239</sup>

- A lack of commitment on the part of the State and insensitivity to the problem on the part of the authorities charged with enforcing the measures;
- Understaffing of the institutions responsible for enforcing measures and a lack of training for police.
- There is no shared database on the protection measures ordered and enforced.
- The system does not recognize the risks or threats to women outside the home.
- Precautionary measures are generally granted in the case of stable *de facto* unions or in marriages. This ignores other situations of violence (violence in courtship, threats by gangs or criminal groups, traffickers, etc.).
- An inability to respond immediately to calls for help.
- Problems in assessing the degree of danger and deciding whether to use precautionary measures or preventive detention.

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<sup>237</sup> *Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres, Secretaría de Gobernación, Consultoría sobre el Acceso a la Justicia de Mujeres víctimas de violencia en el Sistema de Procuración y Administración de Justicia en México* [Advisory Assistance on Access to Justice for Women Victims of Violence in Mexico’s system for seeking and administering justice], First Edition, Mexico, 2009, p. 38.

<sup>238</sup> IACHR, Merits Report No. 80/11, Case 12.626, *Case of Jessica Lenahan (Gonzales) et al. (United States)*, July 21, 2011, para. 145.

<sup>239</sup> See, in general, responses to the questionnaire sent out by the IACHR and Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.

- The delay in deciding whether a measure is called for and, if so, which measure.
- Discriminatory cultural patterns among officers of the court and law enforcement who set little store by the victim's version, which delays the decision and adversely affects the timing of the protection measure.

233. This ineffectiveness is an obstacle to women victims of sexual violence being able to file a complaint, as they are particularly exposed to their assailants' threats and reprisals, especially when the party responsible for the violence is a family member. The lack of effective mechanisms to protect such victims only increases this situation of risk.

234. The Commission observes the importance that the protection measures are selected on the basis of the circumstances of each case, and that the conditions are created to achieve their effective implementation. Accordingly, some countries of the region, like Costa Rica, have adopted a protocol for high-risk situations, so that the officers of the court responsible for ordering the measures have parameters by which to gauge what type of precautionary measure can be ordered in each specific case. Ideally, the judge in charge of ordering the measures should do so taking into account the complaint entered by the victim, the nature of the violence being alleged, and any direct or indirect evidence that can be provided to determine whether there is strong probable cause and risk to the woman victim. It is important to consider the victim's emotional state and the physical or psychological injuries she is suffering.

235. The judge can examine the risk with help from the staff of the court or interdisciplinary teams if the court has those means available (psychologists, assistants, social workers, medical personnel, and others). To the extent possible, the judge should have trained professions working at the court to facilitate the work of the court and expedite the measures to be taken. In countries where intra-family violence has been criminalized, the action taken must be comprehensive and coordinated, combining the precautionary measures ordered with respect to the aggressor with the protection measures ordered in civil court to protect the women in danger and make them less vulnerable.<sup>240</sup>

**d. Lack of articulation between the health and justice sectors**

236. Intervention to assist victims of sexual violence must be interdisciplinary in nature, with the emphasis on ensuring the exercise of women's rights. Where victims of domestic violence and sexual crimes are concerned, a proper understanding of and sensitivity to their physical and emotional condition and needs are fundamental to providing comprehensive services that do not re-victimize these women and are respectful of their rights.<sup>241</sup>

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<sup>240</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.

<sup>241</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.



237. For the health angle, the countries have developed treatment protocols and encourage the use of a kit for treating victims of sexual violence. Nevertheless, many of the health efforts are attributable to the initiative of civil society organizations. For example, in Nicaragua 60% of the children affected by sexual violence are treated at private centers, not by the State.<sup>242</sup>

238. From the judicial standpoint, the goal is restorative justice, not retributive justice. Although the law emphasizes restorative justice, in practice much still remains to be done. The justice system concerns itself with prosecuting crime and the person who commits crime, rather than monitor the affected persons' psychosocial recovery. This works against the best interests of the victim, her family and society in general.

239. Women victims of sexual violence can sustain serious physical injuries; it is also true, however, that their mental health can be affected and they can suffer from disorders like depression, anxiety, low self-esteem; they may even attempt suicide.<sup>243</sup> The Inter-American Court of Human Rights<sup>244</sup> has written that the severe suffering of the victim is inherent in rape, even when there is no evidence of physical injuries or disease. As the Court observed, "[w]omen victims of rape also experience complex consequences of a psychological and social nature." Despite this, the administration of justice does not offer the kind of comprehensive assistance that aids the victim's recovery and helps her rebuild her life.

240. If a woman files a complaint, she is assisted by professionals, but only during the preliminaries. And so, starting in 2009, Costa Rica's Public Prosecutor's Office established 10 interdisciplinary teams (social workers and a psychologist) posted in the prosecution offices to provide service, crisis intervention, and to monitor the victims.<sup>245</sup> Following the filing of the complaint, the women are referred to legal medicine for the necessary medical-legal opinions.

241. Any psychological care that women victims of sexual violence receive during this phase of the process is exclusively for evidentiary purposes. In some countries, chemical-clinical testing is done to ascertain whether the victim is carrying any sexually transmitted diseases; tests of the woman's hormone levels are also done to check for pregnancy. However, if she requires medical treatment, she is sent to a hospital for the necessary care; even here, however, the care is limited.

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<sup>242</sup> *Violencia Sexual en Nicaragua* [Sexual violence in Nicaragua], 2011. Available [in Spanish] at: <http://www.suite101.net/content/violencia-sexual-en-nicaragua-a40097>

<sup>243</sup> See, in general, Comprehensive Treatment Model Focused on the Victim/Survivor of Sexual Violence (conceptual part), El Salvador. Version cleared by institutions in the justice and health sectors in El Salvador, a sample copy.

<sup>244</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, para. 124.

<sup>245</sup> IPAS, *Servicios de Salud para víctimas/sobrevivientes de Violencia Sexual: Buenas Prácticas* [Health Services for Victims/Survivors of Sexual Violence: Best Practices], Costa Rica, p. 32

242. In Costa Rica, emergency contraception is not officially included among the services that the Official Health System provides, and is not widely publicized among women who may require it. The health personnel are afraid to offer this type of medication, since there is still confusion and ignorance about emergency contraception. Some think it is a way of inducing an abortion and medical personnel who offer this service can be reported and penalized; others think that as it is not part of any protocol, handbook or guide for the health sector, it might cause problems for the institution.<sup>246</sup> In Honduras, this method is not available. In El Salvador and Nicaragua, abortion is not an option, not even therapeutic abortions; the result is that hundreds of girls and women get pregnant as a result of rape.

243. The IACHR concludes, therefore, that within the Mesoamerican region there is no comprehensive legislation to protect women's rights and protocols that join the health and justice sectors in partnership to effect significant change in the lives of women who file complaints. In other words, there is no mechanism that combines the efforts to help the victim recover with those to prosecute and punish the crime; despite the fact that rape violates essential aspects and values of private life, it also represents an intrusion in the victim's sexual life, and takes away her right to decide freely with whom to have intimate relations, causing her to lose total control over these most personal and intimate decisions, and over her basic bodily functions.<sup>247</sup>

## 6. Legal medicine and its limitations

244. Forensic medicine is not a nationwide service in any of the countries of the region. Indeed, health providers have to travel to remote areas to act as forensic physicians, without having the necessary training. So when a victim of sexual violence seeks medical attention, the medical professional provides the health care, but does not consider that the woman's clothing and body may hold potential evidence that is important for legal purposes.<sup>248</sup> In other words, health care providers have not been trained in how to collect and preserve evidence to ensure the success of possible criminal actions to which the victim is entitled. Therefore, the forensic opinions that these medical professionals prepare do not rise to the standards established in the Criminal Code, which means that the case files are returned and the evidence is lost.<sup>249</sup> However, in some Mesoamerican countries, among them El Salvador, judicial authorities and health authorities have reached agreements to train the health personnel in investigation techniques.

245. On the other hand, the Commission observes that although in some countries protocols have been approved that facilitate access to justice and make clear the

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<sup>246</sup> IPAS, *Servicios de Salud para víctimas/sobrevivientes de Violencia Sexual: Buenas Prácticas* [Health Services for Victims/Survivors of Sexual Violence: Best Practices], Costa Rica, p. 31.

<sup>247</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, para. 129.

<sup>248</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.

<sup>249</sup> National Police, *Diagnóstico de la violencia intrafamiliar y sexual en Nicaragua* [Examination of intra-family and domestic violence in Nicaragua], op.cit. pp. 57 et seq., and responses to the questionnaire.

roles that medical personnel should play and the procedures they should follow, putting those protocols into practice is a challenge. In Managua<sup>250</sup> a medical legal opinion is difficult to obtain. The victim has to make as many as three visits to get results. There are also delays in getting the forensic opinion, mainly because there are many cases but few medical specialists to prepare and provide them. According to reports from the Institute of Legal Medicine, in 2009 413 expert evaluations related to sexual violence were prepared each month, which boils down to 14 a day, or two hours for each evaluation.<sup>251</sup> Something similar happens in Guatemala, where the clients of the National Institute of Forensic Sciences (INACIF) are summoned 8 or 10 days after having filed their complaints. The delay in delivering the reports –especially the psychologists’ reports- can be significant, so much so that oral arguments may already have been held by the time they are received.<sup>252</sup>

## 7. Special jurisdictions

246. Within this region, only Mexico has a special jurisdiction for prosecution of military personnel, even when their actions constitute violations of human rights.<sup>253</sup> The experience thus far has been that sexual violence committed by military personnel has gone unpunished. The women who have demanded accountability for sexual abuses committed by these agents of the State have come up against deficient medical care, inadequate forensic examinations and a judicial system that does not offer the minimum guarantees to obtain an impartial and independent judgment.

247. As a result, the organs of the inter-American human rights system have repeatedly found the Mexican State responsible, especially in cases involving sexual violence against indigenous women. In one such case, the Inter-American Commission has indicated that the rape committed by members of the armed forces against individuals in the civilian population are inevitably serious violations of the human rights protected under Articles 5 and 11 of the American Convention, and of the provisions of international humanitarian law. It has also found that the abuses committed by the military against the physical, mental and moral integrity of the victims constituted torture.<sup>254</sup>

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<sup>250</sup> National Police, *Dirección Comisaría de la Mujer y la Niñez* [Office of the Director of the Special Police Stations for Women and Children], *Diagnóstico de la Violencia Intrafamiliar y Sexual en Nicaragua* [Examination of Intra-family and Domestic Violence in Nicaragua], Managua, December 2008, p.75.

<sup>251</sup> IACHR, Thematic hearing: Situation of women’s human rights in Nicaragua, March 25, 2011.

<sup>252</sup> López (Miguel Angel), *La Ruta Crítica de la Denuncia para la Protección Integral de la Niñez y Adolescencia vulnerada en sus derechos. Reflexiones sobre el proceso de la ruta crítica no institucional y aportes para la homogenización de criterios para la ruta crítica institucional* [The Critical Path for a Complaint Seeking Comprehensive Protection of a Child or Adolescent Whose Rights Have Been Violated. Reflections on the non-institutional critical path and contributions to standardizing criteria for the institutional critical path], Guatemala, 2009.

<sup>253</sup> It is worth noting that in July 2011, Mexico’s Supreme Court held that military personnel being prosecuted for human rights violations would be tried in civilian courts and not military courts.

<sup>254</sup> IACHR, Merits Report, No. 53/01, *Ana, Beatriz and Cecilia González Pérez* (Mexico), April 4, 2001, para. 52.

## 8. Judicial practices which foster impunity

248. Regardless of the legislative efforts described with the goal of protecting the rights of women, to prevent violence, and to sanction the aggressors, the Commission observes with concern that impunity is still pervasive in the region in cases of sexual violence committed against women in the countries of Mesoamerica. The justice system greatly contributes to this situation of impunity. As a consequence, very few women victims of sexual violence report their cases, because of the mistrust that they have in the justice system. Furthermore, those who commit acts of sexual violence against women are rarely prosecuted and tried for their crimes.

249. For example, in El Salvador,<sup>255</sup> data from the Office of the Attorney General of the Republic show that in the period from 2008 to July 2010, a total of 8,108 complaints were filed for crimes against sexual self-determination and 3,493 were prosecuted, which represents 43% of the complaints received. From the cases prosecuted, 2,432 ended in temporary or definitive dismissals, which is 30% of the total number of complaints. A number of 1,111 cases got as far as the trial hearing; of these, 628 ended in acquittals, which is 7.7% of the total number of complaints; 483 ended in convictions, representing a trifling 5.9% of the total number of complaints filed in that three-year period.

250. In Nicaragua,<sup>256</sup> 1,133 complaints of sexual violence entered the justice system on 2008. Of these, 56% were decided as follows: 70% were dismissed; 15% ended in acquittals; and 15% ended in convictions.

251. The problem of impunity can be blamed on a variety of factors, but there are judicial practices within the region that sustain this problem.

### a. Harmful evidence-related practices

252. The Inter-American Commission has written that “Rape is an aberrant act, which, because of its very nature, requires evidence that is different from other crimes. Subjecting the victim to another episode of humiliation or one that causes that person to relive the events involving the most private parts of the person's body in the form of review proceedings should be avoided. Consequently, the IACHR holds the view that the investigating authorities should analyze the circumstances surrounding the case and all available elements such as statements, circumstantial evidence, presumption, and other legal elements. In the absence of evidence, the medical examination must provide all the

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<sup>255</sup> *Instituto Salvadoreño para el Desarrollo de la Mujer, Segundo Informe Nacional sobre la Situación de la Violencia contra las Mujeres en El Salvador* [Second National Report on Violence against Women in El Salvador], 2010, p. 32.

<sup>256</sup> Data offered in the responses to the questionnaire presented by *Pro Familia* in Nicaragua and the Technical Secretariat for Gender Issues of the Supreme Court of Justice of Nicaragua to the questionnaire sent out by the IACHR.

guarantees for fully respecting the dignity of the person and for considering that individual's mental and psychological condition.”<sup>257</sup>

253. The Inter-American Court, for its part, has held that evidence that may be important to solving a case must be ordered, practiced or evaluated;<sup>258</sup> in the specific case of nonconsensual sexual acts, it held that evidence of physical resistance to such acts cannot be required; rather it is sufficient that there are coercive elements in the conduct.<sup>259</sup> It also held that a State's international responsibility may be engaged by its failure to order, practice and evaluate evidence that might have been important for a proper clarification of the facts.<sup>260</sup>

254. These are important findings when one considers that victims of sexual violence, especially sexual violence committed in private, have difficulty producing the evidence needed to prove the existence of the crime and the aggressor's criminal culpability.

255. In practice, however, the police or those institutions responsible for investigating crime do not do everything possible to collect evidence in cases of crimes of sexual violence. The tendency is to limit the investigation to medical evaluations and witness testimony, disregarding other types of evidence that may be essential to shed light on the facts of the case. Yet there are often no traces of semen, no evidence of violence or other physical evidence of violence. If the case hangs entirely on evidence of this type, the absence of such evidence will mean that the perpetrator will never answer for his crime.<sup>261</sup>

256. Although in most cases of sexual violence, the victim does not have witnesses, the prosecutors demand that the police look for witnesses, which reveals their ignorance of how such crimes are perpetrated. In the end a case may not make its way to court if all the prosecutor has is the victim's testimony, and her testimony alone is not considered sufficient proof to indict. Little or no value is attached to what the victim says, since the first reaction is not to believe her,<sup>262</sup> which is contrary to the principle of the full admissibility of evidence, where the victim herself is a qualified witness. It is also contrary to inter-American standards, which hold that rape is a special type of violence that generally takes place when no one other than the victim and the aggressor or aggressors is present. Therefore, one cannot expect graphic or documentary evidence, which means

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<sup>257</sup> IACHR, Merits Report, No. 53/01, *Ana, Beatriz and Cecilia González Pérez* (Mexico), April 4, 2001, para. 75.

<sup>258</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. 349.

<sup>259</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, para. 115.

<sup>260</sup> I/A Court H.R. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, para. 230.

<sup>261</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.

<sup>262</sup> See, in general, responses to the questionnaire from *Pro Familia* in Nicaragua, and from the *Centro de Derechos Humanos de Mujeres de Chihuahua, Mexico*.

that the victim's statement is the fundamental piece of evidence concerning what happened.<sup>263</sup>

257. Furthermore, the Inter-American Court has held that a judgment can legitimately be based on circumstantial evidence, clues and presumptions when consistent conclusions as to the facts can be inferred from that evidence.<sup>264</sup>

258. Nevertheless, in determining what the evidence will be, prosecutors do not establish differences with respect to sexual crimes, and treat all crimes the same. Thus, they generally request the same expert reports and opinions for all cases, disregarding the different nature of the crime. The evidence thus obtained is not necessarily the best evidence for a particular case. It is also difficult to work with circumstantial evidence because judges do not attach the proper importance to such evidence and therefore demand eyewitnesses when as a rule there are generally no eyewitnesses to crimes of this type.<sup>265</sup>

259. The psychological and psychiatric evidence is not duly considered either, which is an alarming problem considering that most sexual crimes are committed without eyewitnesses and that physical evidence is not always found. This is why the psychological and psychiatric evidence could be crucial in providing more elements that inform the clarification of facts and the truth of what happened.<sup>266</sup>

260. In general the tendency is to offer little evidence, to give little credence to the victim, to leave the burden of investigation on her shoulders, to give a stereotyped interpretation of the evidence, and to decide evidentiary issues without taking the gender perspective into account, all of which obstructs the access that women victims of sexual violence have to justice.<sup>267</sup> This problem is aggravated with important deficiencies in the preservation of the crime scene and in the chain of custody of the evidence collected.

261. From the information compiled, the IACHR concludes that the guiding principles –established mainly by the Inter-American Court- for investigations of sexual violence<sup>268</sup> are barely present in the investigative practices used by the authorities in the region. Those guiding principles are as follows: the State must immediately undertake an

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<sup>263</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, para. 100.

<sup>264</sup> 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. 102.

<sup>265</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City.

<sup>266</sup> See, also, 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. 103.

<sup>267</sup> See generally response to the questionnaire from the *Centro de Derechos Humanos de las Mujeres* (CEDHM) of Chihuahua, Mexico, the State of El Salvador, and Experts' meeting convoked by the IACHR on May 22 and 23 of 2011 in Guatemala City.

<sup>268</sup> 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, paras. 179 et seq.

investigation, promptly provide the victim with the medical attention needed to take the necessary tests, and immediately bring a criminal complaint. When a victim of sexual violence files a complaint, she must be afforded the necessary guarantees of assistance and privacy to which victims of crimes of this kind are entitled. The authorities in charge of the investigation must take the necessary precautions with respect to other elements, such as the clothing the victim was wearing at the time of the event; and provide her with adequate medical and psychological treatment during the investigations into the case. Even more important is that the minimum standard for gathering evidence be that the evidence is compiled immediately and rapidly.

262. An investigation that is inadequate because of the choice of evidence can have several consequences. For example, it can result in that the Public Prosecutor's Office may not indict the assailants because it considers the evidence supplied by those in charge of the investigation to be insufficient. It can also result in that the Judge entrusted with the accusation considers the evidence immaterial or insufficient.

**b. Inadequate questioning**

263. The Commission observes with concern that the investigative practice in the region lacks a single interrogatory prepared and conducted by personnel trained for that purpose, and with a multi-disciplinary team involved. Contrary to what the inter-American standards establish for cases of sexual violence, the victim is forced to repeat her version of the events over and over, and no trained personnel is present to address the subject-matter in an adequate fashion.

264. This void therefore results in a process that re-victimizes the women involved, and that essential information for the development of an investigation is provided. This is contrary to international standards which establish that in cases of sexual violence, the investigation must make every effort to avoid re-victimization and avoid forcing the victim to relive a profoundly traumatic experience each time she recalls or testifies about what happened.<sup>269</sup>

265. Although in most Mesoamerican countries, Gessel chambers (interview rooms for victims) have been introduced, they are not present nationwide. For example, in Guatemala, only three of 22 departments have Gessel chambers;<sup>270</sup> in El Salvador, this service is only available in the capital city and is used at the prosecutor's request.<sup>271</sup>

266. Law enforcement and officers of the court are often unaware that questions need not be repeated; they do not understand how effective pleasant, considerate and respectful treatment is, which should be practiced in any interrogation; they fail to grasp how important it is to create an atmosphere of trust; they do not

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<sup>269</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, para. 196.

<sup>270</sup> Reponse to the questionnaire presented by *Mujeres Transformando el Mundo* from Guatemala.

<sup>271</sup> The Salvadoran State's response to the questionnaire.

recognize that they have a duty to explain the proceedings and report on them; they appear not to understand what a difference it can make if they empathize with the victim's situation; how important it is that they not blame the victim, and that they listen to what the victim wants to say. They forget that supporting a victim of sexual violence is essential, right from the start of the investigation, in order to provide her with a sense of security and an adequate frame of reference in speaking about what was done to her and to enable her to participate in the investigation process as best she can and take all necessary precautions.<sup>272</sup> Instead, during the preparatory phase most officers of the court and law enforcement officers rely on questioning that re-victimizes women victims of sexual violence and violate their private life. In many cases, the questioning is about the victim's sexual and social behavior, which is unnecessary, unreasonable and inconsistent with the nature of the crime being investigated. These questions seek to deflect responsibility away from the aggressor by insinuating that the victim's provocative behavior is to blame.<sup>273</sup> For example, questions about the time and place of the event are followed by others like: Did you scream? Were you alone? Why didn't you try to stop him? They might even blame the victim's moral conduct.<sup>274</sup>

267. The questions are no different in the case of sexual violence between couples, which tends to hide sexual violence behind the curtain of domestic violence. Nor are any questions asked that are specific to the victim's circumstances; in others, all women are treated the same, whether they are indigenous, migrant or Afro-descendant.<sup>275</sup>

268. The evidence in the case is not constructed with a gender perspective, which often causes the victim to drop her case.

### c. Conciliation or mediation

269. In its 2007 report on *Access to Justice for Women Victims of Violence in the Americas*, the IACHR expressed concern at the fact that various judicial bodies mainly encourage the use of conciliation during the investigative process, as one means of solving crimes of violence against women. Yet it is internationally recognized that conciliation in cases of intra-family violence is inadvisable as a means of solving these crimes. Conciliation is premised on the notion that the parties at the table are operating from equal bargaining positions, which is generally not true in cases of intra-family violence. According to the IACHR, in a number of countries it has become clear that the agreements reached in the framework of mediation compound the physical and emotional risks for women given the unequal power relationship between the victim and her assailant. As a rule, the assailant

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<sup>272</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, para. 205.

<sup>273</sup> Meeting of Experts, organized by the IACHR on May 22 and 23, 2011 in Guatemala City.

<sup>274</sup> Response to the questionnaire from *Centro de Derechos Humanos de la Mujer de Chihuahua, México*; and response presented by *Mujeres Transformando el Mundo* from Guatemala.

<sup>275</sup> In this sense, no response to the questionnaire states that there are differentiated interrogatories according to the particular conditions of women victims.



does not honor the agreement and the agreement itself does not address the causes and the consequences of the violence.<sup>276</sup>

270. Even though most countries in the region have laws that clearly prohibit conciliation in cases involving sexual crimes, exceptions are made depending on what the penalty would be.

271. In Chihuahua, conciliation is allowed in cases of sexual abuse, incest, statutory rape, sexual harassment with no aggravating circumstances;<sup>277</sup> in Nicaragua, conciliation is allowed when the penalty for the crime being charged is less than five years.<sup>278</sup> There, of 599 cases of sexual crimes, 57 were settled through mediation.<sup>279</sup>

272. In Guatemala, where sexual crimes are involved, the law allows another option, which is the victim's forgiveness; the result is conciliation proceedings where the woman participates from a position of psychological and financial disadvantage. So, for a sum of roughly \$400, the sexual assailant can go free.<sup>280</sup> Something similar happens in Honduras, where statutory rape, incest, forcible abduction and criminal sexual contact are crimes subject to conciliation if the victim is over 14 years old.<sup>281</sup> A recent study in Nicaragua found that mediation is one area where the discretionary principle is most often used; it is the most frequent basis for declaring a discontinuance of criminal proceedings in judgments of dismissal. It happened in 54 of 123 court judgments (43.90%).<sup>282</sup> The same

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<sup>276</sup> See IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, January 20, 2007, para. 161.

<sup>277</sup> Response from the *Centro de Derechos Humanos de las Mujeres* (CEDHM) of Chihuahua, Mexico.

<sup>278</sup> Response to the questionnaire from the Technical Secretariat for Gender Issues of the Supreme Court of Justice of Nicaragua.

<sup>279</sup> Supreme Court of Justice of Nicaragua and Spanish Agency for International Cooperation, Legal analysis of verdicts delivered in cases involving intra-family and domestic violence and civil suits in family law, p. 46. Available [in Spanish] at: [http://www.americalatinagenera.org/es/index.php?option=com\\_content&task=view&id=905&pub\\_id=1796&ml=1&mlt=system&tmpl=component](http://www.americalatinagenera.org/es/index.php?option=com_content&task=view&id=905&pub_id=1796&ml=1&mlt=system&tmpl=component).

<sup>280</sup> Relatives and Women Survivors of Violence, *Análisis de la situación de la violencia en contra de la mujer en Guatemala* [Analysis of violence against women in Guatemala]. Available [in Spanish] at <http://www.sobrevivientes.org/docs/AnalisisSitMj.pdf>.

<sup>281</sup> Response to the questionnaire presented by Eduardo Montes Manzano.

<sup>282</sup> Silva Pérez (Ada Esperanza), *Estudio Jurídico Evaluativo de la aplicación e interpretación de las normas penales de violencia sexual e intrafamiliar en las sentencias relacionados con estos delitos* [Legal study assessing the application and interpretation of criminal laws on sexual and domestic violence in judgments delivered in connection with these crimes], Nicaragua, 2010, p. 27. This study points to two cases in which the court based its discontinuance decision on the fact that mediation had supposedly taken place, when in fact mediation was prohibited for the particular crimes being prosecuted, such as aggravated rape and intra-family violence that inflicts severe mental harm (Article 56 of the Code of Criminal Procedure). In the first case, all the court needed to hear to order the discontinuance was the wife saying that the matter had already been mediated with her husband; this could be interpreted as an assumption on the court's part that there is no such thing as rape in marriage and that this was a private matter that could be settled privately. The second and more common basis for ordering a discontinuance is that the maximum time period for the proceedings has expired. In 33 of 123 cases (26.83%) no verdict was delivered within the prescribed time period, which was a violation of the rights of the person on trial and the victim.

study found that although illegal in cases of statutory rape, intra-family violence, sexual harassment, sexual abuse, rape, aggravated rape and threats made with weapons, the victim's pardon or decision to not to pursue the case is the main reason for a discontinuance of criminal proceedings in such cases. These decisions are taken on the basis of an oral or written statement made by the victim in the presence of the Public Prosecutor's Office or the judge.<sup>283</sup>

273. Although prohibited, conciliation is also used in practice as a way of taking the proceedings out of the courtroom.<sup>284</sup> In El Salvador,<sup>285</sup> the Office of the Attorney General of the Republic is not looking out for women's interests. Its objective in the area of intra-family violence is, above all, to protect and preserve the family unit as a supposedly mutually supportive environment that includes the children and other members of the extended family. This explains why, in every case where representatives of this institution intervene, the first objective is a reconciliation between the victim and her assailant, irrespective of whether crimes of sexual violence are involved. For example, the Report on the Work of the Office of the Attorney General from June 2007 to May 2008, states that it provided its services in 971 cases of domestic violence settled through conciliation, which break down as follows: physical and psychological violence, 638; sociological and sexual violence, 13; physical, psychological and sexual violence, 196; and psychological and property-related violence, 124 cases. Furthermore, between January and May 2008, it reported 392 administrative conciliation proceedings: 165 complaints of physical and psychological violence; 184 cases of physical, psychological and sexual violence, and 43 cases of psychological and property-related violence each month. Only 12 were not settled through administrative conciliation. In other words, the woman is forced to negotiate a settlement with her aggressor and is then forced to remake her life with her partner/aggressor, until eventually the episodes of intra-family violence resurface; a situation which can end with the woman being murdered by her assailant.

274. The Office of the Salvadoran Prosecutor General, as the institution bringing the indictment, also encourages conciliation between victim and assailant. This happens not only in cases of intra-family violence, but in all forms of violence against women, contributing to the impunity of these acts.<sup>286</sup>

275. The IACHR is disturbed by the use of either conciliation or mediation, because they are detrimental to the interests of the victim, who is already at a disadvantage

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<sup>283</sup> Silva Pérez (Ada Esperanza), *Estudio Jurídico Evaluativo de la aplicación e interpretación de las normas penales de violencia sexual e intrafamiliar en las sentencias relacionados con estos delitos* [Legal study assessing the application and interpretation of criminal laws on sexual and domestic violence in judgments delivered in connection with these crimes], Nicaragua, 2010, p. 28.

<sup>284</sup> Response to the questionnaire presented by *Mujeres Transformando el Mundo* from Guatemala.

<sup>285</sup> ORMUSA, *Boletín Bernarda*, Salvadoran Women's Organization for Peace. Observatory on Gender Violence against Women, El Salvador, 2008.

<sup>286</sup> ORMUSA, *Boletín Bernarda, Organización de mujeres salvadoreñas por la Paz* [Salvadoran Women's Organization for Peace]. Observatory on Gender Violence against Women, El Salvador, 2008.

and not in an equal bargaining position. It also challenges a victim's access to justice and the eventual sanction of the aggressor.

**d. Lack of institutional and interinstitutional coordination**

276. The Commission highlights that positive, on-going coordination between the institutions that receive the complaint of sexual violence, investigate it and then prosecute and punish it, is critical to getting a positive outcome to a victim's case. That coordination should include religious and educational sectors and active participation on the part of NGOs.

277. Conversely, the lack of institutional and inter-institutional coordination in the investigation of sexual crimes can cause problems and gaps in the investigation, as well as serious problems in the chain of custody of the evidence. This will be counterproductive to building a solid case to support the charge. For some countries in the region, the obstacles to this type of coordination may be a lack of earmarked funds and the lack of protocols that spell out the role that each public institution is to play in investigating and prosecuting a case of sexual violence, among others.<sup>287</sup>

278. Although the investigation of these crimes should get underway as soon as the police authorities learn of them, things do not always turn out that way. Some complaints never make it to the Public Prosecutor's Office because the proper investigations were not conducted and because it was believed that no crime was committed. Other times, the complaints are sent to the Public Prosecutor's Office, but the investigations into sexual crimes do not come up with the information the prosecutor's office demands, and the case files can end up being returned to the investigators over and over.<sup>288</sup>

279. In other cases, prosecutors are unclear about what evidence they require, so that the police either don't investigate or don't investigate what they should. This lack of articulation is very common in countries like Honduras, where the Public Prosecutor's Office is in charge of the investigation into the sexual violence and has to coordinate with the National Bureau of Criminal Investigation. One of the main obstacles to that coordination is that the National Bureau of Criminal Investigation is under the authority of the Secretariat of State for Security, and not under the authority of the Public Prosecutor's Office. This makes it difficult for the prosecutor's office to direct the investigation.<sup>289</sup>

280. In general, the contact between the police and prosecutors is distant and the channels of communication are few. As head of the investigation, the prosecutor summons the police from his/her desk, but is unaware of the situation of the police and how they function. These two institutions, which should be working together and in coordination, communicate mainly through briefs and memoranda.

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<sup>287</sup> Response from El Salvador to the questionnaire sent out by the IACHR.

<sup>288</sup> Meeting of Experts convoked by the IACHR on May 22 and 23 in Guatemala City.

<sup>289</sup> Meeting of Experts convoked by the IACHR on May 22 and 23 in Guatemala City.

281. Lack of coordination is also a problem between those in charge of the investigation and the auxiliary entities. In all too many cases, the medical results that would have been so helpful in proving the sexual violence get into the case file only after the hearing, as previously noted.

282. On the whole, there is no fluid exchange of information, with the result that there is much duplication of effort; institutions are not quick about responding, are negligent and slow to act.<sup>290</sup> Lacking are the institutional and inter-institutional systems for effective coordination, not just to ensure enforcement of the law, but above all to effectively protect persons who are victims of sexual violence.

283. Coordination is also missing among state institutions for designing and putting into operation a statistical system on sexual violence against women, to include complaints, investigations, socio-demographic variables, the victims' characteristics, investigative procedures, and the like.<sup>291</sup>

284. Fast action is required in the case of sexual crimes, because the more time that passes, the more hesitant victims and witnesses become to provide information about events related to the crime; they begin to doubt whether they should really get involved in a criminal case. Indeed, one of the obstacles mentioned by the prosecutor's office where reporting crimes of sexual violence is concerned is that the victim does not show up for the hearings.<sup>292</sup> Even so, they do not consider the victim's situation and circumstances and the impact that automatic rescheduling of the hearings can have. Contrary to what one might expect in this situation, it is accepted judicial practice for hearings in cases to be cancelled and rescheduled continually. This is exhausting for victims, who have to return to court over and over, without result.<sup>293</sup>

285. In rural areas, the situation is even more difficult, because the women victims have to travel long distances to attend court, taking with them their witnesses and, in many cases, their children.

286. Very few shelters are available to assist the victim pursue her case, providing her the means necessary so that she will not be forced to drop it.

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<sup>290</sup> López (Miguel Angel), *La Ruta Crítica de la Denuncia para la Protección Integral de la Niñez y Adolescencia vulnerada en sus derechos. Reflexiones sobre el proceso de la ruta crítica no institucional y aportes para la homogenización de criterios para la ruta crítica institucional* [The Critical Path for a Complaint Seeking Comprehensive Protection of a Child or Adolescent Whose Rights Have Been Violated. Reflections on the non-institutional critical path and contributions to standardizing criteria for the institutional critical path], Guatemala, 2009.

<sup>291</sup> Meeting of Experts convoked by the IACHR on May 22 and 23 in Guatemala City.

<sup>292</sup> In this sense, see responses to the questionnaire circulated by the IACHR to the Technical Office for Gender Issues of the Supreme Court of Justice of Nicaragua, and the *Instituto de Promoción Humana* (INPRHU).

<sup>293</sup> Meeting of Experts convoked by the IACHR on May 22 and 23 in Guatemala City.

287. In conclusion the lack of inter-institutional coordination makes it impossible to comply with the principles requiring a swift and immediate investigation; which results in serious consequences for the victims, and in a violation of the State's duty to act with the required due diligence.

**C. Obstacles to secure redress for the harm done**

**1. The need to incorporate victims' needs in the reparations process**

288. The IACHR recognizes that the region has made important strides in the law to make restorative justice part of the criminal justice process. Nevertheless, in practice the courts either do not consider or obscure the fact that the harm that the victim of sexual violence has suffered has profound physical, psychological, and property-related consequences. This is why the victim's need for redress becomes a complex issue for a society in which discriminatory socio-cultural patterns are still prevalent.

289. Considering the standards that the IACHR has mentioned regarding the States' obligation to make reparations for the harm done to a victim of sexual violence, the specific needs of a victim of such violence must be spelled out in order to steer the reparations process. Some of these needs are as follows:<sup>294</sup>

- a. Social response: The process itself should be one means by which the victim gets some redress. It must not be an exercise in re-victimization; instead, it must work to see that justice is done. The victim is seeking society's response.
- b. Acknowledgement of harm: the victim needs to feel that the social system recognizes the harm done and that she is neither at fault nor responsible for what happened.

290. Although both are needs that a victim would logically have, the presence of discriminatory socio-cultural patterns among the officers of the court, law enforcement personnel and the laws themselves do not allow those needs to be fulfilled. To the contrary, victims have little participation in the proceedings and are viewed more as a piece of evidence than as a party to the proceedings. Furthermore, the judicial process focuses on proving that the crime was committed in order to then punish the aggressor; it is up to the victim to prove the facts.

291. To consider the needs of victims, it is necessary to improve the judicial proceedings. For example:

**Legal services:** The victim must have the advice of counsel throughout the entire case and be aware of her right to file a civil suit for damages.

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<sup>294</sup> *Observatorio de Justicia y Género*, 2012 [www.fundacionjyg.org](http://www.fundacionjyg.org).

**Assistance services:** In addition to legal guidance, the victim also needs psychological support and assistance of various kinds. Thus far, the assistance services have put the emphasis on the assistance of experts, but not on addressing the needs of the victim of sexual violence. The victims aid offices in Guatemala and Costa Rica have been developing models of inter-disciplinary services, while in El Salvador an inter-institutional effort has been offering comprehensive services for victims.

**Security and protection services:** Throughout the case and even after, the victim's safety must be guaranteed. Shelters and effective protection measures should be available.

**Economic support:** Although in theory judicial proceedings are *gratis*, they nonetheless require the victim to spend money on transportation, meals for witnesses, paperwork, work permits, etc. Victims need to find ways to cover these expenses and thus be able to pursue their cases.

292. The purpose of reparations in cases of sexual violence should not only serve to confirm the facts denounced and impose the prescribed criminal penalties on the guilty party, but should also require that the aggressor make reparations to the victim; it is even more important that the State help the victim confront the consequences of the violence she has experienced; accordingly it will have to provide her with the tools by which she can recover her dignity, rebuild her self-esteem, and reshape her personality. This is the only way she will regain her trust in society and in the institutions of the State. However, the system re-victimizes these women in so many ways that they either abandon their cases or never seek protection from the justice system again, in order not to suffer even greater harm, harm directly caused by the lack of adequate services for her needs.

293. The information that the IACHR has received indicates that the situation described here is the same in all the countries of Mesoamerica. While reparations policies do exist and reparations are prescribed by law, in practice those reparations never materialize, even when the criminal case establishes the guilt of the aggressor. In some countries like Nicaragua,<sup>295</sup> society censures a women victim of sexual violence if, in addition to attempting to prove the aggressor's guilt, she also seeks reparations. In other countries like Guatemala,<sup>296</sup> even though the conviction may order reparations, the judicial systems to enforce the court order are weak, which renders the right illusory.

#### **D. The particular risk that girls, indigenous women, migrant women, and Afro-descendant women face**

294. The intersection of various forms of discrimination that a woman can suffer by virtue of her sex in combination with other factors, can exacerbate the obstacles that she traditionally encounters in her search for justice. The IACHR must highlight the

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<sup>295</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City, Guatemala.

<sup>296</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, 2011 in Guatemala City, Guatemala.

particular danger that girls, indigenous women, Afro-descendant women, and migrant women face, particularly as the Mesoamerican states have not yet developed procedures and services that are responsive to their particular needs in matters related to justice.

## 1. Girls

295. As evidenced by the references in this report, girls are the main victims of sexual violence. The aggressors are generally male with some degree of kinship or relationship to them. It is possible that they are fathers, stepfathers, brothers, cousins, or boyfriends.

296. There are many reasons why girls and members of their family do not file complaints. Not the least of these is that they do not know their rights and which acts constitute sexual crimes under domestic law. They also fear stigma, shame, and reprisals on the part of the perpetrator.<sup>297</sup> The financial expense that girls and their family members will sustain to cover the cost of traveling to attend court hearings, hospital appointments, or forensic institutions is another obstacle to their access to justice. Another obstacle is the lack of assistance from professional experts who specialize in social work or psychology, or persons they could talk to during the proceedings.

297. For girls and teenage girls, another obstacle to access to justice is the fact that officers of court and law enforcement personnel have no special training in the area of sexual violence and on the issue of the best interests of the child. These officers of the court and law enforcement personnel do not take into account either of the Convention on the Rights of the Child or the international standards for judicial protection of this sector of the population. For example, in the case of *Valentina Rosendo Cantú*, the Inter-American Court<sup>298</sup> established that the State has a number of obligations to protect the best interests of the girls and adolescents and their rights as victims, including to: i) provide the information and implement the appropriate procedures, adapted to their particular needs, while also ensuring that they have the assistance of an attorney and any other type of assistance at all times, according to their needs; ii) in cases in which girls or boys have been victims of sexual crimes or other forms of abuse, take special care to ensure their right to a hearing, while guaranteeing their full protection, making certain that the personnel are trained to assist them, and that interview rooms are a safe, nonthreatening environment that is not hostile, insensitive or inadequate; and iii) ensure that the boys and girls are not questioned more than absolutely necessary, in order to avoid, to the extent possible, their re-victimization or a traumatic impact upon them.

298. The states in the Mesoamerican region, however, do not adhere to the established standards. Privacy is not guaranteed, the age of the victim is not considered,

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<sup>297</sup> Sexual Violence Research Initiative (SVRI). *Sexual violence in Latin America and the Caribbean: a desk review*, March 2010, p. 39.

<sup>298</sup> I/A Court H.R. *Case of Rosendo Cantú et al. v. Mexico*, Judgment of August 31, 2010. Series C No.216, para. 74.

and children are often forced to make their statements repeatedly, or subjected to lengthy interrogations, or exposed to direct contact with their assailant.<sup>299</sup>

299. The Commission reiterates that the States have the duty to act with due diligence to prevent, investigate, sanction and offer reparations for acts of sexual violence committed against girls. This stems, on the one hand, from the broadly-recognized international obligation to provide special protection to children, due to their physical and emotional development.<sup>300</sup> On the other, it is linked to the international recognition that the due diligence duty of States to protect and prevent violence has special connotations in the case of women, due to the historical discrimination they have faced as a group.<sup>301</sup> According to this principle, States are expected to adopt special measures of care, prevention, and guarantee of the right of girls to live free from sexual violence.

300. As part of their due diligence obligation, States should adopt protocols to facilitate and foster the effective, uniform, and transparent investigation of sexual violence acts committed against girls, and the treatment of victims during the process, in consideration of their particular risk to human rights violations on the basis of sex and age. The design of these protocols should be joined by training programs for the justice officials, about the need to ensure the due implementation of the protocols involved, and the consequences of non-compliance.

## 2. Indigenous women

301. The IACHR has highlighted the triple historical discrimination faced by indigenous women, based on factors such as their sex, ethnicity and for being affected by poverty<sup>302</sup>. This situation has exposed them particularly to acts of sexual violence. Indigenous women are also affected by this problem in countries throughout Mesoamerica.

302. Along with this problem, indigenous women face key obstacles to access justice linked with the social exclusion, ethnic discrimination, and poverty that they suffer.<sup>303</sup> The Commission has highlighted that States should - by means of their administration of justice system - incorporate the specific needs of indigenous women in

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<sup>299</sup> Meeting of Experts convoked by the IACHR on May 22 and 23, in Guatemala City.

<sup>300</sup> See, IACHR, Merits Report No. 80/11, *Jessica Lenahan (Gonzales) et al.*, United States, July 21, 2011.

<sup>301</sup> See, e.g., United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010; United Nations General Assembly Resolution, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/64/137, 11 February 2010 and A/RES/63/155, January 30, 2009; United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994; 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); CEDAW, General Recommendation 19: *Violence against Women*, (11<sup>th</sup> Session 1992), U.N. Doc.A/47/38 (1993).

<sup>302</sup> IACHR, *Access to Justice for Women Victims of Violence*, OEA/Ser. L/V/II. Doc 68, January 20, 2007, para. 198.

<sup>303</sup> IACHR, *Access to Justice for Women Victims of Violence*, OEA/Ser. L/V/II. Doc 68, January 20, 2007, para. 199.



their actions, respecting their cultural identity, ethnicity, language, and idiosyncrasy, even creating systems and methods of collecting evidence from the perspective of their culture in cases of violence<sup>304</sup>.

303. For example, in the case of *Ana, Beatriz and Celia González Pérez*<sup>305</sup>, linked to Mexico, the Inter-American Commission on Human Rights developed the concept of rape as torture and as a violation of the right to privacy of women. It also referred to the particular obstacles that indigenous women face when they try to access judicial protection instances. In such report, the Commission highlighted the pain and humiliation that the women suffered had been aggravated by the failure of the State to consider their status as indigenous women, and their different world view and language in the judicial response to the facts.<sup>306</sup>

304. The Inter-American Court of Human Rights also in the cases of *Inés Fernández Ortega* and *Valentina Rosendo Cantú*, which were discussed previously, analyzed in-depth the link between factors that expose indigenous women to an increased risk to human rights violations before the justice and health systems.<sup>307</sup> The Court referred to the specific obstacles that indigenous women confront to access justice such as speaking a different language and not having access to interpreters, and the scarcity of economic resources to obtain a lawyer, among others.<sup>308</sup> This problem in particular produces a mistrust in the justice system and in other public instances of protection.<sup>309</sup> For indigenous women, the Court considers that these barriers are particularly alarming because they also confront the rejection and ostracism of their communities when they report crimes with gender-specific causes.

305. In this report, the Commission reiterates with concern that the access to justice of indigenous women in cases of sexual violence is limited in Mesoamerica due to the factors mentioned. The indigenous woman that despite these obstacles decides to report her case before the ordinary jurisdiction should travel for several hours to access instances that receive these complaints, which are located generally far from her

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<sup>304</sup> IACHR, Report No. 89/08, Merits, *Inés Fernández Ortega and Others*, México, October 30, 2008, para. 112; IACHR, *Access to Justice for Women Victims of Violence*, OEA/Ser. L/V/II. Doc 68, January 20, 2007, Specific Recommendations from States.

<sup>305</sup> IACHR, Report on the Merits No. 53/01, Case 11,565, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 2, 2001.

<sup>306</sup> IACHR, Report on the Merits No. 53/01, Case 11,565, *Ana, Beatriz, and Cecilia González Pérez* (Mexico), April 2, 2001, para. 95.

<sup>307</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, para. 78; I/A Court H.R., *Case of Rosendo Cantú and other v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010 Series C No. 216, para. 185.

<sup>308</sup> I/A Court H.R., *Case of Rosendo Cantú and other v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, para. 216.

<sup>309</sup> I/A Court H.R., *Case of Rosendo Cantú and other v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 31, 2010, para. 216.

community. They also face the ethnic and cultural insensitivity of the justice officials; the monolingualism of the State system; the lack of interpreters that accompany the process; the lack of knowledge of the international legal instruments of human rights of a collective and individual scope applicable to indigenous peoples; and the scarce application of the ethical-legal framework of the human rights of women. In cases of sexual violence there is the aggravated factor that the psychological and medical expert opinions do not guarantee harmony with indigenous cultures.<sup>310</sup>

306. The State has a duty to act with the due diligence required to prevent, sanction, and offer reparations for acts of sexual violence against indigenous women, creating the necessary conditions for their reports and cases to be processed in an exhaustive and prompt fashion, considering their view idiosyncrasy, cultural, and community perspective. The Commission also highlights the importance of the participation of indigenous women in the design of public interventions in matters of justice, and in the identification of the current challenges and priorities. These measures should be joined by legislative, policy, and programmatic interventions with the goal of eradicating discrimination, racism and the poverty that tends to affect indigenous women; problems that reproduce the sexual violence that they suffer in Mesoamerica.

## **2. Migrant women**

307. The Commission observes with concern that indigenous women – a group at particular risk to human rights violations, forms of discrimination, and to sexual violence – are often invisible from the public agenda, and within the administration of justice system in the countries of Mesoamerica.

308. The Commission considers that to understand the concrete forms in which migrant women have been affected by the problem of sexual violence and in their access to justice, it is key to examine the situation of migrant women from the perspective of the inequality between the genders, the traditional functions of a women, the disequilibrium of the labor market from the viewpoint of tender, the general prevalence of violence based on gender, the feminization of poverty, and the labor migration at the global level. The incorporation of a gender perspective, therefore, is particularly important in the analysis of the situation of women migrants, and in the elaboration of policies to address the discrimination, the exploitation, and the abuse to which women are subject to in Mesoamerica and in other countries.<sup>311</sup> Migrant women suffer an intersection of forms of discrimination combined with their sex and their condition as migrants, such as their age, nationality, educational and economic level, among others; dimensions that should be examined by States in the design of interventions with the goal of better protecting their human rights in the realm of justice.

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<sup>310</sup> Association for the Investigation and Social Studies (ASIES) and the Office of the High Commissioner for Human Rights, *Access of Indigenous Peoples to Justice from the Perspective of Human Rights: Perspectives of Indigenous Rights and the Official Justice System*, Guatemala, 2008.

<sup>311</sup> United Nations, Committee of the Convention on the Elimination of All Forms of Discrimination against Women, General Recommendation 26 on women migrant workers, 2008, p. 4.

309. Migrant women suffer different forms of sexual violence such as forced prostitution, trafficking of persons for the purposes of sexual or labor exploitation; the rape and sexual abuses during transit or permanence in the destination country, the physical, sexual and psychological violence exercise in the home, and kidnappings.<sup>312</sup> Women not only migrate to improve their quality of life and that of their families, but they also attempt to flee conditions of family and social persecution that attempt against their life and their integrity.<sup>313</sup>

310. The obstacles that migrant women encounter in attempting to access the justice system are very much a function of their immigration status in the country and the legal systems that the States have instituted to regulate immigration.<sup>314</sup> A migrant woman encounters discrimination during the judicial proceedings.<sup>315</sup> In many cases she is not provided with interpretation services; even if she speaks the language, the complexities of legal jargon make it difficult for her to understand what her rights are and what the various stages of the process are. Then, too, there will be financial costs involved for the plaintiff, even though the legal system is, in theory at least, free; the fact that no interdisciplinary support system is in place to assist her reflects a profound naivete of her psycho-social reality, which only exacerbates her vulnerability and makes her less able to access the justice system.

311. The fear that is the natural consequence of her legal status, and the lack of effective judicial protection by the justice system, mean that migrant women who suffer sexual violence do not report it. In cases of sexual abuse and harassment in the workplace, migrant women do not file complaints out of a fear of being deported or because they may be denied visas in the future. This, combined with the fact that migrant women frequently change jobs and addresses, has consequences for the prosecution of their case, as it complicates the job of notifying them of court decisions taken in their cases.

312. The Inter-American Commission is particularly concerned over the situation of migrant women and children who are detained and held at immigration

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<sup>312</sup> Koblos (María Teresa), *Retos y Oportunidades en la construcción de un acceso a la justicia incluyente para las mujeres migrantes que viven violencia* [Challenges and opportunities in opening up the justice system to migrant women who live in violence]. See [in Spanish] at: [http://www.equidad.scjn.gob.mx/IMG/pdf/El\\_acceso\\_a\\_la\\_justicia\\_para\\_las\\_mujeres\\_migrantes.pdf](http://www.equidad.scjn.gob.mx/IMG/pdf/El_acceso_a_la_justicia_para_las_mujeres_migrantes.pdf)

<sup>313</sup> United Nations, Committee of the Convention on the Elimination of All Forms of Discrimination against Women, General Recommendation 26 on women migrant workers, 2008, p. 5.

<sup>314</sup> United Nations, Committee of the Convention on the Elimination of All Forms of Discrimination against Women, General Recommendation 26 on women migrant workers, 2008, p. 5.

<sup>315</sup> United Nations, CEDAW Committee, General Recommendation 26, Women Migrant Workers, 2008, "Women migrant workers are more vulnerable to sexual abuse, sexual harassment and physical violence, especially in sectors where women predominate. Domestic workers are particularly vulnerable to physical and sexual assault, food and sleep deprivation and cruelty by their employers. Sexual harassment of women migrant workers in other work environments, such as on farms or in the industrial sector, is a problem worldwide (see E/CN.4/1998/74/Add.1). Women migrant workers who migrate as spouses of male migrant workers or along with family members face an added risk of domestic violence from their spouses or relatives if they come from a culture that values the submissive role of the women in the family."

stations in Mexico for failure to comply with immigration requirements.<sup>316</sup> The detention of these women affects their access to justice since they cannot in many cases obtain an adequate legal representation.

313. The Commission reiterates the duty of States included in Article 9 of the Convention of Belém do Pará – examined in conjunction with the immediate obligation to act with due diligence reflected in Article 7(b) of the same instrument – to take special account of the factors that can expose a woman to an increased risk to violent acts; factors which may include her condition as migrant. This involves immediate obligations from States to investigate the priorities and needs of this group of women; to collect information and the pertinent statistics; to train justice officials regarding their needs and life realities; and to create the necessary conditions for them to fully exercise their human rights. The justice system should respect their integrity and dignity as victims, and to process in an exhaustive and prompt fashion sexual violence cases that affect them.

### 3. Afro-descendant women

314. The Commission has highlighted how afrodescendent women confront serious obstacles to access justice.<sup>317</sup> The afrocolombian population in the hemisphere has confronted a history of discrimination, exclusion, invisibility, and social disadvantage; situation which is aggravated in the case of women.<sup>318</sup>

315. By means of the implementation of the mechanisms of the inter-American system of human rights, the Commission has received information regarding the challenges that afrodescendent women face to fully exercise their civil, political, economic, social and cultural rights.<sup>319</sup> Afrodescendent women are particularly at risk to human rights violations due to the intersection of several factors of discrimination, such as their sex, gender, race, ethnicity and economic position. Also, they are frequently affected by forms of social exclusion, racism and poverty, and their needs tend to be invisible from the public agenda of their countries; a reality which results in a limited and deficient access to justice when they are victims of sexual violence.

316. The Commission considers that an analysis of the right to access justice and its guarantee in the case of afrodescendent women involves considering their

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<sup>316</sup> IACHR. Press Release 82/11 (annex). Preliminary Observations of the IACHR's Rapporteurship on the Rights of Migrant Workers on Its Visit to Mexico, August 2, 2011.

<sup>317</sup> IACHR, *Access to Justice for Women Victims of Violence*, OEA/Ser. L/V/II. Doc 68, January 20, 2007; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II Doc. 67 18 October 2006, paras. 41-47.

<sup>318</sup> IACHR, *Access to Justice for Women Victims of Violence*, OEA/Ser. L/V/II. Doc 68, January 20, 2007; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II Doc. 67 18 October 2006, paras. 41-47.

<sup>319</sup> See, for example, IACHR, Thematic Hearing, 143<sup>o</sup> Period of Session, *Situation of the Human Rights of Afrodescendent Women in Latin America*, Friday, October 28, 2011; Center for Afrocostarrican Women, Regional Summit and Conference of Afrodescendent Womenh, *Political Power and Economic Empowerment of Afrodescendent Women*, March 2011, available at <http://mujeresafrocostarricenses.blogspot.com/>

idiosyncrasy, particular reality, traditions, and culture, among other variables, and their singular history of discrimination and racism. The administration of justice in Mesoamerican countries still only offers a homogenous treatment to women as a group without considering the social and cultural diversity of the victims in the processing of their cases. This results in the lack of visibility of afrodescendent women as users within the administration of justice system. The registries and statistics are scarce, and tend not to be disaggregated by race and ethnicity, which impedes the ability to have a comprehensive assessment of the dimensions of the problem of sexual violence that afrodescendent women suffer. The systems of administration of justice lack the capacity, training, and the necessary resources to address cases of sexual violence from a perspective that is sensitive to the cultural and ethnic diversity of several groups of women, including afrodescendent women.

317. The Commission reminds States of the need to recognize the diversity and the specific needs of afrodescendent women in the adoption of legislation, public policies, and programs oriented towards the advancement and the guarantee of their rights; obligation with specific connotations in the processing of the cases by the systems of justice in Mesoamerica. It also reminds States of their duty to act with due diligence to eliminate all forms of discrimination and racism from the perspective of gender and human rights.

### **III. PROGRESS THAT THE STATES HAVE MADE IN ADDRESSING SEXUAL VIOLENCE**

#### **A. Institutions that specialize in addressing violence against women**

318. The Commission recognizes the efforts from Mesoamerican states in the creation of specialized units as part of its strategy to improve the access to justice of women. In the following section, some examples are described. Regarding the same, the Commission encourages States to assign a sufficient amount of human and financial resources to guarantee the effective functioning of these units, and to adopt measures destined to institutionalize the collaboration and the exchange of information among them, and the entities in charge of the processing of cases related to sexual violence.

#### **1. Special units in the judicial system**

319. The Commission received information regarding the creation of Gender Commissions, as policy-making institutions composed of high-ranking judicial authorities; and Gender Units to steer the implementation of policy to bring about the changes needed to establish a justice system with a gender perspective. Costa Rica, El Salvador, Guatemala, Nicaragua, and Panama have both the commissions and the units; and Honduras, for its part, recently created a gender unit.<sup>320</sup>

320. These units have facilitated the implementation of concrete actions such as the training of justice officials, and the incorporation of a gender perspective in the

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<sup>320</sup> The Honduran State's response to the questionnaire.

judicial career, and in the curriculum of judicial schools.<sup>321</sup> Studies have also been undertaken on women's access to justice, which evidence the principal weaknesses that must be corrected in order to fully incorporate the gender perspective.<sup>322</sup> Lastly, steps have been adopted to introduce a gender perspective in the strategic plans and in the operations of the justice systems to guarantee a better attention to the women victims of violence that try to access the system.<sup>323</sup>

## 2. Specialized courts

321. Two types of specialized courts have been established to address gender issues: the criminal courts and courts that deal with intra-family or domestic violence.

322. Upon passage of Guatemala's Law against Femicide and Other Forms of Violence against Women, the Guatemalan Supreme Court created examining courts and trial courts to prosecute femicide and other forms of violence against women in the departments of Guatemala, Chiquimula and Quetzaltenango. It also established which courts would have jurisdiction to hear appeals of the rulings delivered by the lower courts. The criminal proceedings are to be conducted in accordance with the provisions of the international treaties and instruments that Guatemala has ratified, the Constitution, the Criminal Code, the Code of Criminal Procedure, the Law against Femicide, the Judiciary Statute, the Internal Regulations Governing Criminal Courts, and the Supreme Court's own Rules of Procedure.

323. The Specialized Courts for Intra-family or Domestic Violence, as special family-law courts, are to order and ensure compliance with protection measures for victims of intra-family violence. These courts have been functioning for a number of years in Costa Rica and Honduras.

## 3. Specialized units in the Public Prosecutor's Office

324. The Public Prosecutor's Offices have established special prosecution units for crimes of sexual or gender violence, staffed with especially trained personnel and inter-disciplinary teams.<sup>324</sup>

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<sup>321</sup> *Informe de Incorporación de la Perspectiva de Género en Iberoamérica* [Report on Introducing the Gender Perspective in Ibero-America], *Fundación Justicia y Género*, Technical Secretariat, Meeting of Women Magistrates.

<sup>322</sup> *Diagnóstico de Acceso a la Justicia de las Mujeres de Costa Rica* [An Examination of Costa Rican Women's Access to Justice], Judicial Branch, 2002. *Diagnóstico sobre la Igualdad de Género en Panamá* [An Examination of Gender Equality in Panama], Judicial Branch, 2008.

<sup>323</sup> *Informe de Incorporación de la Perspectiva de Género en Iberoamérica* [Report on Introducing the Gender Perspective in Ibero-America], *Fundación Justicia y Género*, Technical Secretariat, Meeting of Women Magistrates.

<sup>324</sup> Costa Rica, El Salvador, Guatemala, Mexico and Nicaragua have prosecution units of this kind.

325. El Salvador's Special Comprehensive Law for a Violence-Free Life for Women requires that the Office of the Prosecutor General of the Republic establish the policy for prosecuting crimes involving violence against women. In Mexico, an Office of the Prosecutor for Crimes of Violence against Women and Human Trafficking (FEVIMITRA) was established back in 2008. Honduras has had an Office of the Special Prosecutor for Women since 1994 through which the State prosecutes cases in which women are victims of domestic violence.<sup>325</sup>

#### **4. Specialized police units**

326. A number of countries in the region have specialized police units to investigate crimes against women.

327. Honduras has a Women's Police Force that is part of the National Preventive Police Force. El Salvador established a special division within the National Civil Police; that special division focuses on cases of violence against women, so that they play an effective role in combating intra-family violence.<sup>326</sup> For some years now, Nicaragua has had a system of Special Police Stations for Women and Children.<sup>327</sup>

328. Overall, training of police at all levels –agents, officials and mid-level personnel- is urgently needed to guarantee qualified service for women who require police assistance.

#### **5. Institutions that steer public policy on gender issues**

329. Apart from the judicial responses to violence against women, the Mesoamerican States have developed a number of structures, institutions and services to combat it through prevention, punishment and eradication of the problem.

330. For example, Guatemala established the Presidential Secretariat for Women's Issues and the Office of the National Coordinator for the Prevention of Intra-family Violence (CONAPREVI), which coordinates, advises and promotes public policies to reduce intra-family violence and violence against women. In El Salvador, the Salvadoran Institute for Women's Development (ISDEMU) is the product of the commitments that the government undertook in Beijing and as part of the Government Plan to respond to the need for public policy that improves the condition of women and establishes gender equity in the country. In the 1990s, Honduras, for its part, embarked upon a process aimed at creating a national mechanism for women: the National Women's Office. Thanks to international cooperation, this institution was further strengthened with the creation of the National Institute of Women (INAM), which designed the first and second National Plans for Equality of Opportunity for Women. Finally, Nicaragua created the Nicaraguan Women's

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<sup>325</sup> The Honduran State's response to the questionnaire.

<sup>326</sup> Response to the questionnaire from the State of El Salvador.

<sup>327</sup> Responses to the questionnaire from *Pro Familia* in Nicaragua, and the Technical Secretariat for Gender Issues from the Supreme Court of Justice of Nicaragua.

Institute, whose mission is to promote equal rights and obligations for men and women in the full exercise of their citizenship, with a view to improving their living conditions.

331. All these mechanisms within the region are pulled together under the umbrella of the Central American Council of Ministers for Women's Issues (COMMCA), which does important work to promote the prevention, punishment and eradication of sexual violence. An example is the Observatory of Justice and Gender, which has compiled and compared the laws, jurisprudence and literature on the subject, and done a study on human trafficking and the incidence of violent death among women.

## **B. Best practices**

332. The Commission observes that by means of the implementation of this project, it has received information in regards to good practices generated by the States of Mesoamerica to improve the treatment of sexual violence. Among them, the Commission recognizes in this report the creation of specialized instances oriented towards the prevention, attention and sanction of sexual violence, which were discussed in the last section; the establishment of inter-institutional coordination mechanisms; and the generation of protocols.

### **1. Inter-institutional coordination for a comprehensive approach in assisting women victims of sexual violence**

333. Currently, the justice systems in the region are developing a number of initiatives whose goal is to ensure that service provided to women victims of violence is comprehensive assistance. These are proposals intended to ease the critical path that women, girls and adolescent girls face when trying to file a complaint. To that end, cooperation agreements are being arranged with other sectors, such as health. While this kind of articulation has not yet succeeded in solving the serious obstacles that women encounter in terms of access to justice, they must nonetheless be acknowledged for what they are, i.e., important strides made by the States.

334. These models have certain features in common, including: a special approach to dealing with violence against women, sexual crimes and intra-family violence. Then, too, the assistance to the victims is provided through multidisciplinary teams composed of psychologists, attorneys, social workers and physicians, who interact before, during and after the complaint is filed. Thus, institutional coordination is at work at various levels to ensure that the victims' rights are protected.<sup>328</sup>

335. In consequence, the Commission highlights the positive results of some of these efforts. For example, in Guatemala an inter-institutional working agreement was signed whose purpose is to establish measures to ensure constant coordination among the Ministry of Public Health and Social Assistance –by way of hospital personnel-, the Public Prosecutor's Office, the National Institute of Forensic Sciences (INACIF) and the Office of the

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<sup>328</sup> Internship in Best Practices, Access to Justice, *Fundación Justicia y Género*. Punta Leona, 2011.



Prosecutor for Human Rights. That coordination is intended to ensure that the victims of sexual violence and/or abuse who enter the criminal justice system through the hospitals in the national public network receive decent, comprehensive treatment. Each participating institution understands its role in assisting the victim.<sup>329</sup>

336. With Nicaragua's National Police Force, a special assistance model operates at three levels: prevention, assistance and protection. The first is based on coordinating the institutions, disciplines and community involved with a view to educating the general public; the second involves specialized assistance to victims of sexual crimes, provided by the institutions involved, especially the detectives, psychologists, social workers and legal advisors. The last level offers victims protection in existing shelters.<sup>330</sup> In this country, also a model for responding to violent situations was developed by women's centers and organizations. It is a model coordinated by women's organizations and its goal is individual and collective empowerment of women victims of violence, through a comprehensive service process that basically makes it easier for women to demand and reclaim their rights and sense of personal empowerment, which the violence they have experienced has undermined.<sup>331</sup>

337. In Honduras, the Observatory of Violence was also created as part of the University Institute of Democracy, Peace and Security. It helps develop policies to counteract violence in general, and against women in particular. The Honduran National Police and the Honduran Supreme Court has a Gender Unit to ensure a cross-cutting approach.<sup>332</sup>

338. In El Salvador, important projects are underway within the National Police Force, such as the Victims of Sexual Violence Support Centers, which operate in five places nationwide. The Salvadoran Supreme Court participates in the Unit to Assist Victims of intra-family violence, sexual aggression and child abuse, working alongside the Institute of Women, the Ministry of Health, the Office of the Attorney General of the Republic, the National Police, the Office of the Prosecutor General of the Republic, nongovernmental organizations and municipal governments.<sup>333</sup>

## 2. Protocols of attention

339. In the last ten years, the judicial branches of some Mesoamerican countries have developed protocols or guidebooks on how to provide service and assistance in various areas of the administration of justice. These have improved the assistance that women victims of violence receive. Although the methods and content vary, these protocols and guidebooks have some elements in common; for example, they all

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<sup>329</sup> Meeting of Experts convoked by the IACHR on May 22 and 23 in Guatemala City.

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cite human rights as an essential part of their ethical and legal frame of reference, with special emphasis on women's rights, and the connection to the domestic legal system. They spell out specific guidelines for officers of the court and law enforcement personnel to ensure that their conduct is respectful of the victims' rights and guarantees access to justice without discrimination on any basis. These protocols thus serve the cause of substantive equality and the right to live a life free of violence.

340. In some cases, the purpose of the protocols is to provide the officers of the court and law enforcement personnel with conceptual and practical guidelines to follow to improve the quality of the services they provide with regard to the interpretation and application of the law.<sup>334</sup> In Honduras, the Office of the Special Prosecutor for Women uses a practical guide to assisting victims of sexual crimes and commercial sexual exploitation and to conducting investigations into these crimes.<sup>335</sup>

341. The protocols that address other needs or subject matters are for interdisciplinary health-sciences groups. They are guides to a comprehensive medical-legal approach to and assessment of intra-family and sexual violence. Depending on the country in question, they are written for physicians, psychologists, social workers, prosecutor's offices and the police. There are also protocols for assisting elderly women and minors who are victims of sexual violence and commercial sexual exploitation. The goal here is to lessen the re-victimization of the person who is a victim of sexual crimes. They also seek to standardize procedure, ensure that it is followed, and thereby avoid arbitrary practices.<sup>336</sup>

342. Some protocols within the region are intended to mainstream the gender perspective and change the sexist language embodied in judgments, such as El Salvador's Protocol to incorporate the gender perspective into Salvadoran court rulings.<sup>337</sup>

343. Overall, the intention is to establish protocols for the judicial branch's proceedings that will facilitate judicial and social measures to assist victims. The protocols are for the officers of the court and law enforcement personnel, with varying degrees of specificity. The idea is to get them to use techniques or follow guidelines that will enhance the response to the victim and to the crime. They are also developed with a view to the relevant coordination with state and nongovernmental institutions to ensure that victims receive medical and psychological treatment and legal assistance for their personal and legal security.

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<sup>334</sup> *Protocolos de Interpretación y Aplicación de las Leyes de Violencia Familiar de Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panamá y República Dominicana* [Protocols for Interpreting and Applying Family Violence Laws in Guatemala, El Salvador, Nicaragua, Costa Rica, Panama and the Dominican Republic]- *Fundación Justicia y Género*, 2007.

<sup>335</sup> The Honduran State's response to the questionnaire sent out by the IACHR.

<sup>336</sup> Costa Rica has protocols for assisting victims, prepared for its Public Prosecutor's Office, for its Juvenile Justice System, for its Forensic Medical Experts, for Psychosocial Experts, for Use of the Gessel Chamber, and others.

<sup>337</sup> El Salvador's National Council of the Judiciary.

344. Although not all the countries of the region have made the same degree of progress in developing and approving these protocols, and implementation of the existing protocols is not what it should be, the IACHR recognizes that the steps the States have taken in this regard are meaningful contributions toward effecting change in the way that law enforcement personnel and officers of the court treat victims of sexual violence and their cases.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

##### **A. Conclusions**

345. In its 2007 report on *Access to Justice for Women Victims of Violence in the Americas*, the IACHR came up with a number of recommendations calculated to help design State interventions and actions that would guarantee an appropriate, immediate, timely, exhaustive, serious and impartial judicial response to acts of violence against women. The recommendations had three specific objectives: (i) to help the States devise a comprehensive State policy, backed up by adequate public resources, to ensure that women victims of violence have prompt access to justice and that the acts of violence are adequately prevented, investigated, punished and redressed; (ii) to urge the States to create the conditions necessary so that women are able to use the administration of justice system to remedy acts of violence they suffer and are treated respectfully by the public authorities; and (iii) to spur the States into adopting public policies calculated to reshape stereotyped concepts of women's place in society, and to promote the eradication of discriminatory socio-cultural patterns that impair their access to justice.<sup>338</sup>

346. The analysis that the Commission presents today, focusing on Nicaragua, Honduras, El Salvador, and Guatemala suggests that even that although the States in this region have made considerable progress in dealing with violence against women, access to justice for women victims of sexual violence is still difficult and is an ordeal in re-victimization. This would, in turn, indicate that the recommendations the Commission made in its earlier report have not been fully carried out.

347. Discriminatory socio-cultural patterns persist that perpetuate violence against women and have a direct negative impact on the officers of the court and law enforcement personnel, thereby impairing the right that women victims of violence have to avail themselves of the remedies of justice. Then, too, structural obstacles in the administration of justice prevent women victims from getting adequate, just and timely responses to the acts of sexual violence they experience.

348. The Commission observes that in this scenario, a woman victim of violence who, after wrestling with her own circumstances, decides to report the violence she has experienced, then has to contend with a justice system in which stereotypes and prejudices are pervasive; a justice system that blames her, discriminates against her, and

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<sup>338</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), para. 296.

ends up rendering a judgment slanted against her. She also has to deal with an understaffed and underfunded system for the administration of justice, tied up in procedural formalities; a system that forces her into mediation to settle her dispute, is incapable of securing the necessary medical evidence, requires witnesses, and fails to coordinate with the other institutions involved in the investigation, among other problems.

349. Women who report these crimes, need to overcome a number of obstacles in the path to obtain an adequate and effective access to justice. These begin with her family and community, then getting immediate medical attention, then the procedures involved in going to the police, the Public Prosecutor's Office, the forensic authorities and the judges. As discussed in this report, she must come face-to-face with her assailant, who is more often than not someone she knows or is related to. Every step in this critical path will be different, but most will be permeated with cultural patterns that foster discriminatory stereotypes. Getting past the first stages of this process is no guarantee that the woman victim will be able to stay the course to its conclusion; to the contrary, every stage is more difficult than the one that preceded it, which may cause the woman to give up at any point along the way.

350. The recommendations presented in this section have been designed to facilitate that women can have an adequate and prompt access to justice. The Commission – parting from the recommendations contained in its report *Access to Justice for Women Victims of Violence in the Americas* published in 2007 – presents a group of recommendations adapted to the reality and the particular needs of women in Mesoamerican countries. This group of recommendations encourages Mesoamerican states to adopt actions in ten spheres: a) the investigation, judgment, and sanction of violence against women acts; b) the prevention of sexual violence and the eradication of sociocultural patterns of behavior that discriminate against women; c) the attention and services for victims of sexual violence; d) the access to judicial instances of protection, reporting mechanisms, and the collection of statistics; e) attention protocols and the collection of evidence; f) specialized expert opinions; g) the grant of protection measures; h) the reparation for the victims of sexual violence; i) specialized instances; and j) the special needs of girls, indigenous, afrodescendent and migrant women.

351. The Commission reiterates its commitment to collaborate with States throughout the Americas in the search for solutions to the problems identified.

## **B. Recommendations**

### **Investigation, judgment, and sanction of violence against women**

1. Strengthen the capacity of judicial institutions, such as the public prosecutor's office, the police, the courts and forensic medicine services, by increasing the financial and human resources they have to combat the pattern of impunity in cases involving violence against women by being able to conduct effective criminal investigations of cases so that they can then be taken to trial, thereby guaranteeing that the violence will be properly punished and redressed. This involves the procurement of the

technical equipment needed to do chemical and forensic tests and to compile all the evidence needed to solve the case under investigation.

2. Adopt immediate steps to ensure that the public officials involved in prosecuting cases of violence and discrimination against women (including prosecutors, police, judges, court-appointed attorneys, administrative personnel and forensic medicine professionals) are properly educated about women's rights so that they apply the domestic and international laws to prosecute these crimes properly and so that the integrity and dignity of the victims and their relatives are respected when the complaints are filed and during their involvement in the judicial process.
3. Take measures to institutionalize collaboration and information sharing among the authorities in charge of investigating acts of violence and discrimination, particularly between the public prosecutor's office and the police.
4. Design protocols to facilitate and promote the effective, uniform and transparent investigation of acts of physical, sexual and psychological violence, which include a description of the detailing of the evidence and an itemization of the minimum evidence that needs to be gathered to properly substantiate a case: scientific, psychological, physical evidence and testimony. Multidisciplinary investigation of these crimes needs to be encouraged.
5. Systematically organize the decisions that regional and international agencies for the protection of women's human rights make on the investigation and prosecution of cases involving violence against women, and make this information accessible to public officials in the justice systems at the national and local levels.
6. Identify and institutionalize new types of training for civil servants in all sectors (justice, security, health and education) to fully address women's right to live free from violence and ensure that in performing their functions, public servants are fully respectful of women's physical and psychological integrity.

#### **Prevention of sexual violence and the eradication of socio-cultural patterns of discrimination**

7. According to the obligations that States have acquired under the inter-American instruments of human rights protection and in light of international instruments such as the Convention on the Elimination of All Forms of Discrimination against Women, States should promote the cultural changes necessary to detect, prevent, investigate and punish sexual violence. Several actions are recommended in particular:

- Adopt social, civic or public interest campaigns with the goal of disseminating knowledge regarding the human rights of women, their right to live free from violence and of all forms of discrimination, the diversity among groups of women, and the intercultural perspective.
- Adopt inter-institutional coordinations aimed at eradicating racism, xenophobia, and discrimination.
- Disseminate information about the different manifestations of violence against women, in particular sexual violence in all State sectors, placing emphasis on the right of access to justice of the victims.
- Distribute at the national level information regarding existing judicial resources for victims of violence against women, taking into account the diversity of the target public taking into account their races, ethnicities and tongues. This information should be disseminated along with guidelines for victims regarding the collection of evidence and the possibility to file complaints against justice officials that do not perform their functions in the processing of cases.
- Include the gender perspective in the training that is offered to officers of the court and law enforcement personnel, to make them sensitive to and aware of the impact that their conduct has on victims.

#### **Attention and services for victims of sexual violence**

8. Promote, create and implement a comprehensive model of assistance to victims of sexual violence, that is centered on the victim, that works to help her recover and to punish the crime. The objective must be the victim's full recovery, while also ensuring that the crime is punished. This model will also include the promotion and implementation of public policies that serve to dismantle those structures that perpetuate and breed violence against women.
9. Foster the creation of multidisciplinary task forces, in which the appropriate areas of specialization are represented, as essential in providing victims with proper support. These teams must be present at every stage in the process that a woman filing a complaint must follow and in seeking redress for the sexual violence she suffered.
10. Create coordination spaces between the community and the State to strengthen the services of attention to sexual violence victims. This will involve identifying the existing networks within civil society so that they

might be enlisted into the support system for women victims of sexual violence.

11. Guarantee the creation of sufficient shelter services. These services should be decentralized and should have multidisciplinary teams to ensure the safety and protection of victims of sexual violence in both urban and rural areas. These shelters should also have information available about the reporting mechanisms and health services at the disposal of sexual violence victims.

### **Access to judicial instances of protection, reporting mechanisms, and the collection of statistics**

12. Adopt concrete actions focused on achieving that the economic factor does not limit the access to justice of women. These include:
  - Ensure and guarantee the availability of free legal aid services of quality, beginning with the complaint stage until the judgment phase.
  - Promote that bar associations, civil society, universities, the judicial branch, or other institutions provide women not just with *pro bono* legal services, but also economic and other forms of support that enable victims of sexual violence to effectively exercise their right of access to justice.
13. Create, make uniform, and standardize forms to register information related to cases of sexual violence that are reported with the goal of preventing the re-victimization of women who report these acts. This involves the reduction of the number of interviews to which a victim is submitted.
14. Develop information-collection initiatives, statistics, investigations, and studies that reflect the specific situation of women from different ethnicities, races, ages, and socio-economic levels. The goal is that serve as a basis for the formulation of public policies oriented towards the prevention, sanction, and eradication of acts of violence and discrimination perpetrated against them, and the improvement of interventions from the justice system. These measures should offer a special attention to the situation of girls and indigenous, afrodescendent, and migrant women.
15. The promotion of good procedural practices, without excessive formalism, is necessary to facilitate the access to justice for women victims of sexual violence. In order to achieve this objective, the States should:

- Guarantee promptness. For this, it is required to evaluate the procedural norms and practices in cases of sexual violence to identify which are unnecessary, burocractic or repetitive in violation of the principle of acting without delay, and to implement the necessary reforms.
  - To ensure that the services in charge of offering attention of victims of sexual violence are available 365 of the year, and 24 hours per day.
16. The places to receive complaints from different instances that intervene in the process, including the police, should incorporate adequate spaces to receive complaints for sexual violence, where the women have their privacy respected. The same principle is applicable to the places oriented to celebrate different hearings before a judicial authority.
  17. The States should adopt measures to sanction public officials that do not act with the due diligence required to prevent, investigate, sanction and offer reparations to acts of sexual violence, by means of a social message of no-tolerance to this alarming human rights problem and to prevent its repetition.
  18. The States should guarantee legislative reforms to prohibit clearly the mediation or conciliation in regards to sexual crimes and to eradicate the administrative and judicial practices that allow or foster this problem.
  19. To establish inter- and intra- institutional coordination mechanisms with the goal of improving judicial and health services for victims of sexual violence.

#### **Protocols of attention and collection of evidence**

20. Develop attention protocols for victims of sexual violence oriented towards the guarantee of their rights and to reduce victimization is key to women's access to justice. This involves the following State measures:
  - Design protocols to facilitate and foster the effective, uniform, and transparent investigation of acts of physical, sexual and psychological violence, which includes a description of the complexity of the evidence, and the detail in the minimum evidence that it is key to collect to grant an appropriate evidentiary basis, which includes scientific, psychological, physical and testimonial proof. It is important to encourage the multidisciplinary investigation of these crimes.



- To review in-depth the existing protocols linked to the investigation of sexual violence cases, to assess their content according to the standards presented in this report.
- To train the public officials in charge of implementing these protocols over their adequate and due application.

### **Specialized expert opinions**

21. Undertake efforts to ensure that specialized experts are available to address evidentiary issues in cases of sexual violence.
22. Create systems and methods of cultural expertise in cases of violence and discrimination against women.

### **Grant of protection measures**

23. Women victims of sexual violence should count with protection measures when they so require it or her family members. To achieve that these measures are effective, States should commit to:
  - Have in place a system of protection measures that is flexible and adaptable to the needs of women victims.
  - Grant the instances responsible to implement the protection measures the necessary human, technical, and economic resources.
  - Achieve an adequate coordination between judicial instances, prosecutor's offices, the police and other authorities linked with the monitoring of compliance with protection measures granted and/or alternative sanctions.
  - Ensure that women victims participate in any modification related to protection measures.
  - Sanction State officials that do not perform an effective follow-up of these measures.
24. Devise and institutionalize training programs geared toward all state officials involved in monitoring and supervising protective measures and measures intended to prevent acts of violence against women - particularly in the case of the police-, to instruct them about the need to ensure proper enforcement of and compliance with these measures and the consequences of non-compliance and non-enforcement. Sanction state officials who do not properly monitor these measures.

25. Sanction State officials that do not perform an adequate follow-up of these measures.

### **Reparations for victims of sexual violence**

26. States must place more emphasis on restorative justice than retributive justice; the former recognizes the harm done to the victim and what she requires in the way of reparation and compensation. Thus, the reparations measures must be geared to restoring the victim's rights and better enabling her to face the consequences of the harm done and thus regain her trust in society and in State institutions.
27. Adopt rectification measures to reform the context of discrimination that reproduces the problem of sexual violence. This involves the organization of the State structure with the goal of sanctioning acts of sexual violence, but also to prevent these acts and to duly address the social causes and consequences of the problem.
28. Grant reparations with the participation and from the perspective of the victims involved and these should be comprehensive, including the elements of restitution, indemnization, satisfaction, and rehabilitation.
29. Guarantee that victims of sexual violence have available mechanisms of physical and and psychological reparation to the harm caused, through the services granted by health institutions and of other nature that guarantee a comprehensive reparation to the women victim. To such effect, the States should consolidate these instances in order for them to bring a quality attention to the victim.

### **Specialized instances**

30. Strengthen the specialized attention offered by the national police – as the instance that acts as the first contact to receive complaints of sexual violence – in conformity with the standards discussed in this report. This attention should involve measures destined to protect the physical and psychological integrity of the victim, her privacy and dignity.
31. Continue the creation of units inside the Public Prosecutor's Office and the justice system which are specialized in the attention of sexual violence acts. Ensure that the creation of these units is joined by the human, financial, and special resources required to guarantee the effective attention to cases of sexual violence.
32. Ensure availability of expert and technical personnel that is sensitive to the needs of sexual violence victims from different cultures, races, ethnicities, ages, and economic levels. Their actions should be joined with

protocols of action elaborated from a gender, intercultural, and human rights perspective.

33. Grant the human and financial resources necessary so that national mechanisms of women can exercise their coordination functions related to the right of women to live free from sexual violence.

**Special needs of girls, and indigenous, afrodescendent and migrant women**

34. Adopt measures to ensure that the actions of the administration of justice systems incorporate the specific needs of women at a particular risk to their human rights violations on the basis of an intersection of discriminatory factors, including girls, indigenous, afrodescendent, and migrant women.
35. Design and adopt culturally relevant policies, with the participation of girls, indigenous, afrodescendent, and migrant women, aimed at preventing, investigating, and punishing acts of violence and discrimination committed against them and providing them with redress.
36. Adopt measures and communication campaigns targeted at these communities, the State and society in general, calculated to make them aware of the problems that these women face and thereby build a commitment to take action to correct their problems and ensure that their human rights are respected, which includes their right to adequate and effective judicial recourse when their human rights are violated.

**RAPPORTEURSHIP ON THE RIGHTS OF WOMEN  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR)**

Joint IACHR/UNFPA project

Access to justice for women victims of sexual violence in Mesoamerica

**QUESTIONNAIRE**

INTRODUCTION

This questionnaire, which is subregional in scope, was prepared as part of the plan for executing the project on access to justice for women victims of sexual violence in Mesoamerica (Mexico and Central America), with a particular focus on Guatemala, Honduras, El Salvador and Nicaragua.

This project is one of the activities of the Rapporteurship on the Rights of Women of the Inter-American Commission (IACHR) and is being conducted in conjunction with the UNFPA. Its purpose is to examine the States' major accomplishments and the challenges they face in how their justice systems and the institutions of those systems respond to complaints and cases of sexual violence.

The IACHR and its Rapporteurship on the Rights of Women devote specific attention to women's human rights and to gender equity and equality. Since its establishment in 1994, this Rapporteurship has performed a vital function in the IACHR's mission of protecting women's rights. It has done this by publishing thematic studies, assisting in the creation of new jurisprudence in the individual case system and supporting the research into broad issues that affect women's rights in specific countries of the region through visits to the countries and publication of country reports.

Considering that in 2007 the IACHR adopted a report on *Access to Justice for Women Victims of Violence in the Americas*, this thematic report of the IACHR-UNFPA will focus on the findings in Mesoamerica, particularly the countries mentioned earlier. The report will examine the investigation, prosecution and punishment of sexual violence and how women victims of sexual violence are treated.

Some of the information for the analysis will come from this specialized questionnaire, which the OAS member states, civil society organizations, international agencies and experts on the subject will be asked to answer. The information will be organized and supplemented with information from secondary sources and existing documents on the problem of sexual violence and women's access to justice in Mesoamerica.

**The replies to this questionnaire will be made public and will be posted on the IACHR's web page. Those replies are to be sent to the following address, by no later than May 19, 2011**

Inter-American Commission on Human Rights  
 Organization of American States  
 Washington, D.C. 2006  
 cidhdenuncias@oas.org

#### ABOUT THE INFORMATION SOLICITED IN THE QUESTIONNAIRE

The questionnaire is looking for quantitative and qualitative information on the investigation, prosecution and punishment of cases of sexual violence committed against women of differing ages, races, ethnic origin and socio-economic circumstance. It is also requesting information on how public officials and civil servants treat women victims of sexual violence when those women turn to the institutions of judicial protection; this includes prosecutors, police, judges, court-appointed attorneys, administrative officials and forensic medical professionals, among others. It also wants to get information on best practices in the prosecution of cases and complaints of sexual violence, and the best way that the institutions of judicial protection and officials in the administration of justice can treat women.

To get the information needed for the research that will be done, we will establish some basic concepts informed by the standards of the inter-American human rights system.

**Violence against women** is defined as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere. It includes the physical, sexual or psychological violence that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman. It also includes, *inter alia*, rape, battery and sexual abuse that occurs in the community and is perpetrated by any person, including, *inter alia*, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace as well as in educational institutions, health facilities or any other place and that is perpetrated or condoned by the state or its agents, regardless of where it occurs.<sup>339</sup>

**Discrimination against women** is defined as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>340</sup>

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<sup>339</sup> OAS, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994, Articles 1 and 2.

<sup>340</sup> UN, Convention on the Elimination of All Forms of Discrimination against women, 1979, Article 1.

**The administration of justice** is broadly defined to include the judicial branch of government, the police and forensic medical services in urban and rural areas alike, whether their jurisdiction is national or local. It also includes traditional and alternative systems of justice.<sup>341</sup>

**Access to justice** is defined as the existence of facilities to enable all persons, without discrimination, to enjoy all the resources and services that will guarantee their safety, mobility, communication and understanding of the judicial services, which, in turn, are to guarantee swift and full justice.<sup>342</sup>

The first part of the questionnaire concerns the domestic laws on sexual violence and the rights of victims of sexual violence. It deals mainly with the formal, normative component.

The second part of the questionnaire is looking for information on the scope of the structure and organization of the administration of justice, with the emphasis on whether or not specialized bodies exist, the types of courts, jurisdiction and areas of the law, types of services provided to victims –whether public or private. It also wants to determine whether protocols are used and what type of inter-institutional coordination/orchestration exists.

The third part of the questionnaire examines the investigation. It looks at how complaints are treated, the questioning, the evidence, the measures taken to protect victims, and the reparations and care provided to them.

The fourth part deals only with the best practices related to dissemination of rights, specialized bodies, the creation of networks or systems, public policy, protocols, expert opinions, risk assessment and others.

As will become apparent, the questionnaire is looking for general information about the access that women victims of sexual violence have to justice. However, the questionnaire is also compiling specific information on groups whose rights are particularly threatened, such as girls, indigenous women, Afro-descendant women and migrant women.

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<sup>341</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II., January 20, 2007.

<sup>342</sup> *Ibid.*

**QUESTIONNAIRE**

Date: \_\_\_\_\_

State: \_\_\_\_\_

- I. National Laws on Sexual Violence and Rights of Victims of Sexual Violence
  1. Laws prohibiting sexual violence
  2. Crimes and lesser offenses classified as sexual violence
  3. Which crimes of sexual violence are prosecuted by the State *ex officio* and which are litigated by private action?
  4. Laws on non-criminal forms of sexual violence
  5. Laws governing victims' rights
  6. Are there specific laws on violence against indigenous women, Afro-descendant women, migrant women, girls or other specific groups of women?
  7. Are the rights of victims of sexual assault and of their next of kin properly disseminated (i.e., in a timely, comprehensible, inclusive, accessible manner adapted to suit the diversity within the population, etc.)?
  
- II. Structure and organization
  1. Are there prosecution offices and courts that specialize in sexual violence against women? What is their geographic distribution?
  2. Are there prosecution offices and courts that specialize in women victims of sexual violence who are indigenous, Afro-descendants, migrants, girls or from any other specific group of women?
  3. What are their specific authorities?
  4. What technical, technological, financial and other resources do they have (for investigation, for example)?
  5. What type of sexual violence do the indigenous authorities sit in judgment of?
  6. Are there other specialized bodies that afford these groups (indigenous women, Afro-descendant women, migrant women, and girls) access to justice when crimes of sexual violence are involved?
  7. Does the system for the administration of justice have offices that provide services to women victims of sexual violence? Please indicate whether these services are provided *gratis*.
  8. Are there public or private networks or systems to assist women victims of sexual violence to which the administration of justice can refer such women victims for treatment and assistance?
  9. Are any of these networks/systems specifically for or provide specialized treatment/assistance to indigenous women, Afro-descendant women, migrant women or girls?
  10. Does the administration of justice have policies on specialized treatment/assistance for women victims of sexual violence? Are any of these specifically for indigenous women, Afro-descendant women, migrant women or girls?
  11. Is information about the resources mentioned above (specialized courts, special prosecutor's offices, treatment and assistance networks, etc.) being publicized properly

(i.e., in a timely, comprehensible, inclusive, accessible manner adapted to suit the diversity of the population, and so on)? Please explain.

12. Are there protocols for receiving complaints, conducting investigations, compiling evidence, and the custody and weighing of evidence when crimes of sexual violence against women are involved?

13. Are there protocols to be followed in treating and assisting women victims of sexual violence? Are any of these protocols specifically for indigenous women, Afro-descendant women, migrant women or girls?

14. Is the use of these protocols mandatory?

15. Are persons associated with the administration of justice instructed in the content of these protocols? Are the protocols used in practice?

16. Is there any mechanism to ensure that these protocols are being used properly?

17. When the victims so require, are interpreters and translators made available to conduct the questioning?

18. Is a budget earmarked to provide services to victims of sexual violence? What percentage does it represent of the total institutional budget?

19. How do institutions coordinate among themselves to ensure an effective investigation of sexual violence: What are the principal obstacles to that kind of coordination?

20. What is the real economic cost that a victim must pay to have the person(s) responsible for sexual violence prosecuted?

21. What measures are taken to ensure that the victim is kept informed throughout the process?

22. What are the main stereotypes and prejudices present among officers of the court with respect to cases involving sexual violence? Please be specific about any stereotypes or prejudices relating to indigenous women, Afro-descendant women, migrant women, girls or other special groups of women. Has the existence of these stereotypes or prejudices been documented? How?

23. Which institutions involved in the investigation and administration of justice have training programs on women's rights and the problem of sexual violence in general?

24. How do they ensure that the gender perspective is mainstreamed into these services for women victims of sexual violence? Indicate criteria in this regard.

### III. Investigation

#### A. Treatment of the complaint

1. The institution or office that receives complaints of sexual violence.

2. If a civil servant has knowledge of an act of sexual violence, is he or she required to report it? What are the criteria governing the obligation to report such acts?

3. What steps are taken to investigate a complaint of sexual violence?

4. What are the principal obstacles encountered when investigating a complaint of sexual violence? Please specify what these obstacles are when the victims are indigenous women, Afro-descendant women, migrant women, girls or any other group of women?

5. What steps are taken to avoid secondary re-victimization in the investigation (the re-victimization that results from the victim's contacts with the system for the administration of justice)? Please specify what steps are taken when the victims are



indigenous women, Afro-descendant women, migrant women, girls or women from any other group.

6. Does the system have specialized staff to receive complaints of sexual violence? Does this specialization extend to the treatment/assistance accorded to indigenous women, Afro-descendant women, migrant women or girls?
7. What information are staff required to give the victims when they file their complaint? Is the obligation honored in practice? What information is actually provided?
8. What are the chief obstacles to providing quality assistance and treatment to women victims of sexual violence? Has the existence of these obstacles been documented? If not, do you have any information suggesting that these obstacles exist?
9. What practices discourage a woman complainant from pursuing her complaint? Has the existence of these practices been documented? If not, is there any information suggesting the existence of these practices?
10. Please indicate how many complaints of sexual violence have been addressed in the last five years, the number of complaints processed and the number of cases resolved by the administration of justice.
11. If you have disaggregated data, please complete following tables:

Crime of sexual violence	Number of complaints filed by men	Number of complaints filed by women	Number of complaints processed	Number of case rulings	Number of convictions

Crime of sexual violence	Total number of complaints filed by women	Of that total number, please indicate how many were filed by indigenous women	Of the total number of complaints filed, please indicate how many were filed by Afro-descendant women

Crime of sexual violence	Total number of complaints filed by women	Age bracket: 0-14	Age bracket: 14-18	Age bracket: 18-35	Age bracket: 35 and older

12. Is there any other type of law and procedure outside the criminal justice system for filing complaints and addressing sexual violence that is not classified as a crime (for example, sexual harassment in the workplace or in school)? Please be specific.
13. Are there figures on the number of cases of sexual violence that end in homicide? What are they?
14. How does the administration of justice deal with cases of sexual violence that end in homicide?
15. Are there figures, statistics, percentages and the like that indicate the magnitude of sexual violence in the country?
16. Does the administration of justice keep its own data? Is that data disaggregated according to the victims' particular circumstances (age, ethnic origin, nationality, other)?

B. Questioning

1. What steps are taken to ensure that the questioning is done in private?
2. What questions is the victim of sexual violence asked?
3. Are different questions asked when the sexual violence occurs in a couple's relations?
4. Are specialists on staff to question indigenous women, Afro-descendant women, migrant women and/or girls who are victims of sexual violence?

C. Evidence

1. Which institutions provide expert assessment services in cases of sexual violence? Please complete the following table:

Type of sexual violence	Institution that provides the service	Objective of the expert assessment	Types of expert assessments that are used for the investigation	Geographic coverage	Time elapsed between the request for the examination and delivery of the results

Classification of Crimes of Sexual Violence	Evidence most commonly requested

2. ¿How does the system for the administration of justice reach a finding when it does not have the services of specialized experts?
3. Is the Gesell Dome (or one-way mirror) or other technological methods used to compile evidence in crimes of sexual violence?

4. What criteria are used to ensure the victim’s dignity, integrity and privacy in the process of gathering evidence?
5. What value is attached to testimonial evidence in crimes of sexual violence?
6. What criteria are used to measure the harm caused to the victim for purposes of reparations?
7. How is evidence preserved in crimes involving sexual violence?
8. What role does the Institute of Forensic Medicine play and how does it tie in with the work of the Prosecutor’s Office or other areas within the system for the administration of justice?

D. Proceedings

1. What is the average duration of the judicial proceedings in a case involving sexual violence?
2. What are the principal steps taken to ensure that cases of sexual violence move quickly through the judicial system?
3. What measures are taken to protect privacy in the judicial proceedings? Please explain.
4. What are the principal obstacles that the prosecution faces in bringing a case for crimes of sexual violence?
5. What crimes related to sexual violence can be legally settled through conciliation?
6. Can any crimes of sexual violence where the victim is a minor be settled through conciliation? What are they? Who handles the conciliation process?
7. Which crimes related to sexual violence are in practice settled through conciliation with the intervention of officers of the court?
8. Describe any differences in the way cases are handled when they involve women who are at a heightened risk of falling victim to acts of sexual violence, such as the following: indigenous women, Afro-descendant women, migrant women, girls and others.
9. What type of support do victims of sexual violence receive to deal with the judicial proceedings? Is this support in any way different in the case of indigenous women, Afro-descendant women, migrant women and/or girls?
10. What are the main reasons why victims desist from the criminal case? Please be specific about whether the victims were indigenous women, Afro-descendant women, migrant women or girls. Are these cases documented? How?
11. What are the main reasons why cases of sexual violence are dismissed?
12. What protective measures does the law establish to protect witnesses to sexual violence?
13. What rights does the victim have where sentence enforcement is concerned?

E. Measures to protect the victim

Crime	Protective or precautionary measures most often ordered	Effectiveness of enforcement (on a scale of one to five, five being the most effective)

To measure effectiveness, please consider the following criteria:

To be rated a 5 on the enforcement scale, the protective measures ordered must be fully carried out without the victim having to make any further overtures.

A rating of 4 on the enforcement scale means that the protective measures ordered are carried out, but at the victim's insistence or through her direct efforts, even after the measures are ordered..

A rating of 3 on the enforcement scale means that the protective measures are partially enforced once ordered and irrespective of whether the victim took matters in hand.

A rating of 2 on the enforcement scale means that the minimum was done to enforce the measures ordered.

A rating of 1 on the enforcement scale means that the protective measures ordered are not enforced.

#### F. Reparations

1. What type of reparations does the law provide for in cases of sexual violence? Elaborate where indigenous women, Afro-descendant women, migrant women or girls are involved.
2. What reparations are victims of sexual violence seeking?
3. How does the system support the victim in her expectations of reparations?

#### G. Care and treatment of victims of sexual violence

Institutions that provide assistance (legal, psychological or other) to victims of sexual violence	Type of support or service	Conditions for providing the service

#### IV. Best practices

Indicate which best practices exist in your country on the following topics. If the practice is documented, please attach the respective documents:

Topic	Best Practices
Publicizing and disseminating the rights of women victims of sexual violence	
Recognition of the indigenous justice system's jurisdiction in cases of sexual violence	
Bodies that specialize in the prevention, treatment and punishment of sexual violence	
Assembling and coordinating networks for treating and/or otherwise assisting victims of sexual violence	
Public policies on prevention, treatment/assistance, investigation and punishment of sexual violence.	
Special protocols for the prevention, treatment and punishment of sexual	

violence	
Coordination among institutions (cooperation agreements and the like)	
Information and assistance to victims of sexual violence	
Impact that training officers of the court on sexual violence has had	
Best practices to avoid re-victimization	
Encouraging reporting of crimes of sexual violence and avoiding desertion	
Statistics on sexual violence	
Efficacy and efficiency of relevant expert assessments	
Measures to ensure that cases of sexual violence are prosecuted swiftly and that privacy is respected.	
Risk assessment and protection of victims of sexual violence	
Practices for measuring and awarding reparations	
Practices for preventing, treating and punishing sexual violence committed against indigenous women, Afro-descendant women, migrant women and girls.	