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Temas en derechos humanos

The right of women to be free from violence and the approach of the Inter-American System in individual cases: Progress and challenges*

*Ximena Andión Ibañez***

Introduction

The purpose of this paper is to analyze the scope of the protection offered by the Inter-American System for the Promotion and Protection of Human Rights regarding violence against women.

The paper is focused on the decisions of the Commission and the Court in individual cases, although it also takes in account the contributions of other procedures of the system, especially the work of the Special Rapporteur on Women.

The analysis intends to be comprehensive but it is not exhaustive. The aim is to contribute to the legal debates in this area and highlight some of the challenges faced by the System.

The limited scope of this work does not permit to analyze the decisions of the system in other areas of women's rights, which have a direct connection with the issue of violence against women, such as equality and non-discrimination. However, some issues and cases regarding non-discrimination and equality are mentioned in the paper.

* Las opiniones vertidas en este artículo son exclusiva responsabilidad de su autora y no reflejan ninguna posición de los organismos en los cuales labora.

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The situation of women¹ in the Americas

The situation of women in the Americas presents different challenges regarding economic, social, cultural, civil and political rights. Gender-based violence² and discrimination persistently impairs and violates the enjoyment of these rights.

The countries of the Region have taken important steps to address inequality and discrimination, however: “the examination of the legal systems and practices revealed the persistence of discrimination based on gender.”³

The Region faces the greatest socio-economic inequalities in the world and poverty affects women in a disproportionate way. The participation of women in the government at the three levels (national, local and municipal) is still low, Costa Rica has the highest rate with 24% and Uruguay has the lowest with 4%.⁴

Worldwide, an estimated one in five women will be a victim of rape or attempted rape in her lifetime. In the countries of the Americas violence against women continues to be one of the most persistent problems. For example, in the United States of America a woman is battered every 15 seconds⁵ and in Nicaragua 70% of women have experienced a situation of physical violence in their life.⁶ Domestic violence is a problem of great concern in the Region, for instance in Chile 26% of women reported at least one episode of violence by a partner.⁷

¹ For the purpose of this paper ‘women’ shall be understood as including girls.

² Gender refers to the “cultural definition of behaviour defined as appropriate to the sexes in a given society at a given time. Gender is a set of cultural roles.” (Lerner, G. *The creation of patriarchy*. Oxford University Press: 1986.) A gender based approach means to use the gender tools to analyze the different ways in which policies, programs, laws affected in a different way men and women. For the purpose of this paper “gender based violence” means the violence exercised against women based on their gender.

³ *Report of the Status of Women in the Americas*. Inter-American Commission on Human Rights. OEA/Ser.L/V/II.100. Doc. 17. 1998.

⁴ UNIFEM/FLACSO CHILE. *Latin American Index of Fulfilled Commitment: 1995-2003*. UNIFEM/FLACSO CHILE.

⁵ United Nations Population Fund (UNFPA), *State of World Population 2000*. UNFPA.

⁶ Morrison, A. y Orlando B. *The socio-economic impact of domestic violence in Chile and Nicaragua*. Washington: IBD. 1997.

⁷ UNICEF. *Domestic Violence Against Women and Girls*. Innocenti Digest. UNICEF: 2000.

In Latin America four million abortions are practiced every year and unsafe abortion accounts for about half of all maternal deaths. In 2003, 23% of the total births were result of adolescent pregnancy.⁸

The Inter-American System and the protection of women's rights

The Inter-American System for the Protection and Promotion of Human Rights⁹ (hereinafter 'the System' or 'the Inter-American System') has protected the rights of men and women since its creation. The principles of equality and non-discrimination enshrined in the Organization of American States (OAS) Charter and in the American Convention on Human Rights¹⁰ are the cornerstone of the System.

However, there is a wealth of literature¹¹ supporting the proposition that international human rights law has not reflected and responded adequately to women's needs and experiences. The Inter-American System has not been the exception, and the way in which women are affected by the violation of their rights, as well as the specific violations that women suffered based on their gender, was not taken into account in a comprehensive manner until very recently.¹²

The Vienna Conference on Human Rights of 1993¹³ reaffirmed that women's rights are human rights. A year later, the Inter-American Commission appointed the Special Rapporteur on Women¹⁴ opening a path to enhance the protection of women's rights and to incorporate a gender perspective in the work of the System.

⁸ *Supra* note 5.

⁹ For the purpose of this paper Inter-American System shall be understood as comprising the Inter-American Commission, the Inter-American Court and the Inter-American instruments.

¹⁰ Article 3 (l) OAS Charter. Articles 1 and 24 of the ACHR.

¹¹ See for example: Charlesworth, H. and Chinkin, C. "Women and the international legal system" in *The Boundaries of International Law: a feminist analysis*. Manchester University Press: 2000. See Coomaraswamy, R. "Violence against Women" in *Women and International Human Rights Law*. Askin, K and Koenig D. (eds.). Vol. 1, Transnational Publishers: 1999.

¹² Medina, C. "La Comisión Interamericana de Derechos Humanos y las mujeres con particular referencia a la violencia" in *Ensayos sobre Justicia Transicional, Estado de Derecho y Democracia*. Universidad de Chile. Pp. 9.

¹³ Vienna Conference on Human Rights. "Declaration and Plan of Action". 1993. Par: 18 and 36.

¹⁴ See mandate and competence of the Rapporteur in the web page of the Inter-American Commission for Human Rights: www.cidh.oas.org.

The Special Rapporteur has been playing an important role in the protection and promotion of women's rights in the Americas through the elaboration of thematic reports,¹⁵ site visits,¹⁶ the involvement in the elaboration of the country reports which now have a specific section dedicated to the situation of women's rights¹⁷ and assisting the Commission in the development of new jurisprudence.

The attention and importance that the Inter-American Commission has given to women's rights, is also reflected in the fact that, in the last five years, the Commission held four thematic hearings regarding the situation of women's rights in the Region.¹⁸

In relation to individual petitions,¹⁹ in the last decade, the number of cases has increased and the kind of issues regarding women's rights has widened. So far, the System has addressed issues of equality and non-discrimination, domestic violence, violence perpetrated by State agents, as well as sexual and reproductive rights.

The protection of women against violence under the Inter-American System

The issue of violence against women, especially the one perpetrated by State agents, has been constantly addressed by the System. The American Convention on Human Rights (ACHR) and the Protocol of San Salvador²⁰ protect the most fundamental rights and freedoms which are impaired with gender-based violence.

¹⁵ See *The situation of the rights of women in Ciudad Juárez: the rights to be free from violence* (OEA/Ser.L/V/II.117, 2003) and the *Report of the Status of Women in the Americas* (OEA/Ser.L/V/II.100, 1998).

¹⁶ The Rapporteur visited Mexico in 2002 and Guatemala in 2004.

¹⁷ See for example *Report on the situation of Human Rights in Haiti* (OEA/Ser.L/V/II. 88); *Report on the Situation of Human Rights in Guatemala* (OEA/Ser.L/V/II.111).

¹⁸ The topics of the thematic hearings have been the following: Situation of Women in the Americas (2003), Discrimination and Access to justice for Women in the Region (2004), Sexual and reproductive health (2005), Violence and murder of women in Latin America (2006).

¹⁹ The Commission was mandated to receive individual petitions in the Río Conference held in 1965. For more about the procedure of individual petitions see: Faúndez, H. *El Sistema Interamericano de Protección de los Derechos Humanos: aspectos institucionales y procesales*, Instituto Interamericano de Derechos Humanos. Costa Rica, 1999.

²⁰ Additional Protocol to the American Convention on Human Rights on the area of Economic, Social and Cultural Rights (Protocol of San Salvador) approved by the General Assembly of the OAS in 1988.

However, the specific ways in which violence is exercised against women and its consequences were obscured for a long time. Furthermore, other types of violence against women, such as domestic violence or violations of sexual and reproductive rights, were not addressed by the System until very recently. It is important to note that it was in the last twelve years²¹ when the issue of violence against women started to be analyzed in a human rights framework.

Since 1994, with the adoption of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (hereinafter ‘Belem Do Pará Convention’ or ‘ICPPEVAW’)²² the System has been playing a more active role in the protection of women from all forms of gender-based violence.

The ICPPEVAW, which is the first international binding instrument on the subject and the most widely ratified of the System, provides a legal framework to analyze cases and situations of violence against women. The text recognizes in its preamble that violence against women is a manifestation of the unequal relations of power between men and women, and in Article 1 provides a comprehensive definition of violence against women: “For the purposes of the Convention, violence against women shall be understood 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.”²³

This definition is responsive to the multiplicity of forms of gender based-violence and bridges the so-called private sphere putting all the forms of gender-based violence within the protection of the law.²⁴

The Convention of Belem Do Para also established that violence against women is a human rights violation that prevents and nullifies the enjoyment of the civil, political, economic, social and cultural rights enshrined in international and regional instruments,²⁵ as well as the

²¹ This was promoted by the approval of the *United Nations Declaration on Violence against Women* (GA Res.48/104) and the Beijing Process.

²² The *Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (ICPPEVAW)* was approved by the General Assembly of the Organization of American States on 9 June 1994. The Convention has been ratified by 31 States (until 2005).

²³ Article 1, ICPPEVAW.

²⁴ See the *Special Rapporteur on Violence against Women, its Causes and Consequences (SRVAW)* reports: (E/CN.4/2003/75/Add.1); (E/CN.4/2001/73) and (E/CN.4/2004/66).

²⁵ Articles 4 and 5, ICPPEVAW.

right to be free from discrimination.²⁶ The acknowledgment of violence against women, as comprising the violation of different rights, expands the scope of the protection of women against violence and creates a strong link between this instrument and the ACHR.

In relation to the duties of the State Parties, the ICPPEVAW established what can be classified as obligations of immediate execution²⁷ and obligations of progressive execution.²⁸ The text comprises the duty to refrain from acts of violence as well as positive obligations²⁹ to prevent, punish and eradicate violence against women.

The positive obligations laid down in the ICPPEVAW³⁰ embrace the concept of due diligence, which was first applied in the human rights field, by the Inter-American Court in the case of *Velásquez Rodríguez*: “An illegal act which violates human rights and which is initially not directly imputable to a State (...) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”³¹

The concept of due diligence, as a yardstick to assess the fulfillment of State obligations, has been incorporated in most international and regional instruments which addressed the issue of gender-based violence.³²

²⁶ Article 6, ICPPEVAW.

²⁷ Article 7, ICPPEVAW.

²⁸ Article 8, ICPPEVAW. It is important to say that the fact that the obligations are regarded as of progressive execution does not mean that the State can avoid its responsibility. See General Comment 3 Committee on Economic, Social and Cultural Rights (CESCR E/1991/23).

²⁹ The existence of positive obligations of the State is now an accepted concept of international human rights law. See General Comment 31 of the Human Rights Committee (CCPR/C/21/Rev.1/Add.13) par. 8. See the jurisprudence of the Inter-American Court in: *Villagrán Morales v Guatemala* (Series 63, Judgment: 1999) par. 139; *Godínez Cruz v Honduras* (Series 5, Judgment: 1989) par. 185. And the jurisprudence of the European Court in: *X and Y v The Netherlands* (App. 8978/80) par. 32; *Osman v United Kingdom* (App. 87/1997) par. 107.

³⁰ Article 7, ICPPEVAW.

³¹ *Velásquez Rodríguez v Honduras* (Series 1, Judgment: 1988) Par. 172.

³² See *UN Declaration on Violence Against Women; General Recommendation 19 of the CEDAW Committee* (CEDAW/C/1992/L.1/Add.15); *Beijing Declaration and Plan of Action*. (United Nations Fourth Conference on Women, China: 1995).

In relation to the mechanisms to monitor its compliance, the ICPPEVAW established that States have to present reports to the Commission on Women;³³ and that the Inter-American Commission is allowed to receive individual petitions alleging violations to the Convention.³⁴

Under the text, there is no explicit reference which gives adjudicatory jurisdiction to the Court.³⁵ However, it has been argued that the Court can use the ICPPEVAW to interpret and give content to the rights contained in the ACHR in cases of violence against women.³⁶ This was recently considered by the Court itself in the case *Penal Castro Castro v Peru*,³⁷ which relates to state violence against women in a prison. In the mentioned case, the Court applied the ICPPEVAW as a source of interpretation of the rights contained in the American Convention. The Court took a very progressive approach by connecting the rights contained in the ICCPEVAW with the rights in the American Convention thus expanding its content and scope.

In sum, it can be said that nowadays the Inter-American System has a rich legal and institutional framework to protect women from gender-based violence. The question is to what extent has it been applied in practice. An analysis of the decisions in individual cases is aimed to provide a guide in this respect.

From 1990 to 2004, the System acknowledged 63 cases (See table 1) in which women were victims of some form of violence.³⁸ However,

³³ Article 10, ICPPEVAW. The Commission on Women is an organism of the OAS in charged of monitoring the situation of women in the Region.

³⁴ Article 12, ICPPEVAW.

³⁵ One of the drafts of the ICPPEVAW contained a provision in relation to the adjudicatory function of the Court, but no consensus was reached. See "Intergovernmental Meeting of Experts to Consider the Preliminary Draft Inter-American Convention on Women and Violence", (OEA/Ser.L/11.7.5, CIM/RECOVI/doc. 20/93).

³⁶ See article 29 of the ACHR. In the case of *Las Palmeras v Colombia* (Series 67 Preliminary Objections) par. 34, the Court stated that it can use other treaties for interpretative purposes. See also Ewing, A. *Establishing State responsibility for private acts of violence against women under the American Convention of Human Rights*. 26 Columbia Human Rights Law Review: Spring, 1995.

³⁷ *Penal Castro Castro v Peru*, Judgment, 25 November 2006 (Series C, No. 160). The case will be further described in this article under the chapter concerning state violence against women.

³⁸ It is important to mention that in this table, the recent Court's decision *Penal Castro Castro v Peru*, issued in 2006, is not included. However, in the article this case is mentioned because of its relevance regarding women's rights.

it is important to note that the paper will only analyze the cases which involved a gender dimension. In other words, in cases where the act was committed or had effects on women for reasons of their gender.

The cases are divided into four categories: 1) violence perpetrated or condoned by State agents; 2) violence that takes place in the community; 3) domestic violence; and 4) sexual and reproductive rights. The first three correspond to the categories laid down in the ICPPEVAW.³⁹

The close connection between violence against women and reproductive rights, deem it necessary to have a special category: “Many forms of violence against women result in violations of women’s reproductive rights (...) Similarly many reproductive rights violations constitute violence against women per se.”⁴⁰

However, this category is connected with the other three. In fact, all the forms of violence against women are linked and even though in this analysis they are divided, it is important to see the problem of gender-based violence from a holistic perspective.

Violence perpetrated by State agents

In this area we find the most number of cases of violence against women. From 1990 to 2004, the Inter-American Commission acknowledged 45 cases of violence perpetrated by State agents (See table 2). On the other hand, from 1990 to 2006⁴¹ the Court has acknowledged five cases regarding gender-based violence perpetrated by state agents.

In the early eighties, when the Commission began to exercise its quasi-judicial function, a large number of the countries in the Region were facing situations of internal conflicts and authoritative regimes, characterized by human rights violations.⁴² In this context,

³⁹ Article 12, ICPPEVAW.

⁴⁰ SRVAW report “Policies and practices that impact women’s reproductive rights and contribute to, cause or constitute violence against women.” E/CN.4/1999/68/Add.4. See also: *General Comment 12 of the ESCR* (E/C.12/2000/4) and *General Recommendation 19 of the CEDAW Committee*.

⁴¹ This article was drafted in 2005. For this reason, only cases until 2004 were analyzed. Nevertheless, considering the relevance of the 2006 *Penal Castro Castro v Peru* decision, the analysis of the cases before the Court covered the period between 1990-2006.

⁴² For more on the context of the human rights violations in the Americas see: Méndez, J. and Mariezcurrena, J. “The consolidation of democracy and human

the Commission acknowledged cases with female victims of forced disappearances,⁴³ arbitrary executions⁴⁴ and torture.⁴⁵ This however does not mean that the cases included a gender dimension or that this was the approach taken by the Commission. In fact at that time, men and women were treated indistinctly. The specific forms in which women's rights were violated by state agents, especially in conflict situations,⁴⁶ were not present in the analysis by the Commission.

One of the issues of grave concern, regarding state violence against women, is the use of rape and sexual abuse as a form of torture. This issue has been raised constantly in the System and the jurisprudence of the Commission has been evolving in a very positive way. From 1990 to 2004, the Commission acknowledged twelve cases of torture inflicted against women, and in eight of them the victims alleged that they were raped (See table 3).

In the early cases, when rape was alleged to be another form of torture, even though the Commission found a violation of article 5 of the ACHR (right to humane treatment), the specific act of rape was subsumed within the other acts of torture and ill-treatment. In these cases, there is no explicit reference to rape as a form of torture and, in contrast with the later decisions; the Commission did not find a violation of the right to privacy. This was the approach in the cases of *Rosa Marta Cerna Alfaro v El Salvador*⁴⁷ and *COMADRES v El Salvador*.⁴⁸

rights in Latin America" in Pollis, A. and Schwab, P. *Human Rights: New Perspectives, New Realities* (Lynne Rienner Publishers, London: 2002).

⁴³ See for example the cases against Guatemala of: *Sandra Zamora López* (Case 9922), *María Elena Rodas Orellana* (Case 9935), *María Tzampop* (Case 9926). The cases against Peru of: *Teresa García Bautista* (Case 9812), *Gloria Martha Tineo García* (Case 9875), *Giovana Vera* (Case 10.263).

⁴⁴ See *Soledad Granados v Peru* (Case 10.380); *María Teresa Guardado v El Salvador* (Case 10.915).

⁴⁵ See for example *Flor de María Hernández Rivas v El Salvador* (Rep. 7/94); *Sonia Muñoz Yangali v El Salvador* (Case 10.202).

⁴⁶ See *Violence against women in armed conflict*, Amnesty International (ACT 77/050/2004); UN web site: www.womenwarpeace.org.

⁴⁷ *Report 19/92, Case 10.257*. The case regards the rape and torture of Mrs. Cerna by members of the Armed Forces.

⁴⁸ *Report 13/96, Case 10.948*. The case regards a human rights organisation integrated by women which was the object of attacks and harassment by the Salvadoran government. The petition claimed different human rights violations, including torture and rape.

The approach taken by the Commission has changed in a significant way, incorporating a gender analysis in its decisions. Two of the most relevant cases are *María Elena Loayza Tamayo v Peru*⁴⁹ and *Raquel Martin de Mejía v Peru*.⁵⁰

The case of *Raquel Martin Mejía* regards a woman who was raped by a police official. In the decision on the merits the Commission established that, under certain circumstances, rape can constitute torture. This approach was ground-breaking in relation to women's rights and was later supported and extended by the European Court of Human Rights and the ad-hoc tribunals of the Former Yugoslavia and Rwanda.⁵¹

To determine that rape constitutes torture, the Commission applied a test separating the definition of torture into three elements.⁵² Two important conclusions were reached: the first is that rape causes severe physical and mental pain; the second one is that rape, when perpetrated by state agents, can be exercised with the purpose of punishing and intimidating the victim.

The decision also stated that rape gives rise to a violation of the right to privacy (Article 11 ACHR). The Commission linked the right to privacy with the right to personal integrity and established that the concept of private life extends to a person's physical and moral integrity.⁵³ This gives content to the right to privacy as entailing the right to autonomy over women body and sexuality and points out the fact that violence against women is often exercised in forms which entailed interference in their sexuality.

In further cases the Commission has reaffirmed and expanded its approach to the issue. In the case *González Pérez Sisters*,⁵⁴ which concerned three indigenous women and children that were raped by military personnel in Mexico, the Commission concluded that rape

⁴⁹ *María Elena Loayza Tamayo v Peru* (Series 30, Judgment, 1997).

⁵⁰ Report 5/96, Case 10.970, 1995.

⁵¹ Case of *Aydin v Turkey* (App. 57/1996/676/866) European Court of Human Rights; *Prosecutor v Akayesu* (ICTR-96-4) International Tribunal for Rwanda; and *Prosecutor v Furundžija* (IT-95-17/1) International Tribunal for the Former Yugoslavia.

⁵² Definition of torture contained in article 1 of the Inter-American Convention for the Prevention and Punishment of Torture (1995).

⁵³ This was also the approach in *X and Y v Argentina* (Rep. 38/96, Case 10.506).

⁵⁴ Report 53/01, Case 11.565, 2001.

constituted torture for the victims and inhumane treatment for their mother who was present during the acts. It also stated that it was a violation of article 7 of the ICPPEVAW regarding the lack of due diligence of the authorities in the investigation and punishment of these acts. Moreover, the Commission was receptive to the fact that the victims were indigenous and that also underpins their situation in addition to their gender.⁵⁵

The recent decisions, which incorporate a gender perspective, are sensitive to the nature of sexual crimes and its investigative and probative difficulties.⁵⁶ This is also reflected in the fact that the Commission has stated that the remedies for these violations shall include recovery services for the victims as well as the prosecution and the punishment of the perpetrators.

One additional element that is missing in the decisions and that could expand the scope of the protection is the interpretation of rape as a violation of women's sexual and reproductive rights. Furthermore, there are other elements that the Commission could still explore, for instance, whether or not other forms of sexual violence can also be regarded as torture.

The Inter-American Court addressed the issue of gender-based violence perpetrated by State agents when the Commission submitted the case of *María Elena Loayza Tamayo v Peru*. During her detention she was subject to different forms of torture and ill treatment including rape. Although the Commission had previously asserted that there was enough evidence to prove that Mrs. Loayza Tamayo had been raped during her detention, the Court decided that "... given the nature of this fact, the accusation could not be substantiated."⁵⁷ The Court did not provide further arguments explaining the reasoning followed to reach such conclusion.

Furthermore, in this case, when weighing the evidence, the Court followed the principle of law that establishes that the burden of proof

⁵⁵ See Charlesworth *supra* note 11.

⁵⁶ The Commission has highlighted the importance of circumstantial evidence, presumptions and the testimony of the victim (*Raquel Martín Mejía v Peru*). The Commission has also established the importance in not subjecting the victim of rape to another traumatic experience in the cross-examinations and in the medical examinations (*González Pérez Sisters v Mexico*).

⁵⁷ *Judgment*, Par. 58.

falls upon the party that is making the allegations.⁵⁸ However, in the Loayza Tamayo case, two issues should have been taken into account; first, the complexity of the evidence, and second, the fact that Mrs. Tamayo was at all times in the hands of the authorities, thus it was more difficult for her to obtain evidence that would substantiate the accusation.

Moreover, the Court has assumed a more flexible approach to the issue of evidence⁵⁹ and the burden of proof in cases where the person is in detention⁶⁰ and when forced disappearances take place, due to its probative difficulties.⁶¹ A similar reasoning could have been followed assuming that rape, particularly when perpetrated by state agents, also has probative difficulties. If a systematic pattern of rape as a form of torture can be established⁶² and the case can be linked to that pattern, it the burden of proof should be shifted to the State.

Following its approach in other cases, it can be argued that the Court could have taken more into account the circumstantial evidence⁶³ and the fact that Mrs. Tamayo was in a situation of extreme vulnerability.⁶⁴ It could have also relied more strongly on the victim's testimony and in the fact that, as was stated later by the Court, the medical examinations issued by Peru in that context were not thorough.⁶⁵

It can be said that, in this decision, the Court did not fulfill the expectations in terms of the protection of women's rights from violence perpetrated by the State.⁶⁶

⁵⁸ *Velásquez Rodríguez*, Par. 123.

⁵⁹ *Castillo Petruzzi et al v Peru* (Series 52, Judgment 199) Par. 60.

⁶⁰ *Neira Alegría v Peru* (Series 10, Judgment: 1995) and *Gangaram Panday* Ibid Par. 49.

⁶¹ *Bámaca Velásquez v Guatemala* (Series 70, Judgment: 2000) Par. 130.

⁶² In the case of Raquel Martin Mejia the Commission relied in part on the reports of the situation of human rights in Peru of Amnesty International and of the United Nations Special Rapporteur on Torture.

⁶³ In some cases the Court had established that the direct evidence can be supplemented by circumstantial evidence and presumptions. See *Blake v Guatemala* (Series 36, Merits, 1998) Par. 47 and *Gangaram Panday v Suriname* (Series 16, Merits, 1994) Par. 49.

⁶⁴ See *Villagrán Morales v Guatemala*, Par. 166; *Castillo Petruzzi* Ibid par. 62.

⁶⁵ *Cantoral Benavides v Peru* (Series 69, Judgment: 2000), Par. 33.

⁶⁶ The case has also been criticised because the Court only found that the acts perpetrated against Mrs. Loayza, for example prolonged immersions in water, amounted only to cruel and inhumane treatment.

There are three other cases decided by the Court involving some form of gender-based violence perpetrated by state agents. The first one is the case *Maritza Urrutia v Guatemala*⁶⁷ that concerns a woman who suffered from psychological torture which included the threat of being raped. In its decision the Court did not highlight the particular form in which torture was inflicted on the woman in reason of her gender. The second case is *Plan de Sanchez Massacre v Guatemala*,⁶⁸ which concerns the massacre of at least 250 people, most of them from the Mayan community, by the Guatemalan Armed Forces. In the context of that massacre women and girls were subjected to rape and other forms of torture. In its decision the Court mentioned rape as one of the acts of violence and among the rights violated it included the right to humane treatment and the right to privacy, but it did not explicitly established that the rape was inflicted as a form of torture. It has to be said that the Guatemalan State recognized and accepted its responsibility for human rights violations that occurred and the Court did not analyze in depth all the facts.

It was only in 2006, with the case of *Penal Castro Castro v Peru*,⁶⁹ that the Court took a very important step towards advancing the jurisprudence in relation to the protection of women against gender based-violence. The case regards a police operation in a prison of Peru that took place in 1992, where 42 inmates were allegedly killed, 175 were injured, and 322 were subjected to inhumane and degrading treatment. Several women, who were in prison for allegedly belonging to guerrilla groups, were victims of these human rights violations.

During this operation, several women were obliged to crawl naked on the floor and step on the corps of dead inmates. In its decision on the merits, the Court stated that the treatment that these women received was a violation of their personal integrity and dignity, and that the forced nudity constituted an act of sexual violence.⁷⁰ It is also relevant that in this decision the Court follows the jurisprudential criteria of the international tribunals when defining sexual violence.

The Court also refers to a woman inmate who was subjected to a vaginal inspection by a group of guards wearing hoods. The Court

⁶⁷ *Maritza Urrutia v Guatemala* (Series 103, Judgment: 2003).

⁶⁸ *Plan de Sánchez Massacre v Guatemala* (Series 105, Judgment: 2004).

⁶⁹ *Penal Castro Castro vs Peru*, Judgment, *supra* n. 37.

⁷⁰ Judgment, Par. 308.

stated, following the jurisprudence of the international tribunals, that this vaginal inspection was rape and that it constituted torture.⁷¹

It is important to mention that in relation to these events, the Court did not consider nor did it include the violation to the right to privacy, contrary to the approach taken by the Commission in cases of sexual violence. In addition, although the Court connected the rights of the American Convention with the ICCPEVAW, it only did this in relation to article 7b of this instrument, which sets forth the standard of due diligence, and not in relation to other articles such as 7a, which prohibits state agents to exercise violence against women.

Nevertheless, this decision reflects the inclusion of a gender perspective in the analysis of the Court. It took into account the specific damage and effect that a violation has on women, and the particular violations that women suffer, particularly in contexts such as an armed conflict. The decision greatly contrasts with the decision of *Loayza Tamayo v Peru* and sets a precedent within the Inter-American System regarding the protection of women against gender-based violence.

Domestic violence

Domestic violence is one of the most pervasive forms of violence against women and for many years, it was placed outside the scope of the protection of the State because it was considered a private matter. Today it is widely accepted that domestic violence is a public matter.⁷²

Nevertheless, because acts of domestic violence occur in the private sphere and are perpetrated by private actors, the mere act of domestic violence does not give rise to State responsibility. The State might be responsible, if it can be shown that it knew about these acts and it did not act diligently to prevent, investigate and punish them. Furthermore, it can be argued that the obligation of the State to act with due diligence⁷³

⁷¹ *Judgment*, Par. 312.

⁷² Romany, C "State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law" in Cook (ed.) *Human Rights of Women* (University of Pennsylvania Press: 1994). Coomaraswamy, R. "Violence against Women" in *Women and International Human Rights Law*. Askin, K and Koenig D. (eds.). Vol. 1, Transnational Publishers: 1999.

⁷³ Article 7, ICPPEVAW.

is engaged, not only when it knew but also if it should have known,⁷⁴ such as where there are clear patterns of domestic violence.

In contrast with the number of cases of violence perpetrated by public agents, the Inter-American Commission has had few opportunities to address the situation in individual cases. Until now, there have been only three individual cases (See table 5): *María Da Penha v Brazil*,⁷⁵ *Zoila América Narvaéz Murillo v Nicaragua*⁷⁶ and *Indravani Pamela Rajmattan v Trinidad and Tobago*.⁷⁷ The case of *María Da Penha* is the most relevant as is the only case where the Commission has issued a decision on the merits and, in which, the State was held responsible for acts of domestic violence. The other two cases only have an admissibility report, thus the substantive issues have not been analyzed.

In the case of *María da Penha* the Commission developed elements of two concepts that are fundamental for the protection of women against domestic violence: due diligence and equality before the law.

Applying the yardstick of due diligence, the Commission looked at the way in which the State, particularly the judicial system, responded to the acts of domestic violence suffered by Mrs. Da Penha. It established that the State is obliged to take *effective* measures to protect women from domestic violence, implying that the standard of due diligence is not satisfied with the mere fact of developing actions if they do not have the effect of remedying and redressing the situation.

The Commission concluded that there was a denial of justice aggravated by a pattern of gender-discrimination within the judicial system, which violated the rights to fair trial, judicial guarantees and equality before the law. It continues by stating that this situation resulted in the impunity of cases of domestic violence and at the same time created a climate conducive this violence.

This reasoning is relevant as it articulates gender-discrimination within the judicial system as a cause and consequence of domestic violence. It also construed the right of equality before the law⁷⁸ as

⁷⁴ *Osman v United Kingdom*, Par. 2.

⁷⁵ Rep. 54/01, Case 12.051, 2001.

⁷⁶ Rep. 118/01, Case 12.230, 2001.

⁷⁷ Rep. 92/98, Case 11.387, 1998.

⁷⁸ This interpretation of the right of 'equality before the law' has been applied by the Court in various cases. See for example *The girls Jean and Bosico v Dominican Republic* (Series 130, Merits, 2005). See also Advisory Opinion OC-4/84.

comprising not only the equality in the law but also the system where it is applied, revealing that women are discriminated because of their gender.

In this case the Commission did not analyze the violation of the right of personal integrity based on the fact that the acts occurred before the ratification by Brazil of the ACHR. The question is whether the Commission will be prepared to find a violation of the right to personal integrity or the right to life for the State's lack of due diligence in the punishment and prevention of domestic violence.

The recommendations in the case contribute to give content to the obligations of the State, as it comprises measures to redress the specific violations and general measures to punish and prevent domestic violence. However, the level of compliance with the recommendations of the report was partial, until 2004.⁷⁹ The case could not go to the Court because at that time Brazil had not accepted its jurisdiction.

With this case the Commission started to define the scope of the protection of the system in cases of domestic violence. One of the questions that still remain is whether or not domestic violence can constitute torture⁸⁰ under the definition of the Inter-American Convention for the Prevention and Punishment of Torture and in the light of the ACHR and the ICPPEVAW.⁸¹

Violence in the community

Violence against women that takes place in the community is a problem that has been growing in an overwhelming way in the last few years. Cases of women, violently murdered or attacked, by unknown persons, occurred in a pervasive way in countries such as El Salvador, Guatemala and Mexico.⁸²

The legal reasoning in cases of violence perpetrated in the community is quite similar, to the one applicable in cases of domestic

⁷⁹ Annual report of the Inter-American Commission (OEA/Ser.L/V/II.122, 2004).

⁸⁰ See Copelon, R. *Intimate terror: understanding domestic violence as torture*; in Cook (ed.) "Human Rights of Women" (University of Pennsylvania Press: 1994).

⁸¹ See Ewing, *supra* note 36.

⁸² See the reports of the UN SRVAW on the visits to El Salvador (E/CN.4/2005/72/Add.2), Guatemala (E/CN.4/2005/Add.3) and Mexico (E/CN.4/2006/61/Add.4).

violence, in relation to determining State responsibility and applying the standard of due diligence and equality before the law.

Under this category of violence there is also a lack of decisions on the merits. However, there are two relevant issues that have been acknowledged by the Commission. The first one was raised in the case *MZ v Bolivia*,⁸³ which regards a rape where the perpetrator was absolved despite of the evidence against him. The case was admitted in 2001 and a friendly settlement is being negotiated, so it is likely that the Commission will not have to issue a decision on the merits. However, it is possible that the issue of gender-based discrimination in the judicial system, especially the inadequate way in which domestic courts prosecute and punish rape and sexual abuse will be raised in future cases.

The other issue of violence perpetrated in the community that has been acknowledged by the System regards the situation of violence against women in Ciudad Juárez, Mexico. In 2003 the Rapporteurship on Women issued a thematic report regarding this situation.⁸⁴ The report addressed the situation of the large number of abductions and murders of women, as well as the situation of domestic violence in Ciudad Juárez. It also provides an important conceptual framework on the issue of state responsibility for acts of gender-based violence committed by non-state actors, based on the ACHR and the ICPPEVAW.

The report concluded that the Mexican State had not been acting with due diligence in the investigation, prevention and punishment of these acts, and that this was not only perpetuating impunity, it was also fuelling the commission of acts of violence against women.

In addition to the report, the Commission has just declared three cases admissible: *Claudia Ivette González*, *Esmeralda Herrera Monreal* and *Laura Berenice Ramos Monarrez*.⁸⁵ In these cases, the girls were abducted, subjected to different forms of violence, including rape and other forms of sexual abuse, and then killed.

In the admissibility decision the Commission applied the exception to the exhaustion of domestic remedies relying on two grounds: the delay in the investigation and the pattern of cases of violence against women which proved that the remedies were ineffective.

⁸³ Rep. 73/01, Case 12.350, 2001.

⁸⁴ *Supra* note 15.

⁸⁵ Rep. 16/05, Case 281/02; Rep. 17/05, Case 282/02; Rep. 18/05, Case 283/02.

The petitioners alleged the violation of the right to fair trial, judicial guarantees and equality before the law, as well as violation of the right of personal integrity under the ACHR and article 7 of the ICPPEVAW. The Commission added the possible violation to the right to life. It is relevant that the Commission seemed to be prepared to determine the responsibility of the State for the violations of right to life and personal integrity in cases of violence against women perpetrated by non-state actors.

The cases were also declared admissible in relation to article 8 of the ICPPEVAW regarding the obligations of progressive execution including the modification of cultural and social practices and stereotypes, as well as in relation to article 9, which contained the obligation of taking into account the conditions that make women more vulnerable to violence. The nature of the obligations laid down in these articles represent a challenge for the Commission in terms of giving content to the obligations of States to address the structural causes of violence against women and determining the State responsibility.

In cases of violence perpetrated in the community, as in cases of domestic violence, the responsibility of the State relies, in large part, on the capacity of its judicial systems to deal effectively with the crime in a non-discriminatory basis. The System has developed a vast jurisprudence in respect to judicial guarantees and fair trial which can enrich the content of due diligence in cases of violence against women.

In addition, the States are obliged to prevent acts of violence against women committed by private actors. The effective prosecution and punishment of acts of violence has an effect of deterrence which can be considered as satisfying part of the obligation to prevent. Nevertheless, the duty to prevent is much broader and entailed "... all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts."⁸⁶

It is still a challenge for the Commission to further develop the content of this duty to prevent in cases of violence against women.

In the case of *María Da Penha* as well as in the cases of Ciudad Juárez, the Commission is supporting the failure of the State in the systematic pattern of violence against women. It is arguable whether the

⁸⁶ Velásquez Rodríguez, Ibid Par. 175.

existence of a pattern establishes a threshold regarding due diligence that would be different in cases where that pattern does not exist or cannot be demonstrated. However, it can be argued, the cases of violence against women are usually not isolated and the situation in the Region reflects that violence against women is an extended problem.

Another interesting issue that was addressed in the report of Ciudad Juárez, and that the Commission might raise again in the individual cases, is the understanding of violence against women as a multiple violation of human rights.⁸⁷ In its jurisprudence the Court has stated that forced disappearances are a multiple violation of human which give rise to a “radical breach of the treaty [ACHR].”⁸⁸ The question is to what extent the Commission and the Court will give a similar interpretation to violence against women.

Sexual and reproductive rights

Another important area of women’s rights is the one concerning sexual and reproductive rights.⁸⁹ As it was stated above, the protection and enjoyment of these rights in the Region is still inadequate.

A comprehensive definition of the elements of reproductive health can be found in the Platform of Action and Beijing Declaration: “Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.”⁹⁰

At the international level the case-law in this area is still scant. The European Court of Human Rights has some important decisions regarding the right of reproductive self-determination⁹¹ and related

⁸⁷ *Supra* note 15 at Par. 120.

⁸⁸ *Godínez Cruz*, *Ibid* Par. 166.

⁸⁹ For a more on the human rights involved in sexual and reproductive health see Cook, R.; Dickens, B. and Fathalla, M. *Reproductive Health and Human Rights*, Clarendon Press, Oxford: 2003.

⁹⁰ Platform of Action and Beijing Declaration, Par. 94.

⁹¹ See *Paton v United Kingdom* (App. 8416/78) and *Bruggemann and Scheuten v Federal Republic of Germany* (App. 6959/75).

to the access to information on sexual and reproductive rights⁹². The treaty-body machinery of the United Nations has also provided important elements regarding sexual and reproductive rights, especially through their general comments.⁹³

It was not until very recently that the Inter-American System started to address the issue of sexual and reproductive rights. The first time the Commission addressed the issue was in the “Report of the Status of Women in the Americas,”⁹⁴ issued in 1997. After this report, the Commission has considered the issue of sexual and reproductive rights in a permanent way in the country reports.⁹⁵

Sexual and reproductive health involved elements of different human rights contained in the ACHR and in the Protocol of San Salvador. The Convention of Belem Do Para also provides an important legal framework to protect and promote these rights.

Regarding individual cases, the Court had not had the opportunity to decide a case involving sexual and reproductive rights.⁹⁶ The Commission has addressed the issue on relatively few occasions (see table 6) and there is only one report on the merits. In the first instance, the Commission has dealt with the issue in the cases involving rape and sexual abuse,⁹⁷ which also entailed violations of sexual and reproductive rights.

One of the important issues that the Commission has developed in its decisions regards the scope of the right to privacy in relation to sexual and reproductive rights. The case of *X and Y v Argentina*⁹⁸ regarding the vaginal inspections that took place in a prison, provided important elements in this respect.

⁹² See *Open Door Counselling and Dublin Well Woman Centre LTD v Ireland* (App. 14234/88) Kjeldsen, Busk Madsen and Pedersen v Denmark (App. 50/95/71).

⁹³ Ibid *supra* note 38.

⁹⁴ *Supra* note 3.

⁹⁵ See for example the “Report on the Situation of Human Rights in Mexico” (OEA/Ser.L/V/II.100) and “Report on the Situation of Human Rights in Colombia” (OEA/Ser.L/V/II.102).

⁹⁶ Although the case of *María Elena Loayza Tamayo*, as it has been said, the Court did not analyze in depth the issue.

⁹⁷ See *MZ v Bolivia*, *González Pérez, Sisters v Mexico*, *Raquel Martin de Mejia v Peru*.

⁹⁸ Rep. 38/96, Case 10.506, 1996.

In this case, the Commission made a direct connection between the right to personal integrity and the right to privacy. It stated that the provision of the right to privacy in the ACHR guarantees to each individual a sphere into which no one can arbitrarily intrude. It continues by stating that the State can only intervene in the sphere of private life when there is a reasonable justification, which is proportional to the aims pursued.⁹⁹ The extent to which the State is allowed to intervene in the private life is determined by the limitations provided in the ACHR in article 32 (2): the rights of others, security of all and demands of general welfare in a democratic society.

In the present case, the interference of the State was justified by security reasons but the Commission concluded that the practice of vaginal inspections was not proportional to the aim pursued and that there were other means available that were less intrusive.

The way, in which the Commission interpreted the content and scope of the right to privacy and its connection with the right to personal integrity, is an important precedent for all the cases regarding sexual and reproductive rights. Following this reasoning, the right to privacy covers the right of women to self-determination over their reproductive and sexual functions without arbitrary interference. The question that is still not clear, because of the lack of decisions in this area, is the interpretation that the Inter-American System will give to the limitations to the right to privacy in the context of sexual and reproductive rights. In this respect it is worth to mention that in the cases of termination of pregnancy the European Commission has stated that this is not solely a matter of the private life of the mother¹⁰⁰ but that the mother has a broad margin of decision as long as she is the person primarily concerned in the pregnancy.¹⁰¹

Regarding the scope of the right to privacy, the Commission also established, in the case of *X and Y v Argentina*, that the State is not only obliged to respect private life, it also has positive obligations to protect a person from arbitrary interference by third parties.

⁹⁹ In this case it applied a four-part test: 1) it must be absolutely necessary to achieve the security objective in the particular case; 2) there must not exist an alternative option; 3) it should be determined by judicial order; and 4) it must be carried out by an appropriate health professional.

¹⁰⁰ *Bruggeman and Sheuten v Federal Republic of Germany*.

¹⁰¹ In the case of *Paton v United Kingdom* the Commission concluded that a woman can decide to have an abortion, permitted by law, without consulting the potential father.

The recognition of positive obligations in relation to the right to privacy acquires special relevance in women's rights taking into account that the right to private life is a paradoxical one. On the one hand, it has been very important at the international level to protect reproductive rights but on the other, at the national level, it has been used to classify acts such as domestic violence, as outside the scope of public scrutiny and governmental intervention.¹⁰²

The Commission also had the opportunity to address the issue of reproductive rights in the case of *María Mamérita Mestanza v Peru*,¹⁰³ which regards the forced sterilization of an indigenous woman who died as a consequence of this surgery.

A friendly settlement was reached in this case. The Peruvian State admitted responsibility and pledged to take steps for material and moral reparation of the harm done. The reparation agreement is very comprehensive and it includes not only a commitment to stop forced sterilization but it also encompasses the development of a national policy to protect sexual and reproductive rights of women in Peru. In second place, the case raises important elements regarding the protection of sexual and reproductive rights. It placed reproductive rights as a form of violence against women and as a violation of different rights enshrined in the Inter-American instruments, including the right to health enshrined in the Protocol of San Salvador.

Another issue that arises from this case is the possibility of using the CEDAW Convention in order to interpret the ACHR and expand the scope of the protection of sexual and reproductive rights.¹⁰⁴ This was done by the Commission in the case of *María Eugenia Morales de Sierra v Guatemala*,¹⁰⁵ where it used the CEDAW as a source for the interpretation of the civil legislation of Guatemala in relation to equality and non-discrimination.

There are other cases, which are now being analyzed by the Commission that also give rise to different elements of sexual and reproductive rights. In 2004, the Commission declared admissible

¹⁰² *Supra* note 83, Pp. 389.

¹⁰³ Rep. 71/03, Case 12.191, 2003.

¹⁰⁴ The CEDAW contains specific provisions regarding sexual and reproductive health in Article 12.

¹⁰⁵ Rep. 4/01, Case 11.625, 2001.

the case of *Ana Victoria Sánchez Villalobos v Costa Rica*,¹⁰⁶ which regards the decision of the Constitutional Court of Costa Rica to declare unconstitutional the presidential decree that authorizes the practice of *in vitro* fertilization. The petitioners alleged that the decision of the Court is an abusive interference in the private life and it is also a violation of the right to found and raise a family. The State relied on the protection of the right to life from the moment of the conception under article 4 of the ACHR.

The issue of the interpretation of the right to life under the American Convention is a difficult one. The text of the ACHR, in contrast with the text of the European Convention on Human Rights and the ICCPR, is more explicit when stating that the right to life: "...shall be protected by law, and, in general, from the moment of the conception."¹⁰⁷ It is likely that the Commission, as with the European System, will not enter into the debate as to when life starts, and may be focused instead in determining the scope of the right to privacy and the right to family life. However, it is a difficult situation that has great importance in the context of sexual and reproductive rights. In the present case, the Commission decided to step aside from the arguments of the parties regarding the interpretation of the right to life and only declared admissible in relation to the other rights that are at stake in the present case, which are right to privacy, the rights of the family and the right of an effective remedy.

Finally, it is important to mention that there are some other cases before the Commission which have not yet been admitted, and that will probably reach a friendly settlement. That is the situation of the case of *Paulina*,¹⁰⁸ which regards a girl who became pregnant following a rape and was prevented from exercising the right of termination of the pregnancy authorized in cases of rape under the Mexican law.

The other relevant case *Marta Lucía Álvarez v Colombia*¹⁰⁹ regards a woman deprived from her liberty, which was not allowed to have intimate visits because her partner was a woman. This case raises the issue of sexual orientation that has been highly controversial in

¹⁰⁶Rep. 25/04, Case 12.361, 2004.

¹⁰⁷Article 4 (1) American Convention on Human Rights. The American Declaration does not contain this wording in the article regarding the right to life.

¹⁰⁸Press release, CIMAC Noticias, 7 March 2006, www.cimacnoticias.com.

¹⁰⁹Rep. 71/99, Case 11.656, 1999.

the Region at a national level, it was admitted in 1999 and there is no further information about the process in the Commission.

In the last few years, the number of cases presented before the Commission regarding sexual and reproductive rights has increased in a very important way and it is likely that it will continue increasing, presenting new conceptual and practical challenges for the System.

Conclusions

In the last ten years the Inter-American System has achieved important improvements regarding the protection of women against all forms of gender-based violence. The Belem Do Para Convention together with the jurisprudence of the System, have expanded the content and scope of the rights of women to be free from gender-based violence.

The Commission has been ground-breaking in some areas and has contributed by giving meaning to concepts that are crucial for the protection of women's rights, such as the standard of due diligence. Moreover, the elements laid down in cases of gender-based violence, can be further explored to expand the current approach and open the path for the protection of women against other forms of violence which have not yet been addressed.

The System has a rich institutional and legal framework to protect women from all forms of violence; however, it has not yet been applied to its full potential. The Belem do Para Convention, approved twelve years ago, and the most widely ratified instrument of the Inter-American System, has only been applied by the Commission and the Court in one decision on the merits. Moreover, the number of cases regarding violence against women, presented before the System, is few and far between. It is a challenge for the civil society organizations of the Region to increase the number of cases and the topics in order to expand the scope of the protection offered by the System regarding violence against women.

Furthermore, the Court has had few opportunities to address the issue of violence against women and, until 2006; its decisions did not reflect an adequate consideration of the gender dimension. The decision issued in 2006, represents a very important precedent of the jurisprudence of the System regarding gender-based violence. It is expected that the Court will continue expanding the scope of the

protection of women against gender-based violence by addressing other forms of violence that have never been acknowledge by the Court, such as domestic violence or the violation of sexual and reproductive rights.

The recommendations of the System have been important as well to further develop the standards and promote changes in the situation at the domestic level. However, the compliance with the decisions of the Commission and the Court is also not satisfactory. The implementation seems to be one of the most significant challenges.

The work of the System in individual cases has been reinforced by the work of other mechanisms, such as the Special Rapporteur. The use of different mechanisms of the System could be further explore in order to expand the protection, procedures such as precautionary measures has not been explored yet and can be useful in cases of irreparable harm.

The Inter-American System faces enormous challenges in this area, in a region where gender-based violence is a deep-rooted issue that prevents women from the execution of all their human rights and fundamental freedoms. It is expected that the System will continue contributing to enhance and expand the scope of the protection and contribute to achieve the right to be free from all forms of violence.

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¹¹⁰ The cases that are in the Annex are not included here, because all the information is in the Tables.

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Table 1: Cases of violence perpetrated by State Agents where the victim is a woman¹¹¹

**Admissibility and Merits 1990-2004
Inter-American Commission on Human Rights**

Topic	Case	Date	Country	Status in the system
Forced disappearances	1. Case Sandra Zamora López Case 9922	1990	Guatemala	Merits. The State did not appear before the Commission. Violation of articles. Violation right to life and personal integrity.
	2. Case María Elena Rodas Orellana Case 9935	1990	Guatemala	Merits. The State did not appear before the Commission. Violation right to life and personal integrity.
	4. María Tzampop Case 9926	1990	Guatemala	Merits. The State did not appear before the Commission. Violation right to life and personal integrity.
	5. Laura Elizabeth del Cid Case 9936	1990	Guatemala	Merits. The State did not appear before the Commission. Violation right to life and personal integrity.
	6. Martha Judith Chiric 9948	1990	Guatemala	Merits. The State did not appear before the Commission. Violation right to life and personal integrity.
	7. Irma Yolanda Gudiel Case 9967	1990	Guatemala	Merits. The State did not appear before the Commission. Violation right to life and personal integrity.

¹¹¹ This table included the cases regarding forced disappearances, torture and ill treatment, arbitrary executions and police violence.

	8. Susana Ramos Grijalva Case 9968	1990	Guatemala	Merits. The State did not appear before the Commission. Violation right to life and personal integrity.
	9. Case Ileana López Rivera Case 9983	1990	Guatemala	Merits The State did not appear before the Commission. Violation right to life and personal integrity.
	10. Case Teresa García Bautista Case 9814	1990	Peru	Merits. The State did not appear before the Commission. Violation to articles 4, 5, 7 and 8.
	11. Case Gloria Marta Tineo García Case 9878	1990	Peru	Merits. The State did not appear before the Commission. Violation to articles 4, 5, 7 and 8.
	12. Giovana Vera Case 10263	1990	Peru	Merits. The State did not appear before the Commission. Violation to articles 4, 5, 7 and 8.
	13. Alicia Consuelo Herrera Case 10.147 Rosaria Valenzi de Sánchez Case 10.181 Graciela Bustamante de Argañaraz et al Case 10.309 Rosa Ana Frigeiro et al Case 10.311	1992	Argentina	In these cases the petitioners were claiming that the Commission declared the Amnesty Laws violated the right to fair trial and judicial protection regarding the cases of disappearances.
	14. Miriam Huaches García Case 10321	1990	Peru	Merits. The State did not appear before the Commission. Violation of articles 4, 5, 7 and 8.

	15. Guadalupe Ccallocunto Case 10.563	1993	Peru	Merits. Violations of articles 1, 4, 5, 7, 8 and 25. The State did not appear before the Commission.
	16. Patricia Rivera and daughters Case 9477	1993	Colombia	Merits. Violations of articles 1, 4, 5, 7, 8, 19 and 25.
	17. Olga Esther Bernal Case 10.537	1993	Colombia	Merits Violations of articles 4, 11, 13 and 25.
	18. Ana Lucrecia Orellana Case 9120	1996	Guatemala	Merits. Violations of articles 3, 4, 5, 7, 8 and 25. The State did not appear before the Commission.
	19. Carmen Aguari de Lapacó Case 12.059	1999	Argentina	Admissibility. Friendly settlement. The State acknowledged its respect for and guarantee of the right to truth, and it pledged to adopt various measures to remedy the violations alleged by the petitioners.
	20. Amparo Tordecilla Trujillo Case 10.337	2000	Colombia	Merits. Violations of Articles 1, 4, 5, 7 8 and 25.
	21. Ileana del Rosario Solares Castillo Case 9111	2000	Guatemala	Merits. Violation of articles 1, 4, 5, 7, 8 and 25.
Torture and inhumane treatment	22. Rosa Marta Cerna Alfaro Case 10.257	1992	El Salvador	Merits. State was held responsible. The rape was subsumed in the other forms of torture. Violation of articles 1, 5 and 7.

	23. COMADRES Case 10.948	1996	El Salvador	Merits. State was held responsible. It did not appear before the Commission. Some of the acts alleged were substantiated and some others not.
	24. Flor de María Hernández Rivas Case 10.911	1994	El Salvador	Merits State was held responsible. The rape was subsumed in the other forms of torture. Violation of articles 1, 5, 7 8 and 25.
	25. María Dolores Rivas Quintanilla Case 10.772	1994	El Salvador	Merits. State was held responsible. It did not appear before the Commission. The case concerned a girl that was raped by a soldier. Violation of articles 5, 11 and 19.
	27. Raquel Martín de Mejía Case 10.970	1996	Peru	Merits. Violation of articles 1, 5, 8, 11 and 25. Is the first case where the Commission interpreted that rape can constitute torture.
	28. Diana Ortiz Case 10.526	1996	Guatemala	Merits. Violations to articles 1, 5, 7, 8, 11, 12, 16 and 25. The Commission concluded that the rape was not proved but that it could be part of the torture.
	29. Leonor de la Rosa Case 11.756	1998	Peru	Admissibility. The case was admissible regarding possible violations to the ACHR and to article 7 of the ICPPEVAW. There is no information about what happened with the case.

	30. Hermanas González Pérez Case 11.565	2001	Mexico	Merits. Violation 1, 5, 7, 8, 11, 19 and 25. Reaffirmed and expand the interpretation of rape as a form of torture.
	31. Dayra María Levoyer Case 11.992	2000 2001	Ecuador	Admissibility. Merits. Violation of articles 5, 7, 8 and 25.
Extrajudicial executions	32. Soledad Granados Case 10.380	1990	Peru	Merits. The State did not appear before the Commission. Violation of articles 4,5,7 and 8.
	33. Irma Vera Peña Case 10.456	1993	Colombia	Merits. Violation of articles 1, 4, 7, 8 and 25. It was a woman under 18 which was pregnant when she was executed. The Commission did not found a violation of article 19.
	34. María Teresa Guardado Case 10.915	1993	El Salvador	Merits. Violation of articles 1,4 and 25. State was held responsible. It did not appear before the Commission. The victim died from a lost bullet. She was a minor.
	35. María Mejía Case 10.553	1995	Guatemala	Merits. Violation of Articles 4, 6, 8 and 25. It is interesting that the Commission found a violation of article 6: freedom from servitude for the obligatory participation in the PAC's (Civilian self defense patrols).
	36. Mariela Barreto Riofano Case 12.095	2000	Peru	Admissibility. Torture and arbitrary execution.

	37. Río Frio Massacre Case 11.654	2001	Colombia	Merits. Violations of articles 1, 2, 8, 19 and 25.
	38. Zulema Tarazona Ariate et al Case 11.581	2001	Peru	Admissibility.
	39. La Rochela Massacre Case 11.995	2002	Colombia	Admissibility.
	40. Leydi Dayán Sánchez Case 12.009	2002	Colombia	Admissibility.
	41. María del Consuelo Ibarguén Case 475/2003	2004	Colombia	Admissibility. Killed by paramilitary and alleged State inaction.
Arbitrary Detention and Police Violence	42. Ruth García Valladares Case 11.778	1997 1998	Ecuador	Admissibility. Merits. Violations of articles 5, 7, 8 and 25.
	43. Lori Berenson Case 11.876	1997	Peru	Admissibility.
	44. Gilda Rosario Pizarro et al Case 12.2.81	2003	Chile	Admissibility. Women that were victims of various violations of their human rights as a consequence of their public and peaceful demonstration against what they considered to be the inadequate remuneration received by their spouses in their jobs as Carabineros.
Conditions of detention	45. Marcela Irene Rodríguez Valdivieso Case 12.316	2004	Chile	Admissibility. The petitioner in this case alleges violations of the right to a fair trial and she also complains about the conditions of detention.

Table 2: Cases of torture and ill treatment of women
Admissibility and Merits 1990-2004
Inter-American Commission on Human Rights

Torture and inhumane treatment	1. Rosa Marta Cerna Alfaro Case 10.257	1992	El Salvador	Merits. State was held responsible. The victim was raped. The rape was subsumed in the other forms of torture. Violation of articles 1, 5 and 7.
	2. COMADRES Case 10.948	1996	El Salvador	Merits. Some of the victims were raped. State was held responsible. It did not appear before the Commission. Some of the acts alleged were substantiated and some others not.
	3. Flor de María Hernández Rivas Case 10.911	1994	El Salvador	Merits. The victim was raped. State was held responsible. The rape was subsumed in the other forms of torture. Violation of articles 1, 5, 7, 8 and 25.
	4. María Dolores Rivas Quintanilla Case 10.772	1994	El Salvador	Merits. The victim was raped. State was held responsible. It did not appear before the Commission. Violation of articles 5, 11 and 19.
	5. Sonia Muñoz Yangali Case 10.202	1990	Peru	Merits. State was held responsible. It did not appear before the Commission. The case concerned the arrest and torture of Mrs. Muñoz. Violation of Articles 1, 5 and 7.

	6. Raquel Martín de Mejía Case 10.970	1996	Peru	Merits. The victim was raped. Violation of articles 1, 5, 8, 11 and 25. Is the first case where the Commission interpreted that rape can constitute torture.
	7. Diana Ortiz Case 10.526	1996	Guatemala	Merits The victim alleged that she was raped. The Commission concluded that the rape was not proved but that it could be part of the torture. Violations to articles 1, 5, 7, 8, 11, 12, 16 and 25.
	8. Leonor de la Rosa Case 11.756	1998	Peru	Admissibility. The case was admissible regarding possible violations to the ACHR and to article 7 of the ICPPEVAW. There is no information about what happened with the case.
	9. Hermanas González Pérez Case 11.565	2001	Mexico	Merits. The victims were raped. Violation 1, 5, 7, 8, 11, 19 and 25. Reaffirmed and expand the interpretation of rape as a form of torture.
	10. Dayra María Levoyer Case 11.992	2000 2001	Ecuador	Admissibility. Merits. Violation of articles 5, 7, 8 and 25.

Of the ten cases of torture before the Commission in 8 of them the victims alleged rape and other forms of sexual violence, which shows that rape as a form of torture is recurrently practiced. Of the 8 cases in two of them, the most recent ones, the Commission explicitly stated that rape constitutes, under certain circumstances a form of torture.

Table 3: Violence against women perpetrated by the State

Cases decided by the Inter-American Court of Human Rights 1989-2004¹¹²

Case	Brief summary	Date of Judgment	Violations	Decision of the Court
María Elena Loayza Tamayo V Peru Judgment of 17 September 1997 Series C I/A Num. 33	<p>María Elena Loayza Tamayo professor of a Private University was detained by members of the National Antiterrorism Bureau (DINCOTE) accused of acts of terrorism as part of the Shining Path (Sendero Luminoso).</p> <p>She was held incommunicado for ten days and subject to different forms of torture and ill treatment including rape. The DINCOTE wanted her to incriminate in different acts committed by the Shining Path.</p> <p>María Elena was prosecuted twice for the same crimes of terrorism in a civil and a military court. She was judge by faceless judges, which are not impartial and independent.</p>	1997	<p>Article 5</p> <p>Article 7</p> <p>Article 8</p> <p>All in relation with article 1 (1) of the American Convention.</p>	<p>The Court decided that María Elena Loayza Tamayo was subjected to inhumane treatment during her detention. In relation to the rape she alleged it concluded that this allegation was not substantiated.</p> <p>The Court also found a violation to the rights of fair trial and judicial guarantees.</p> <p>In relation to the reparations the Court issued in November 1998 a sentence on reparations that included monetary compensation, the restitution of Mrs. Loayza Tamayo in her work, as well as the general measure of adapting the domestic legislation on terrorism to conform to the American Convention.</p> <p>In 2005 the Court issued an Order of Compliance with the Judgment in which it stated that the Court shall comply with the reparations sentence.</p>

¹¹² The Court has decided three other cases where women were subjected to State violence: Myrna Mack v Guatemala, Mapiripan Massacre v Colombia and Serrano Cruz Sisters. However, it is arguable that these cases did not involve a gender dimension that it is why they are not considered in the present table.

<p>Maritza Urrutia v Guatemala</p> <p>Judgment of 27 November 2003</p> <p>Series C I/A Num. 103</p>	<p>The case concerns the arbitrary detention and torture of Maritza Urrutia that she was subjected when she was retained in a clandestine place of detention. She was obliged to issue to public opinion a communiqué, which her captors had prepared previously.</p> <p>When the case was before the Commission Guatemala acknowledged its responsibility for the violations against Maritza Urrutia. However, the petitioners asked to rule on the merits and because of the non-compliance the case went to the Court.</p>	2003	<p>Article 5 Article 7 Article 8</p> <p>All in relation with article 1 (1) of the American Convention.</p> <p>Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture</p>	<p>The Court found a violation of the right to humane treatment embodied in article 5 of the American Convention as well as the obligations enshrined in the Inter-American Convention to Prevent and Punish Torture. Although the Court did not highlight that the nature of the threats to Mrs. Urrutia included sexual violence. Moreover, the right to privacy was not considered as being violated.</p> <p>In relation to the reparations the Court established that the judgment per se was part of the violation, and that the State.</p>
<p>Plan de Sánchez Massacre V Guatemala</p> <p>Judgment 29 April 2004</p> <p>Series Num. 105</p>	<p>The case concerns the massacre of at least 250 people, most of them Mayan people by the Armed Forces of Guatemala.</p> <p>In the context of that massacre an undetermined number of women and girls were subjected to rape and other forms of torture.</p> <p>The Guatemalan government acknowledged its responsibility and the Court did not enter to analyze all the facts.</p>	2004	<p>Article 5 Article 8 Article 12 Article 24 Article 25</p> <p>All in relation with article 1 (1) of the American Convention.</p>	<p>The Court decided that this acts took place in the context of a genocidal policy developed by the Guatemalan State against the Mayan people.</p> <p>The Court found a violation of article 8 and article 11 and this could be interpreted as taking very much into account the rape that the women suffered. However, as the Guatemalan Government recognized its responsibility the Court did not enter to analyze in depth the facts.</p> <p>The sentence of reparations is very comprehensive.</p>

Penal Castro Castro V Peru Judgment 25 November 2006 Series C Num. 160	<p>The case concerns the police operation conducted in a prison in Peru where a large number of inmates were killed, injured and subjected to various forms of inhumane and degrading treatment. Several women were subjected to diverse forms of sexual violence, including one woman that was raped.</p> <p>The Peruvian government acknowledged its responsibility on part of the facts. Nevertheless, the Court analyzes the merits of the case.</p>	2006	Article 4 Article 5 Article 8 Article 25 A 1.1 of the American Convention and all in connection with article 7.b of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women. Articles 1, 6 and 8 of the Inter-American Convention for the Prevention and Punishment of Torture.	<p>The Court recognized in this decision that in the context of armed conflict women are subjected to specific forms of violence, particularly sexual violence which is used to punish the enemy. Following the international jurisprudence on the issue the Court defines sexual violence and interpreted it in a very broad way. It stated that, under certain circumstances, rape can constitute torture, like in this case.</p> <p>The Court established that the Peruvian state was responsible for the alleged acts as it was recognized by the State itself.</p> <p>To interpret the scope and content of the rights contained in the American Convention, regarding the acts of violence against women in the case, the Court used the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women.</p> <p>This case sets a very significant precedent in the area of gender based violence perpetrated by state agents.</p>
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Table 4: Cases of Domestic Violence
Admissibility and Merits
Inter-American Commission of Human Rights

Case	Country	Date	Status in the system	Observations
María Da Penha Maia Fernández Case 12.051	Brazil	2001	Merits	Partially compliance with the recommendations. The State have taken important steps, however, the perpetrator was sentenced it is serving his sentence in an open regime. In relation to the recommendation of enacting legislation to prevent and punish domestic violence. The petitioners stated that the new law only covers physical abuse and it is not in accordance with the ICPPEVAW.
Indravani Pamela Ramjattán Case 11.387	Trinidad and Tobago	1998	Admissibility	No further information available of the process of the case.
Zoila América Narváez Murillo Case 12.230	Nicaragua	2001	Admissibility	No further information available of the process of the case.

Table 5: Cases of violence perpetrated in the community

**Friendly settlement, Admissibility and Merits
Inter-American Commission of Human Rights**

Case	Country	Date	Status in the System
MZ Case 12.350	Bolivia	2001	Admissibility. Negotiations to reach a friendly settlement are taking place.
Esmeralda Herrera Monreal Case 282/02	Mexico	2005	Admissibility.
Claudia Ivette González Case 281/02	Mexico	2005	Admissibility.
Laura Berenice Ramos Monárrez Case 283/02	Mexico	2005	Admissibility.
Marina Machaca	Peru	2000	The case reached a friendly settlement before admissibility.

**Table 6: Cases of Sexual and Reproductive Rights
Admissibility and Merits
Inter-American Commission of Human Rights**

Topic	Case	Date	Country	Status in the system
Vaginal inspections	X and Y Case 10.506	1996	Argentina	Merits. Violations of articles 5,11, 17 and 19. The Commission stated that Argentina took actions towards partial compliance by proposing a reform to the legislation in order to regulate inspections and establishing in which cases (exceptional) vaginal inspections are allowed. The Commission ordered to pay compensation to the victims.
Sexual orientation	Marta Lucía Álvarez Giraldo Case 11.656	1999	Colombia	Admissibility. There is no further information about the process of the case.
Forced sterilization	María Mamérita Mestanza Case 12.191	2003	Peru	Admissibility. Friendly settlement. Comprehensive agreement of reparations that included monetary compensation, recovery services for the family, investigation of the acts, as well as a general measures in order to create a national policy of sexual and reproductive health in Peru.
In vitro fertilization	Ana Victoria Sánchez Villalobos et al Case 12.361	2004	Costa Rica	Admissibility. There is no negotiation of friendly settlement going on at the moment.

Prevention from exercising the provision of the law regarding the termination of pregnancy in case of rape	Paulina	2002	Mexico	A Friendly settlement is being negotiated. The government and the petitioners have agreed a preliminary proposal of reparations.
Sentenced to 42 years in prison allegedly for murdering her baby immediately following delivery. She declared her innocence	Alba Lucía Rodríguez	2002	Colombia	She was released before the case was admitted. The case involved violations of fair trial and due process but it also reflected the how society conceptualize women and their reproductive rights. ¹¹³

¹¹³ Abi-Mershed, E. "Reproductive rights in the context of the Inter-American System for Human Rights Protection" in *Promotion and Defense of Reproductive Rights: a new challenge for the national human rights institutions*. Inter-American Institute of Human Rights, Costa Rica: 2003.

Table 7: Individual cases of women before the Inter-America System involving some form of violence

Inter-American System for the Protection of Human Rights 1990-2004

Topic	Total number of cases	Cases before the Commission (admissibility)	Cases before the Commission (merits)	Cases before the Court
Forced disappearances	21	1	19	1
Torture and ill treatment (sexual violence)	12	2	8	3
Extrajudicial Executions	14	6	5	3
Arbitrary detention and police violence	4	4	0	0
Conditions of detention	1	1	0	0
Domestic violence	3	2	1	0
Violence in the community	4	4	0	0
Sexual and reproductive rights	4	3	1	0

TOTAL NUMBER OF CASES: 64

Total number of cases in the admissibility stage before the Commission: 23

Total number of cases with report on the merits: 34

Total number of cases before the Court: 7