

Gender violence against low-income women in Mexico. Analysis of the Inter-American doctrine*

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1. *Introduction. A contextual note on poverty and gender violence in Mexico*

The Latin American and Caribbean regions have always been characterized for structural economic and social inequality¹. Even if they cannot be considered as the most poor regions in the world², according to the data collected by the Economic Commission for Latin America and the Caribbean (hereinafter "ECLAC"), the number of people living in poverty in Latin America reveals an alarming situation: for 2015, it has been observed an increase in both poverty and indigence rates, where almost 165 millions people are living in poverty, more than 60 millions of which are in a situation of indigence

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¹ L. Gasparini and G. Cruces, *Poverty and Inequality in Latin America: a Story of two Decades*, in *Journal of International Affairs*, vol. 66, 2013, p. 51 ff.

² See The World Bank, *Poverty & Equity Data Portal*, 2019, available at <http://povertydata.worldbank.org/Poverty/Home> [Accessed on March 26, 2019].

(extreme poverty, living with less than \$ 1.90 per day)³, representing almost 4% of the population⁴.

Even if it has not demonstrated the relationship between extreme poverty and inequality⁵, the Latin American and Caribbean regions continue to be the most unequal in the world⁶: according to the 2014 data, 10% of the population accounts for 71% of the wealth, compared to half of the population that is in poverty, which only would accumulate 3.2%. In that context, and in more specific terms, only 1% owns 40% of the wealth.

Inequality affects men and women differently. Women are more vulnerable to fall and remain in poverty. Unlike the dynamics of male poverty, which is basically related to work, female poverty is also significantly linked to family life and society. The lack of autonomy in women's income-generating capacity makes them especially vulnerable, particularly at certain stages of their life cycle, such as pregnancy, lactation, care of young children and old age. This phenomenon is called "feminization of poverty"⁷. The "gender

³ According to the ECLAC a person is "poor" when the per capita income of his household is lower than the value of the poverty line, or the minimum amount necessary to satisfy his essential needs. Data is available at ECLAC, *Social Panorama of Latin America*, Santiago del Chile, 2007. See also S. Cecchini and A. Uthoff, *Poverty and employment in Latin America: 1990-2005*, in *Cepal Review*, n. 94, 2008, p. 41 ff.

⁴ See ECLAC, *Social Panorama in Latin America*, Chile, 2017, graphic II.1.

⁵ C. Arriagada, *Pobreza en América Latina: Nuevos escenarios y desafíos de políticas para el hábitat urbano*, Santiago del Chile, 2000, p. 18.

⁶ Inequality in income distribution is measured by the Gini coefficient: in countries with the lowest Gini coefficient income is distributed more evenly. In contrast, those with a higher Gini coefficient are those where the inequality in income distribution is greater. The data on the Gini coefficient is available in the World Bank website: <https://data.worldbank.org/indicator/SI.POV.GINI>.

⁷ The first mention of this expression can be found in Diana Pearce's work on *The feminization of poverty: Women, work, and welfare*, in *Urban and Social Change Review*, vol.11, 1978, p. 28 ff. Her work was focused particularly on the statistical description that referred to the increase of the number of households headed by women in the USA (which went from 10.1% in 1950 to 14% in 1976,

perspective” also points to a multidimensional perspective because the multiple roles of men and women in the house, in the labor market and in society are considered, as well as factors such as age and ethnicity that interrelate with gender⁸.

Inequality is strongly related to violence too. It is not a coincidence that Latin America and the Caribbean are both within the most unequal regions in the world and the most insecure outside the war zones. According to the last Annual Report elaborated by the Mexico’s Citizens’ Council for Public Security’s⁹, among the 50 most dangerous cities in the world – as far as the number of homicide is concerned – 42 are located in Latin America¹⁰. However, also data on

which resulted in a 40% increase) and the correlation of that fact with the deterioration of their living conditions.

⁸ See C. Clert, *De la vulnerabilidad a la exclusión: género y conceptos de desventaja social*, in I. Arriagada and C. Torres (eds.), *Género y pobreza. Nuevas dimensiones*, n. 26, 1998. Regarding the dynamics of poverty, the gender perspective points out the importance of understanding the phenomenon as a “process” and not as a “symptom”, thus avoiding static views, that is, «poverty as a photo, [that] naturalizes and freezes social relations, gives little account of the relations of the gender and generation system, does not allow to understand the previous processes or potentialities and does not allow understanding poverty in historical macro social and micro dimensions in the home»: M. C. Feijoo, *Desafíos conceptuales de la pobreza desde una perspectiva de género*, document presented to the Meeting of Experts on Poverty and Gender, Economic Commission for Latin America and the Caribbean (ECLAC)/International Labor Organization (ILO), Santiago del Chile, 12-13 August 2003.

⁹ The Report is available at <http://seguridadjusticiaypaz.org.mx/files/Metodologia.pdf> [Accessed on April 15, 2019].

¹⁰ 15 out of 50 are located in Mexico (Tijuana is the first in the list with 138,26 for every 100.000 people, Acapulco, Ciudad Victoria, Ciudad Juárez, Irapuato, Cancun, Culiacan, Uruapan, Ciudad Obregon, Coatzacoalcos, Celeva, Ensenada, Tepic, Reynosa and Chihuahua follow), 14 in Brazil (Natal, Fortaleza, Belem, Feira de Santana, Maceió, Vitória da Conquista, Aracaju, Salvador, Macapa, Campos dos Goytacazes, Manaus, Recife, Joao Pessoa, Terisina) and 6 in Venezuela (Caracas, Ciudad Guayana, Ciudad Bolivar, Barquisimeto, Maturin and Valencia). Two Colombian cities are on the list (Palmira and Cali), as two Honduran cities (San

gender violence is really alarming. In 2017, almost 3,000 women were murdered in the Latin American and Caribbean regions by their former or actual partner¹¹, with Brazil leading the list with 1,133 murdered women for gender-related reasons¹².

It is not a coincidence that the most unequal region in the world is also the most violent one and it does represent a real risk in generating endemic violence against women and especially low-income women. According to the studies conducted by the Inter-American Development Bank¹³, the strict relationship between inequality and violence emerges. On one hand, inequality constitutes a risk factor for the appearance of physical violence in the house. On the other hand, inequality is the consequence of violence, that is, violence impoverishes and slows economic development, since: (a) attention to the consequences of social violence and domestic violence causes spending on police system, judicial and in the provision of social services which, as a whole, commits resources that could be destined to more productive activities, and (b) in the specific case of women who suffer domestic violence, are less productive in their places of work, which is a direct loss for national production.

Pedro Sula and Distrito Central), and El Salvador, Guatemala, and Jamaica all have one city on the list. Four US cities are on the list as well listed: St. Louis, Baltimore, Detroit and New Orleans. San Juan, the capital of Puerto Rico, is also on it.

¹¹ According to official data compiled by the Gender Equality Observatory for Latin America and the Caribbean (GEO) of the ECLAC, available at https://oig.cepal.org/sites/default/files/nota_27_eng.pdf [Accessed on April 30, 2019].

¹² Nonetheless, if the rate per every 100,000 women is compared, the phenomenon has a scope in El Salvador that is seen nowhere else in the region: 10.2 femicides for every 100,000 women. In 2016, Honduras recorded 5.8 femicides for every 100,000 women. In Guatemala, the Dominican Republic and Bolivia, high rates were also seen in 2017, equal to or above 2 cases for every 100,000 women. In the region, only Panama, Peru and Venezuela have rates below 1.0.

¹³ Cited in (cited in M. Buvinic *et al*, *La violencia en América Latina y el Caribe: un marco de referencia para la acción*, Washington D.C., 1999).

Mexico is not an exception to this panorama. Data on inequality and gender violence against low-income is really worrying in the country. According to the 2018 Report of the International Monetary Fund¹⁴, Mexico's economy has registered a continuity in growing and growth is expected to moderately pick up to 2.3% in 2019. While Mexico's public debt is projected to stabilize, the current level—at 54% of GDP—limits space for social and infrastructure spending. However, poverty affects over 43% of the population, and according to the Gini Index, inequality is at almost 50¹⁵.

Together with social and economic inequality, also the rates of violence are still very high in Mexico¹⁶. Mexico also faces serious problems as far as gender violence is concerned. Gender violence in Mexico is a broad and complex phenomenon that is rooted in social structures and has various manifestations. In 2007, the General Law on the Women Access to a Life Free of Violence was enacted, which constitutes a pillar in the normative framework to address violence against women in the country. However, there are gender roles and stereotypes that are still valid and they can partly explain the high rates of gender violence in Mexico.

According to the data elaborated by the National Institute of Statistic and Geography, out of the 46.5 million women aged 15 and over in the country 66.1% (30.7 million) have faced violence of any

¹⁴Available at <https://www.imf.org/en/Publications/CR/Issues/2018/11/07/Mexico-2018-Article-IV-Consultation-Press-Release-Staff-Report-and-Staff-Statement-46343> [Accessed on April 15, 2019].

¹⁵ According to the 2018 Report of the International Monetary Fund on Mexico (see *supra*, note n. 14), poverty rates remain high due to the Mexico's meager per capita growth in recent decades. Moreover, social policies in the country have not been targeted as well as they could have been: as a matter of fact, some social programs have disproportionately benefited individuals at the top rather than at the bottom of the income distribution.

¹⁶ As already mentioned above among the first six more dangerous cities in the world, five are Mexican: see *supra*, note n. 10.

kind and by any aggressor, during their lives. 43.9% have faced assaults by the current or last partner throughout their relationship and 53.1% suffered violence from an aggressor other than the couple. Between 2014 and 2016, the entities with the highest rates of femicides have been Baja California, Colima, Chihuahua, Guerrero, the State of Mexico, Michoacán, Morelos, Oaxaca, Sinaloa, Tamaulipas and Zacatecas¹⁷.

Among the different dynamics of violence against women that have occurred in the country, there are some that due to their seriousness and for being representatives of a context of generalized endemic gender violence have reached the Inter-American Court of Human Rights (hereinafter “the IACtHR”), which developed a very interesting case law in which the issue of gender violence against low-income women has been addressed.

According to Article 1 of the American Convention on Human Rights (hereinafter “the American Convention”)¹⁸, on “Obligation to Respect Rights”, «The States Parties to [the] Convention undertake to *respect* the rights and freedoms recognized [t]herein and to *guarantee* to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.» (emphasis added)

¹⁷ See the *Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares 2016* [National Survey on the Dynamics of Relationships in Households 2016], the *Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública 2018* [National Survey of Victimization and Perception of Public Safety 2018] and the *Censo de Alojamiento de Asistencia Social 2015* [Census of Social Assistance Lodges 2015] all elaborated by the National Institute of Statistics, Geography and Informatics (INEGI, from its name in Spanish, *Instituto Nacional de Estadística, Geografía e Informática*).

¹⁸ Organization of the American States, *American Convention on Human Right*, November 22, 1969.

It does establish a double obligation: on the one hand, the obligation to “respect” and, on the other, the obligation to “guarantee”. The first implies an attitude of “omission”, that is, of not violating people’s fundamental rights: in this sense, therefore, States have the duty to refrain from committing any type of action or act that interferes with the free and full exercise of the human rights. The second, on the other hand, implies a *quid pluris*, identified in the State duty to take specific measures and activate mechanisms to “prevent” rights from being violated by others.

There is a third obligation provided by the American Convention: Article 63.1 establishes the State obligation to “repair” the injury provoked by the violation of the rights recognized in the Convention¹⁹. It deals with the idea of a “full reparation”, which arises from the responsibility attributable to the State. Consequently, reparation is a right for who has been affected but also a State obligation²⁰.

Which are the implications in terms of human rights related to these obligations with reference to cases of gender violence against low-income women? And more importantly, which are the measures that States must adopt to repair cases of gender violence?

¹⁹ Article 63 of the American Convention «1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.»

²⁰ On this double connotation of reparation measures see A. J. Rousset Siri, *El concepto de reparación integral en la jurisprudencia de la Corte Interamericana de Derechos Humanos*, in *Revista Internacional de Derechos Humanos*, n. 1, 2011, p. 59 ff.

The present paper will try to provide an answer to these questions throughout the analysis of the IACtHR case law with specific reference to three decisions: they are the cases of *González et al. (“Cotton Field”) v Mexico*²¹, and the “twin decisions”: *Fernández Ortega et al. v Mexico*²² and *Rosendo Cantú et al. v Mexico*²³. In par. 2, a brief description of each case will be offered, underlining which are the rights of the American Convention that IACtHR considers that has been breached. Par. 3 will concentrate on the reparation measures that have been dictated in the selected decisions. Finally, some brief final considerations will be developed, mainly focusing on the effectiveness of the IACtHR case law in the protection of low-income women against gender violence.

The choice of these three decisions finds its justification in the fact that among the cases in which Mexico has been declared internationally responsible for the violation of the rights recognized in the American Convention, the selected cases deal with gender-violence against low income women.

2. The IACtHR’ case law on gender violence against low-income women in Mexico

Violence and discrimination against women are endemic problems in many Latin-American countries and the IACtHR has

²¹ IACtHR, *Case of González et al. (“Cotton Field”) v Mexico*, Judgment of November 16, 2009 (Preliminary Objection, Merits, Reparations, and Costs).

²² IACtHR, *Case of Fernández Ortega et al. v Mexico*, Judgment of August 30, 2010 (Preliminary Objections, Merits, Reparations and Costs).

²³ IACtHR, *Case of Rosendo Cantú et al. v Mexico*, Judgment of August 31, 2010 (Preliminary Objections, Merits, Reparations and Costs).

developed a very interesting and advanced case law dealing with this issue²⁴.

Generally speaking, the IACtHR case law on violence and discrimination against women addresses two situations: violence and discrimination in (internal) armed conflict contexts and in no-conflict contexts. In the first category we can include the cases decided by the IACtHR against Colombia²⁵, Perú²⁶, Guatemala²⁷ and El Salvador²⁸. In these cases, the Court stated that during an armed conflict, women are particularly selected as victims of sexual violence and in these contexts, rape of women becomes a State practice, aimed at

²⁴ See IACtHR, *Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No 4: Género*, San José Costa Rica, 2017.

²⁵ See the following decisions issued by the IACtHR: *Case of the Massacre of Mapiripán v Colombia*, Judgment of September 15, 2005 (Merits, Reparations, and Costs) and *Case of the Massacres of Ituango v Colombia*, Judgment of July 1, 2006 (Preliminary Objections, Merits, Reparations and Costs).

²⁶ See the following decisions issued by the IACtHR: *Case of the Miguel Castro-Castro Prison v Peru*, Judgment of November 25, 2006 (Merits, Reparations and Costs); *Case of Espinoza Gonzáles v Perú*, Judgment of November 20, 2014 (Preliminary Objections, Merits, Reparations and Costs); and *Case of J. v Perú*, Judgment of November 27, 2013 (Preliminary Objections, Merits, Reparations and Costs).

²⁷ See the following decisions issued by the IACtHR: *Case of the “Las Dos Erres” Massacre v Guatemala*, Judgment of November 24, 2009 (Preliminary Objections, Merits, Reparations and Costs); *Case of the Río Negro Massacres v Guatemala*, Judgment of September 4, 2012 (Preliminary Objections, Merits, Reparations and Costs); *Case of Gudiel Álvarez et al. (“Diario Militar”) v Guatemala*, Judgment of November 20, 2012 (Merits, Reparations and Costs); *Case of the Plan de Sánchez Massacre v Guatemala*, Judgment of November 19, 2004 (Reparations); and *Case of Human Rights Defender et al. v Guatemala*, Judgment of August 28, 2014 (Preliminary Objections, Merits, Reparations and Costs).

²⁸ IACtHR, *Case of the Massacres of el Mozote and nearby places v El Salvador*, Judgment of October 25, 2012 (Merits, Reparations and Costs).

destroying their dignity at the cultural, social, family and individual level²⁹ and consequently it does constitute a form of torture³⁰.

However, one of the more interesting developments of the IACtHR case law in the international and comparative perspective concerns the so called “endemic gender violence” produced in no-conflict contexts, in which there has been no interruption of the democratic life of the country and no internal conflict has occurred in the contemporary history.

This is the case of Mexico.

2.1. *The Case of González et al. (“Cotton Field”) v Mexico and the violence against women in Ciudad Juarez*

In the *Case of González et al. (“Cotton Field”) v Mexico*, the IACtHR addressed the disappearance and death of three young women in Ciudad Juarez (Chihuahua): Laura Berenice Ramos Monárrez³¹, Claudia Ivette González³² and Esmeralda Herrera Monreal³³. Their young bodies, tortured, raped and brutally

²⁹ See the following decisions issued by the IACtHR: *Case of the “Las Dos Erres” Massacre v Guatemala*, cit., par. 139 and *Case of the Plan de Sánchez Massacre v Guatemala*, cit., párr. 49.

³⁰ D. M. Bustamante Arango, *La violencia sexual como tortura. Estudio jurisprudencial en la Corte Interamericana de Derechos Humanos*, in *Revista Facultad de Derecho y Ciencias Políticas*, vol. 44, 2014, p. 461 ff.

³¹ Laura Berenice Ramos Monárrez was a 17-year-old young woman who was studying the fifth semester of high school. She also worked in a restaurant. Like all young people, she liked to go out, have fun but also worked to have better life opportunities.

³² Claudia Ivette González was 20 years old and worked in a maquiladora company. She was a very reserved girl and did not like to go out. Her time was always limited as she helped her sister with the care of her youngest daughter.

³³ Esmeralda Herrera Monreal was 14 years old and worked as a domestic employee. She arrived in Ciudad Juarez a few months earlier, with her mother,

mutilated, were found dead in a cotton field in Ciudad Juárez on November 6 and 7, 2001, along with the mortal rests of five other people.

Ciudad Juárez can be considered a red focus zone as far as “endemic gender violence” is concerned, being sadly famous for many femicide cases. It is located in the north of the country and more specifically in the state of Chihuahua, on the border with El Paso, Texas. It has a population of more than 1.2 million inhabitants, and it is an industrial city – where the maquila industry has flourished – and a place of huge transit for Mexican and foreign migrants. The State, as well as various national and international reports, mention a series of factors that converge in Ciudad Juárez, such as social inequalities and the proximity of the international border, that have contributed to the development of different types of organized crime, such as drug-trafficking, human trafficking, arms smuggling and money-laundering, which have increased the levels of insecurity and violence³⁴.

Since 1993, the number of disappearances and murders of women and girls in Ciudad Juárez has increased significantly. Although Ciudad Juárez has been characterized by a significant increase in crimes against women and men, several aspects of the increase are “anomalous” due to the fact that the coefficients for murders of women doubled compared to those for men, the homicide rate for women in Ciudad Juárez is disproportionately higher than that for other border cities with similar characteristics³⁵.

Although no clear data exists on the exact number of women who have been murdered in Ciudad Juárez since 1993, according to

brothers and nephews and still had no friends. Since her 15th birthday was approaching, her family organized a party to celebrate. In addition, Esmeralda wanted to continue her studies and have a good job that would allow her to support her mother and family.

³⁴ IACtHR, *Case of González et al. (“Cotton Field”) v Mexico*, cit., pars. 113 ff.

³⁵ *Idem*.

relevant reports on this issue a range from 260 to 370 women from 1993 to 2003 has been murdered. Meanwhile, the State forwarded evidence that 264 murders of women had been recorded up until 2001, and 328 up to 2003. According to the same evidence, by 2005, the number of murders of women had increased to 379. Only recently, the Mexican State has acknowledged the problem, recognizing that still in 2006, Ciudad Juárez was ranked fourth among all Mexican cities for the murder of women³⁶.

In the three cases at the IACtHR consideration, the girls' disappearance had been reported to the competent authorities by their relatives and close friends within the first 72 hours³⁷. After the disappearance's report and until the bodies of the victims were found, the authorities had limited themselves to recording the disappearance and requesting the judicial police to investigate. Likewise, an official letter of the Victims of Crime Program had been issued and posters had been prepared indicating that the victims had disappeared. The only investigative effort had been to collect the testimonies of some people³⁸. But no real effort to find them was made.

The IACtHR declared Mexico's international responsibility for the violation of various provisions of the American Convention and in particular, the rights to life (Article 4.1, ADH Convention), to personal integrity (Article 5, ADH Convention) and to personal liberty (Article 7, ADH Convention) is pointed out.

More specifically, the State international responsibility is related to the general obligation to *respect* and *guarantee* (Article 1.1 of the American Convention), as well as the obligation to adopt provisions of domestic law [Article 2 of the American Convention and Article 7, lett. b) and c) of the Convention to Prevent, Punish and Eradicate Violence against Women - hereinafter "Convention of Belem do

³⁶ *Idem*.

³⁷ *Ibidem*, pars. 171-172.

³⁸ *Ibidem*, pars. 180, 185 and 194.

Para³⁹]: in particular, as already seen above⁴⁰ the general obligation provided for in Article 1.1. of the American Convention establishes a series of more specific obligations that must be activated at two different times: 1. Immediately after the disappearance, that results in the obligation of immediate and effective search (in the specific case, the competent authorities maintained an attitude of indifference towards the victims relatives' complaints, minimizing the disappearance of the girls with discriminatory comments due to their gender and age); 2. Immediately after the finding of the bodies, that implies the duty to investigate, clarify the facts and finding the responsible (not respecting this obligation implies the violation of the rights of access to justice and judicial protection provided by Articles 8.1 and 25.1 of the American Convention).

In this sense, therefore, Mexico international responsibility is related to the attitude of indifference maintained by State authorities that affected the internationally recognized obligation to carry out investigations with due diligence⁴¹. In addition, irregularities and inconsistencies in the investigation by the Mexican authorities after the disappearance as well as after the finding of the girls bodies are common characteristics in the three cases⁴².

³⁹ Organization of American State, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* ("Convention of Belem do Para"), June 9, 1994. According to Article 7.a «The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;». See the following decisions issued by the IACtHR: *Case of Fernández Ortega et al. v Mexico*, cit., pars. 100-131 and *Case of Rosendo Cantú et al. v Mexico*, cit., pars. 89-140.

⁴⁰ See *supra*, par. 1.

⁴¹ IACtHR, *Case of González et al. ("Cotton Field") v Mexico*, cit., pars. 197-199 and 208.

⁴² For a more detailed description of this case and especially for an analysis of the due diligence see *v Abramovich, Responsabilidad estatal por violencia de*

2.2. *The Case of Fernández Ortega et al. v Mexico and Rosendo Cantú et al. v Mexico: the “military institutional violence”*

In the last two decades, the Mexican State of Guerrero (located in the south-west of the country) has experienced a significant military presence, whose purpose was the repression of illegal activities, such as those implemented by the organized crime very present in the area⁴³. Unfortunately, in the exercise of this task, the military present in the territory have been responsible of many fundamental rights' violation⁴⁴.

An important percentage of the Guerrero's population belongs to indigenous communities, who live in areas of great marginalization and poverty, preserving their traditions and cultural identity. They suffer a special condition of vulnerability mainly related to the lack of economic resources: moreover, many of them do not speak or understand Spanish (and they do not count on interpreters) and suffer many fundamental rights' violations (as far as, for example, the right to access to justice or health is concerned). This situation is even more serious for indigenous women: for them, the report of certain facts is a challenge that requires facing many barriers, including the rejection by their community and other «traditional harmful practices»⁴⁵.

género: comentarios sobre el caso “Campo Algodonero” en la Corte Interamericana de Derechos Humanos, in Anuario de Derechos Humanos, 2010, p. 167 ff.

⁴³ M. Bergman, *La violencia en México: algunas aproximaciones académicas*, in *Desacatos*, num. 40, 2012, p. 65 ff.

⁴⁴ IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit., pars. 78 ff.

⁴⁵ The members of the indigenous communities of Guerrero, due to the condition of special vulnerability in which they live, face enormous difficulties in access to a lawyer, moving to health centers or judicial bodies. This has caused that members of indigenous communities do not go to justice bodies or public bodies for the protection of human rights due to distrust or fear of reprisals: IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit., pars. 78 ff.

The women of the State of Guerrero have also been victims of the so-called “military institutional violence”⁴⁶, perpetrated by the military that should perform police work in the territory. This has further aggravated the situation of great vulnerability indigenous women already live under⁴⁷. Within this context, between 1997 and 2004 several reports of sexual violations of indigenous women attributed to the military have been filed. These cases were known by the military jurisdiction and responsible people were never sanctioned⁴⁸. Two of them arrived to the Inter-American judge.

The first one is the *Case of Fernández Ortega v Mexico*. Inés Fernández Ortega is an indigenous woman who belongs to the Me’phaa community. She used to live in a village called Barranca Tecoani, located in the State of Guerrero, in an isolated mountainous area. She is married and has 5 children now. On the 22 March 2002, when she was 25 years old, she was raped by Mexican soldiers who were in the territory on police work duties. While she was staying home with her children, a group of approximately eleven soldiers approached her house: three of them entered the house without her consent and asked her about her husband’s alleged illegal activity. Inés did not speak Spanish well and she was afraid. The soldiers

⁴⁶ J. Ceja Martínez, *Seguridad ciudadana, militarización y criminalización de las disidencias en México (2006-2012)*, in *Espacio Abierto Cuaderno Venezolano de Sociología*, vol. 22, 2013, p. 681 ff.

⁴⁷ IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit., pars. 78 ff., in which the document of the Secretariat of Women of the State of Guerrero and the National Network of Refugees is cited, *Desarrollo de Redes de detección, apoyo y referencia de casos de violencia contra las mujeres indígenas de Guerrero*, 2008, folio 13247, according to which «indigenous women continue to suffer the consequences of a patriarchal structure that is blind to gender equality, especially in instances such as armed or police forces, where they are trained to defend, combat or attack criminals, but they are not sensitized to the human rights of the community and of women».

⁴⁸ IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. pars. 78 ff.

threatened Inés and one of them raped her while the other two stayed there watching the rape.

Her children witnessed what happened but when Inés was raped they had fled to their grandparents house in search of help. Inés and her husband filed a criminal complaint and the authorities initiated a preliminary investigation for the crimes of rape, trespassing, abuse of authority and those that resulted. They encountered a lot of hostility by the Mexican authorities as well as in the medical staff that attended Inés. A few months later, when the possible participation of military personnel in the events was determined, the preliminary investigation was remitted to the military jurisdiction⁴⁹. This decision was opposed by the victim without any success.

The second case is about Valentina Rosendo Cantú's rape. Valentina was 17 years old when, on February 16, 2002, she was raped by a soldier. Valentina, as Inés, is an indigenous woman of the Me'phaa community; she is originally from the community of Caxitepec in the State of Guerrero and at the time of the facts she lived with her husband and their daughter in a village in a mountainous area with very difficult access. The day she suffered the rape, Valentina was in a stream near her home where she had come to wash clothes. When she was about to take a bath, eight soldiers, accompanied by a civilian who had been detained, approached and surrounded her. She was interrogated by two of them about alleged criminal activities in the area: she was scared and said that she had no information. She was beaten and sexually abused by two of them. The victim announced the facts to the community and state authorities, finding the same resistance and difficulties that Inés Fernandez Ortega had already encountered when she filed her complaint.

⁴⁹ On the military jurisdiction in Mexico see K. Hudlet Vázquez and D. González Núñez, *Los efectos de la incidencia internacional de las organizaciones de la sociedad civil: el caso de la Corte Interamericana de Derechos Humanos y el fuero militar en México*, in *El Cotidiano*, num. 172, 2012, p. 136 ff.

In a pair of “twin decisions” (due to the proximity of the date in which the two cases had been addressed and the similarity of the facts occurred) the IACtHR determined the international responsibility of the Mexican State for the violation of several provisions of the American Convention. First of all, in both cases the Inter-American judge declared Mexico’s responsibility for the violation of the rights to personal integrity, dignity and privacy, enshrined, respectively, in Articles 5.2, 11.1 and 11.2 (in relation to Article 1.1) of the American Convention and Articles 1, 2 and 6 of the Inter-American Convention to Prevent and Punish Torture⁵⁰, as well as for the breach of the duty established in Article 7.a of the Convention of Belem do Para.

The IACtHR recalls the Preamble to the Convention of Belem do Para, according to which violence against women not only constitutes a violation of human rights, but is «an offense against human dignity and a manifestation of the historically unequal power relations between women and men,» that «pervades every sector of society, regardless of class, race, or ethnic group, income, culture, level of education, age or religion, and strikes at its very foundation.»⁵¹ Likewise, it reiterates its own jurisprudence according to which sexual violence does include every action with a sexual nature that is committed against a person without her/his consent, with the physical invasion of the human body, but also with acts that do not imply any penetration or physical contact⁵². In particular, rape constitutes a paradigmatic form of violence against women whose consequences transcend the person of the direct victim⁵³.

⁵⁰ Organization of American State, *Inter-American Convention to Prevent and Punish Torture*, December 9, 1985.

⁵¹ Preamble of the Convention of Belem do Para. See the *Case of Fernández Ortega et al. v Mexico*, cit., par. 118

⁵² IACtHR, *Case of the Miguel Castro-Castro Prison v Peru*, cit., par. 306.

⁵³ IACtHR, *Case of Bueno-Alves v Argentina*, Judgment of May 11, 2007 (Merits, Reparations, and Costs).

Secondly, the Court declared the violation of the right to personal integrity provided for in Article 5.1 of the American Convention of Inés and Valentina and their families⁵⁴, for the behavior of the authorities⁵⁵. In particular, Valentina's daughter, who was a few months old at the time of the events, suffered because of the exile that she had to face with her mother as a result of the events, the distance from her community and her indigenous culture, and the dismemberment of her family. These transfers caused her upbringing to develop far from her maternal family, to which she was strongly linked. Additionally, the transfers also resulted in her education outside the community being developed in schools where only Spanish was spoken⁵⁶.

Likewise, the State international responsibility for the violation of Articles 8.1 and 25.1 of the American Convention was declared due to the lack of due diligence in the investigation and punishment of those responsible. Moreover, Mexico failed to comply with the obligation of guaranteeing, without any discrimination, the right of access to justice, established in Articles 8.1 and 25 of the American Convention, due to the fact that neither Inés nor Valentina had an interpreter provided by the State when they required medical attention, neither when they filed their initial complaint, nor did they receive information in their language about the actions derived from their complaint⁵⁷.

⁵⁴ IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. par. 149, in which it is highlighted that the violation of the right of Inés family to personal integrity enshrined in Article 5.1 of the American Convention was related to the facts on the search for justice and impunity.

⁵⁵ In particular, in the case of Inés Fernández Ortega, the violation of her right to psychological integrity was due to the delay in medical care, the loss of gynecological tests and the delay in investigating the facts of the case: IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit., par. 135.

⁵⁶ IACtHR, *Case of Rosendo Cantú et al. v Mexico*, cit., par. 137 ff.

⁵⁷ IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit., pars. 190 ff. See also the *Case of Rosendo Cantú et al. v Mexico*, cit., par. 185 according to which in

Finally, in the specific case of Valentina, Mexico has been declared internationally responsible for the violation of the rights of the child recognized in Article 19 of the American Convention for failing to adopt special measures in her favor, not only during the criminal complaint, but also during the time when, as a child, she went through the investigations, especially because as an indigenous person, she was in special situation of vulnerability due to poverty and lack of economic resources⁵⁸.

3. Reparation measures: which obligations for the Mexican State?

Reparation is the main consequence of State international responsibility⁵⁹. It is an obligation established in Article 63 of the American Convention whose *ratio* is compensatory and not punitive⁶⁰. This feature implies that any violation of an international obligation that has produced an injury entails the duty to repair it adequately⁶¹.

order to inform the authorities about the crime that she had suffered and to access information, she had to turn to her husband who spoke Spanish. The impossibility of reporting and receiving information in her language meant a treatment that did not take into account her situation of vulnerability, based on her language and ethnicity, generating a detrimental effect to her right to access justice.

⁵⁸ IACtHR, *Case of Rosendo Cantú et al. v Mexico*, cit., pars. 201-202.

⁵⁹ See M. Monroy Cabra, *Derecho Internacional Público*, Bogotá, 1986, p. 272.

⁶⁰ International Court of Justice, *Case of Corfu Strait*, Judgment of April 9, 1949.

⁶¹ See the following decisions issued by the IACtHR: *Case of Velásquez-Rodríguez v Honduras*, Judgment of July 21, 1989 (Reparations and Costs), par. 25; *Case of Chitay Nech et al. v Guatemala*, Judgment of May 25, 2010 (Preliminary Objections, Merits, Reparations, and Costs), par. 227; and *Case of Manuel Cepeda Vargas v Colombia*, Judgment of May 26, 2010 (Preliminary objections, Merits, Reparations and Costs), par. 211. This principle «reflects a customary norm that constitutes one of the Fundamental Principles of Contemporary International Law

Reparations must have a causal link with the facts of the case, the violations declared, the damages credited, as well as with the measures requested to repair the respective damages. More specifically, the situation of the victims special vulnerability is taken into account by the IACtHR.

On the basis of these general principles, in the IACtHR case law it is possible to identify different reparation modalities⁶². First of all, the reparation (compensation) for material and immaterial damages: the former are identified with «the loss or detriment of the income of the victims, the expenses incurred due to the facts and the consequences of a pecuniary nature that have a causal link with the facts of the case»⁶³; the latter include «both [of] the sufferings and the afflictions caused to the direct victim and his relatives, the impairment of very significant values for the people, as well as the alterations, of a non-pecuniary nature, in the conditions of existence of the victim or his family»⁶⁴. In addition, the Court dictates measures of satisfaction, rehabilitation and guarantees of non-repetition, with individual, social and community nature.

As far as the reparation's measures are concerned in the three cases analyzed in the present work, first of all, the IACtHR establishes

on the Responsibility of a State»: see IACtHR, *Case of Castillo-Páez v Peru*, Judgment of November 27, 1998 (Reparations and Costs), par. 43; *Case of Chitay Nech et al. v Guatemala*, cit., par. 227, and *Case of Manuel Cepeda Vargas v Colombia*, par. 211.

⁶² On this point, see further C. Nash Rojas, *Las Reparaciones ante la Corte Interamericana de Derechos Humanos (1988 - 2007)*, Chile, 2009.

⁶³ See the IACtHR, *Case of Bámaca Velásquez v Guatemala*, Judgment of February 22, 2002 (Reparations and Costs), par. 43; the IACtHR, *Case of Chitay Nech et al. v Guatemala*, cit., par. 261, and the IACtHR, *Case of Manuel Cepeda Vargas v Colombia*, par. 242.

⁶⁴ See the IACtHR, *Case of the "Street Children" (Villagrán-Morales et al.) v Guatemala*, Judgment of May 26, 2001 (Reparations and Costs), par. 84; the IACtHR, *Case of Chitay Nech et al. v Guatemala*, cit., par. 273, and the IACtHR, *Case of Manuel Cepeda Vargas v Colombia*, par. 242.

the State obligation to investigate the facts and identify, prosecute and eventually punish the responsible, with due diligence through a process that allows the victims and their families full participation at any time in full safety conditions. This implies the adoption of all necessary affirmative measures in order to ensure the victims the access to justice, taking into account their cultural, social, economic conditions and other obstacles they may face, and provide them the means to overcome them⁶⁵.

Second, the Court orders the State to adapt its domestic law, both from the legislative point of view⁶⁶, as well as from an interpretative one through a call to the judicial power to exercise an *ex officio* “control of conventionality”, between the domestic norms and the American Convention⁶⁷.

Third, the State must recognize its responsibility in a public act. In the Inés and Valentina cases the act should have been done in Spanish and Me’phaa language, with the intervention of high-level officials and in which the President of Mexico would have apologized for the violations committed. The act must be due with the «coverage by the main means of communication [with] state and community scope» and has to be made in accordance with the wishes of the victim, who must indicate the place as well as the other aspects related

⁶⁵ See the IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. pars. 225-232; see also the IACtHR, *Case of Rosendo Cantú et al. v Mexico*, cit., pars. 208-215 and the IACtHR, *Case of González et al. (“Cotton Field”) v Mexico*, cit., pars. 452-463.

⁶⁶ See the IACtHR, *Case of Rosendo Cantú et al. v Mexico*, cit., par. 217 ff. and on this point see G. M. Puente de la Mora, *El Estado mexicano y la Corte Interamericana de los Derechos Humanos. Algunas consideraciones respecto al margen de apreciación en los casos contenciosos. Retos y perspectivas*, in P. A. Acosta Alvarado-M. Núñez Poblete (coords.), *El margen de apreciación en el sistema interamericano de derechos humanos: proyecciones regionales y nacionales*, Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 2012, p. 313.

⁶⁷ See the IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. pars. 233-240; see also the IACtHR, *Case of Rosendo Cantú et al. v Mexico*, cit., pars. 216-223.

to the content and conditions for its realization. Moreover, during the act, the reality of marginalization, exclusion and discrimination of indigenous peoples and, particularly, of indigenous women, has to be recognized⁶⁸. Another reparation measures dictated by the Court in the three cases consists in the publication of the IACtHR judgment⁶⁹. In the cases of *Fernández Ortega et al. v Mexico* and *Rosendo Cantú et al. v Mexico* a full version of it should have been published in a national newspaper and the most important parts of it should have been published, in Spanish and in Me'phaa⁷⁰.

Fourthly, as far as the no-repetition measures are concerned, Mexico had to adequate, taking into account international standards, national parameters of criminal investigation and perform forensic analysis to ensure diligent investigation of acts of violence⁷¹. On the same way, the State should have continued to implement permanent training programs and courses on diligent investigation in cases of sexual violence against women, which must include a gender and ethnic perspective. Likewise, the State institutional capacities should

⁶⁸ IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. pars. 241-244; see also the following IACtHR decisions: *Case of Rosendo Cantú et al. v Mexico*, cit., pars. 224-226 and *Case of González et al. ("Cotton Field") v Mexico*, cit., par. 469. Among the measures of satisfaction dictated in the *Case of González et al. ("Cotton Field") v Mexico*, there is the lifting of a monument in memory of the victims (par. 471) and the establishment of a national day in memory of the victims (par. 473).

⁶⁹ IACtHR, *Case of González et al. ("Cotton Field") v Mexico*, cit., par. 468.

⁷⁰ «[...] both on a radio station with broad state and community coverage, on four occasions [...], and in a newspaper of wide national circulation and in a newspaper of state circulation, in the Official Gazette of the Federation and on the Internet page of the Secretariat of National Defense»: see IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. pars. 245-247; see also IACtHR, *Case of Rosendo Cantú et al. v Mexico*, cit., pars. 227-229 and the *Case of González et al. ("Cotton Field") v Mexico*, cit., par. 468.

⁷¹ IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. pars. 253-256; see also the following IACtHR decisions: *Case of Rosendo Cantú et al. v Mexico*, cit., pars. 239-242 and *Case of González et al. ("Cotton Field") v Mexico*, cit., pars. 474-512.

have been strengthened throughout the Armed Forces members training on human rights⁷².

Fifthly, in addition to the granting of scholarships for the victims⁷³, in the *Case of Fernández Ortega*, Mexico was ordered to ensure adequate accommodation and food facilities for girls from the community of Barranca Tecoani who were currently studying in the nearest city of Ayutla de los Libres, in order to allow them to continue receiving education in their institutions⁷⁴.

Finally, and in addition to monetary compensation⁷⁵, the State had to adopt reparation measures that provide adequate and free attention to the victims physical and psychological suffering, attending to their specificities of gender and ethnicity, with the prior consent of the victims, providing clear and sufficient prior information⁷⁶.

⁷² IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. pars. 261-262; see also IACtHR, *Case of Rosendo Cantú et al. v Mexico*, cit., pars. 247-249.

⁷³ IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. pars. 263-264; see also the following IACtHR decisions: *Case of Rosendo Cantú et al. v Mexico*, cit., pars. 256-257 and *Case of González et al. ("Cotton Field") v Mexico*, cit., pars. 544 ff.

⁷⁴ Cfr. IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. pars. 265-270: the mentioned measure can be fulfilled by the State with the installation of a secondary school in the aforementioned community.

⁷⁵ IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. pars. 281 ff.; see also the following IACtHR decisions: *Case of Rosendo Cantú et al. v Mexico*, cit., pars. 270 ff. and *Case of González et al. ("Cotton Field") v Mexico*, cit., pars. 544 ff.

⁷⁶ Cfr. IACtHR, *Case of Fernández Ortega et al. v Mexico*, cit. pars. 248-252; see also *Case of Rosendo Cantú et al. v Mexico*, cit., pars. 250-253. Treatments must be provided for as long as necessary, and must include the provision of medications and, where appropriate, transportation, interpreter and other expenses directly related and that are strictly necessary.

4. *Final considerations: is the Inter-American standard of protection of low-income women effective?*

The analysis developed in the previous pages shows a very advanced Inter-American jurisprudence that, far from legal formalities, contributes in a relevant way to the advancement of fundamental rights in particular – for the topic treated in the present work – of low-income women victims of gender violence in Mexico. In particular, the doctrine issued by the Court is developed along three fundamental axes that synthesize the State obligations: to respect, to guarantee and, finally, to repair.

By the way: is the Inter-American standard of protection of low-income women in Mexico effective?

Perhaps, to answer this question and to begin to draw some relevant conclusions, a first point is represented by checking the status of compliance of the reparatory measures ordered by the Court in the three cases analyzed. According to the respective Monitoring Compliance Judgments issued by the IACtHR⁷⁷, in all three cases, Mexico has complied with the measures relating to compensation for pecuniary and non-pecuniary damage and expenses and costs; the realization of a public act of recognition of responsibility and medical and psychological attention to the victims.

In addition, with reference to the compliance of the *Case of González et al. (“Cotton Field”) v Mexico*, the measures according to which the State was ordered to implement permanent programs and courses on human rights and gender addressed to public officials can

⁷⁷ IACtHR, *Case of Fernández Ortega et al. v Mexico*, Monitoring Compliance with Judgment of November 25, 2010, Judgment of November 21, 2014 and Judgment of April 17, 2015; see also the following IACtHR decisions: *Case of Rosendo Cantú et al. v Mexico*, Monitoring Compliance with Judgment Monitoring Compliance with Judgment of November 25, 2010, Judgment of November 21, 2014 and Judgment of April 17, 2015, and *Case of González et al. (“Cotton Field”) v Mexico*, Monitoring Compliance with Judgment, May 21, 2013.

be considered fulfilled. Also, the creation of a website with information on missing persons in Chihuahua since 1993, the erection of a memorial monument in honor of the disappeared victims, the standardization of instruments used to investigate crimes related to disappearance, sexual violence and homicide, as well as the decision publication have been realized by the State. Moreover, as far as the *Case of Fernández Ortega v Mexico* is concerned the measures that oblige the State to award scholarships to the victims and those direct to ensure an effective remedy to challenge the intervention of the military jurisdiction must be considered fulfilled⁷⁸.

There are still measures that the Mexican state has not complied with yet and for which it is subject to compliance supervision by the IACtHR. In the *Case of González et al. ("Cotton Field") v Mexico*, almost ten years after the ruling, the measures still pending of compliance are: to conduct investigations in accordance with the sentencing guidelines; to ensure that the different institutions involved in the investigations have sufficient material and human resources; to sanction those responsible; to provide medical attention to the victims; to investigate, identify, prosecute and punish those responsible for human rights violations; to investigate the public officials mentioned in the judgment; and, to the design of a comprehensive care plan for victims.

With reference to the "twin decisions", the cases of *Fernández Ortega et al. v Mexico* and *Rosendo Cantú et al. v Mexico*, the measures to carry out the process of standardization of protocol of action in the federal scope and of the state of Guerrero, the training in human rights for armed forces personnel, to ensure services for women victims of sexual violence, to conduct the investigation and, where appropriate, the criminal proceedings, to examine the omission of public officials, the publication of the judgment and the adoption of legislative reforms in military matters are still to be complied. In

⁷⁸ On the legislative changes see the references *supra* in note n. 66.

addition, in the specific *Case of Fernández Ortega et al. v Mexico* the measure to facilitate the construction of a center for the care of women in the Barranco de Tecoani is still pending and in *Rosendo Cantú et al. v Mexico* decision the measure ordering to provide for awareness campaigns on the effects of discrimination and violence against women has not been complied yet.

In this sense, the considerations developed in the present text allow us to affirm that the IACtHR plays a fundamental role in the region in terms of progress in the States' agendas on human rights. And this places her, in an international and comparative perspective, in an *avant-garde* position with regard to the arguments used to guarantee the rights and corresponding obligations to “respect”, “guarantee” and “repair” human rights.

However, the development of the human rights agenda of the region cannot rest solely and exclusively on the back of the Inter-American Court. It also needs States' cooperation without which no progress will ever be possible.

Abstract: The paper addresses the issue of gender violence against low-income women in Mexico, through the analysis of the IACtHR case law, with specific reference to three decisions: they are the cases of *González et al. (“Cotton Field”) v Mexico*, and the “twin decisions”: *Fernández Ortega et al. v Mexico* and *Rosendo Cantú et al. v Mexico*. In par. 2, a brief description of each case is offered, underlining which are the rights of the American Convention that IACtHR considers that has been breached. Par. 3 concentrates on the reparation measures that have been dictated in the selected decisions. Finally, some brief final considerations are developed, mainly focusing on the effectiveness of the IACtHR case law in the protection of low-income women against gender violence.



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Gender violence against low-income women in Mexico. Analysis of the Inter-American doctrine

Keywords: gender violence, inequality, IACtHR, Mexico.

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