

## Ten Years After the Decision in the *Case of González et al. (“Cotton Field”) v. Mexico [2009]*\*

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### 1. Introduction. The *González et al. (“Cotton Field”) v. Mexico [2009]* Decision

On 16 November 2009, the Inter-American Court of Human Rights (henceforth “the Court” or “the IACtHR”) delivered its judgment in *González et al. (“Cotton Field”) v. Mexico*<sup>1</sup> declaring the Mexican State liable internationally for the disappearance and subsequent death of three young women in Ciudad Juarez (Chihuahua). According to the decision, Mexico violated several rights provided for in the American Convention on Human Rights (henceforth “the ACHR”); namely: the right to life (article 4.1), to humane treatment (article 5), and to personal liberty (article 7).

Even though it was not the first time that the Court had delivered a decision in which the gender perspective had been considered<sup>2</sup>, surely the decision in the “*Cotton Field*” case represents several other “first times” for the Court. First, it was the “first time” that the IACtHR carried out a contextual analysis incorporating the gender perspective, highlighting the generalized discrimination and violence against women (as will be analyzed in para. II).

Second, the gender perspective was used for the “first time” by the IACtHR as an enriching element of the standard of due diligence, since it has a bearing on the extent to which States are responsible for the fulfillment of the obligations to respect and guarantee the rights and liberties set out in article 1 of the ACHR. The ACHR

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<sup>1</sup> IACtHR, *Case of González et al. (“Cotton Field”) v. Mexico*, 16 November 2009 (Preliminary Objection, Merits, Reparations, and Costs).

<sup>2</sup> IACtHR, *Case of the Miguel Castro-Castro Prison v. Peru*, 25 November 2006 (Merits, Reparations, and Costs).

provides the “due diligence standard” to determine, on the one hand, States’ obligations for acts committed by individuals who have no relationship with the State and, on the other, States’ responsibility for the violations of human rights committed against a minority or a historically discriminated group by the State itself (to be discussed in para. III).

Finally, the Court, for the “first time”, applied the gender perspective when defining reparation measures, thereby starting the development of a rich case law on reparations with a gender perspective, which has strengthened the transforming vocation of the role of the Inter-American case law (under discussion in para. IV).

However, gender discrimination and violence against women is still an alarming problem in the region. Where do we stand ten years after the “*Cotton Field*” judgment? To find an answer to this question, some concluding reflections will be developed in the final section of this article (para. V).

## 2. Contextual Analysis and the Gender Perspective

The first great input made by the Court in the “*Cotton Field*” case refers to the implementation of a gender perspective in the contextual analysis, “abnormalizing” the much-normalized situation of violence and discrimination against women.

The facts of the case took place in the north of Mexico, in Ciudad Juárez (State of Chihuahua), a city that in the last few decades has been characterized by an increase in insecurity and violence, in particular violence against women. In this respect, since 1993, the number of disappearances and murders of women and girls in Ciudad Juárez has increased significantly<sup>3</sup>, so much so that the number of murders of women had doubled in comparison to those committed against men.

This context of violence can be explained by taking into consideration some characteristics of Ciudad Juárez, a city with a population of almost a million and a half inhabitants (according to data from the 2015 census) located on the border with El Paso (Texas, United States of America). Ciudad Juárez has also experienced a very intense transit of migrants, both Mexican and foreigners. It is an industrial city, and one of the most developed economic activities relates to the *maquiladora* industry. The social inequalities are strong and have contributed to the development of different types of organized crime<sup>4</sup>, which have increased the levels of insecurity and violence, especially against women.

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<sup>3</sup> See IACtHR, *Case of González et al. (“Cotton Field”) v. Mexico*, cit.: para. 114. This fact has turned Ciudad Juárez into the «[...] focus of both the national and international community due to the particularly critical situation of violence against women that has been prevailing since 1993 and the poor response from the State to these crimes».

<sup>4</sup> See IACtHR, *Case of González et al. (“Cotton Field”) v. Mexico*, cit.: para. 113.

Set against this background and even though the situation of violence against women is an extremely severe issue in the entirety of Mexico<sup>5</sup>, the panorama in Ciudad Juárez was – and still is – very alarming<sup>6</sup>.

Mexican authorities have long been aware of this situation; however, they had failed to give it the necessary attention considering not just the alarming quantitative data, but also the type of violence that marked out a very serious cultural and structural pattern.

In fact, the crimes for which the women in Ciudad Juárez were victims displayed common elements. First, the profile of the victims: generally, they were very young women, between the ages of 15 and 25, students, migrants, and either *maquiladora* workers or from stores or other local companies. Some of them had only recently moved to Ciudad Juárez and, they had low-income.

Second, a sizable number of these femicides were accompanied by signs of sexual violence. Specifically: the women were kidnapped and, days, weeks, or months later, their bodies, sexually abused or raped, tortured, and mutilated, were found in vacant lots.

Third, another common element was represented by the lack of clarification, irregularities in investigations after the disappearances, as well as after the finding of their bodies, and the persistence of impunity. The behavior of the authorities was worsened by their discriminatory and slack attitude to dealing with the homicides against women in Ciudad Juárez, which demonstrated a strongly stereotyped perception of the victims as women. We are looking at behaviors that, in turn, reflect a generalized and even “normalized” culture of discrimination and violence against women, which according to the Court, had played a decisive role when it came to the motives and methods of the crimes, as well as the attitudes of the authorities.

In this context of generalized violence and impunity, between the 6 and 7 of November 2001, the bodies of 17-year-old Laura Berenice Ramos Monárrez, 20-year-old Claudia Ivette González, and 14-year-old Esmeralda Herrera Monreal, were found

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<sup>5</sup> See S.J. Vázquez Camacho, *El Caso “Campo algodono” ante la Corte Interamericana de Derechos Humanos*, in *Anuario Mexicano de Derecho Internacional*, 2011, p. 520 ss.

<sup>6</sup> The violence rates in the area have reached even higher peaks in 2006 due to the so-called war on drugs led by then President Felipe Calderón Hinojosa against the criminal groups: see C.E. Zamora Valadez, *El Derecho penal del enemigo en la legislación mexicana. ¿Son proporcionales las restricciones de derechos de los acusados de delincuencia organizada?*, Master’s Thesis in Law with emphasis in the Adversarial System, Autonomous University of Coahuila, 2017. During that period, gender-based crimes against women were committed by members of organized crime groups as well as private parties, but also by the police and members of the Mexican Army: see I. Spigno - C. Zamora Valadez, *Evolución de la desaparición forzada de personas en México. Análisis a la luz de la jurisprudencia de la Corte Interamericana de Derechos Humanos*, in J.M. Ibáñez Rivas, et al. (eds.), *Desaparición forzada en el Sistema Interamericano de Derechos Humanos. Balance, impacto y desafíos*, Mexico, pp. 527-528.

lifeless, tortured, raped, and brutally mutilated in a cotton field in Ciudad Juárez, along with the remains of five other people. Given the ineptitude of the Mexican authorities, their families, with the support of different human rights organizations, took the case to the Inter-American system for the protection of human rights<sup>7</sup>.

### *3. The IACtHR’s Decision and Mexico’s Responsibility for Acts Committed by Individuals*

Article 1 of the ACHR, titled «Obligation to Respect Rights», establishes the obligation of States to “respect” the rights and freedoms recognized therein and to “ensure” their free and full exercise to every person who is subjected to their jurisdiction without discrimination. In fact, this provision establishes a double obligation: on one hand, to “respect” and, on the other, to “ensure” rights and freedoms. The first one entails an obligation of omission, i.e., not to violate the fundamental rights of people. In that sense, consequently, States must abstain from committing any type of action or act that interferes with the free and full exercise of human rights of people. The second one, however, implies a *quid pluris* which translates into the duty of States to take a positive approach to implementing specific measures and activating mechanisms to avoid the violation of rights by others.

Specifically, the obligation to “ensure”, contemplated in article 1.1 of the ACHR also represents the States’ duty to “prevent” the commission of wrongful acts by private parties with no link to the State. It is a principle that had already developed since the beginning of the contentious jurisdiction of the Court in cases related to the forced disappearance of persons in the framework of the so-called “Honduran block”, which established the legal obligation of States to take reasonable steps to prevent violations of human rights<sup>8</sup>.

Therefore, the commission of a wrongful act that leads to the violation of human rights by a private individual (or without it having been possible to identify the perpetrator) is able to lead to the international responsibility of the State by omission, that is, for not preventing the violation with sufficient due diligence in the terms provided by the ACHR. The international responsibility of States in this regard comes from the implementation of a due diligence standard<sup>9</sup>, according to five criteria set by

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<sup>7</sup> On the matter regarding the path that made it possible to take the case of Laura Berenice, Claudia Ivette and Esmeralda to the Court, see I. Spigno, González y otras (“Campo algodnero”) vs. Estados Unidos Mexicanos [2009]. *La obligación de garantizar, respetar y reparar derechos y libertades con perspectiva de género y el (in)cumplimiento del Estado mexicano*, in L.E. Ríos Vega - I. Spigno (dirs.), Vol. XIII. *México ante la Corte Interamericana de Derechos Humanos: a 20 años de la aceptación de su competencia contenciosa*, México, 2021, p. 147 ss.

<sup>8</sup> See X. Soley, *La desaparición forzada de personas en la jurisprudencia de la Corte IDH*, in L.E. Ríos Vega - I. Spigno (dirs.), *Estudios de casos líderes interamericanos y europeos. Vol. I. Libertad religiosa/Libertad de expresión/Derechos económicos, sociales y culturales/Derechos de las personas desaparecidas*, Mexico, 2016, p. 187 ss.

<sup>9</sup> See S.J. Vázquez Camacho, *op cit.*: p. 536. This criterion was also applied in the IACtHR, *Case of the Pueblo Bello Massacre v. Colombia*, 31 January 2006 (Merits, Reparations and Costs), in which it was

the Inter-American Tribunal: first, the due diligence to prevent relates to the existence of a situation of real and immediate risk that endangers the rights and liberties recognized by the ACHR and that is caused by actions from private parties or people not identified as States parties; second, it must be possible to determine the persons or vulnerable groups; third, there must be reasonable opportunities to prevent or avoid the risk of violations of human rights; fourth, the State must know, be able to know or should have reasonably known the risk and the specific vulnerable situations and; finally, for the State to be able to reasonably prevent or avoid the materialization of the risk<sup>10</sup>.

In the “*Cotton Field*” judgment, the Court added one more element to the due diligence standard: that is to say, the gender perspective, which entails the analysis of the specific case under a methodological tool whose objective consists of eradicating the power imbalances created by biological, social, and anatomical differences that exist between men and women. It is about a fundamental approach that allows the Inter-American Court to develop the standard of “strict” due diligence<sup>11</sup> which must be applied in every case in which the victim/victims belong to a historically discriminated and vulnerable group, as in the case of women, and that pushes towards a more onerous demand for States in the fulfillment of their obligations.

The standard of due diligence, developed in accordance with the application of the gender perspective, guides the Court in applying the gender perspective to the interpretation of the obligation to prevent and ensure recognized in article 1.1 from the ACHR, indicating the specific characteristics of this obligation with reference to three key points: 1) a duty of generalized and anticipated prevention which has to be carried out before the disappearance (in accordance with the awareness of the existence of a generalized pattern of gender-based violence; 2) a duty of specific and subsequent prevention which takes shape through the immediate search that has to be carried out from the moment the news of the disappearance is received; and 3) a duty to investigate, which means finding and punishing the person or persons presumed responsible.

In reference to the first of these key points, the implementation of the gender perspective in the obligation of prevention from the State is interpreted, in conformity with article 7, letter b) of the 1994 Inter-American Convention on the Prevention,

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recognized that the State was responsible for allowing and not preventing wrongful acts perpetrated by individuals (in this specific case they were paramilitaries that massacred and disappeared dozens of people).

<sup>10</sup> See V. Abramovich, *Responsabilidad estatal por violencia de género: comentarios sobre el caso “Campo algodonero” en la Corte Interamericana de Derechos Humanos*, in *Annuario de Derechos Humanos*, 6, 2010, p. 167 ss. In the *Case of the Puerto Bello Massacre v. Colombia*, the Court considered that these elements existed because the State knew the situation of real and imminent danger in which the victims were, as well as the reasonable opportunity to prevent and avoid such danger, developing what would be defined as the “doctrine of foreseeable and avoidable risk”.

<sup>11</sup> S.J. Vázquez Camacho, *op. cit.*

Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), which forces State parties to use due diligence to prevent, investigate and impose penalties for violence against women<sup>12</sup>, to undertake efficient measures and policies<sup>13</sup>. By virtue of that, Mexico was declared internationally responsible, as authorities of the State demonstrated willful misconduct by having observed the increase in violence against girls and women and not having been capable of facing, controlling or eliminating it. The States' obligation of prevention is established, therefore, as an obligation of means and not of results<sup>14</sup> which does not imply that a States is responsible for every violation of human rights committed by private individuals. Rather, it is about State obligations that become active once the State becomes aware of the existence of a situation of real and immediate danger for a specific individual or group of individuals, and it has reasonable opportunity to prevent or avoid that danger.

In the specific case, the Mexican State was aware of the context and generalized pattern of violence against women in Ciudad Juárez; however, this fact alone cannot be enough to lead to the unlimited responsibility of the State for every wrongful act committed against women.

The existence of a generalized context of violence against women causes the emergence of an international responsibility of the State in reference to the second key point outlined by the Court (namely, after they have been made aware of the disappearance and before the discovery of the bodies), for ignoring the existence of a real and immediate danger for the safety and life of the victims. It would be in this moment when the obligation of strict due diligence appears in cases of reports of missing women, which obligates State authorities to act immediately by carrying out a search in the first few hours. In this case, it is also about an obligation of means, albeit stricter than the previous one and which requires an exhaustive implementation of search actions. It is essential for police authorities, prosecutors, and judicial officials to take prompt and immediate action by ordering the measures necessary to determine the whereabouts of the victims or the place where they may have been detained. In this regard, there must be adequate procedures for reporting disappearances, which should result in an effective investigation in the first few hours. The authorities should presume that the disappeared person has been deprived of their liberty and is still alive until there is no longer any uncertainty about their fate.

In the "*Cotton Field*" case, the Court highlighted how the State had failed to demonstrate the implementation of reasonable and efficient measures aimed at finding

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<sup>12</sup> In the same vein, the Committee on the Elimination of Discrimination Against Women (CEDAW) has pronounced itself stating that: «States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation [...]» (CEDAW, *General recommendation No. 19: Violence against women* (A/47/38), 29 January 1992, para. 9).

<sup>13</sup> IACtHR, *Case of González et al. ("Cotton Field") v. Mexico*, cit., para. 272.

<sup>14</sup> IACtHR, *Case of González et al. ("Cotton Field") v. Mexico*, cit., para. 251.

the victims alive. It failed to act promptly once the news of the disappearance was received, did not perform specific search actions, and the authorities and officials who participated adopted an attitude that suggested it was not necessary to respond to the reports of the disappearances. From the reconstruction of the facts, the Court inferred that the State did not act with the required due diligence to prevent the death and abuse suffered by the victims and did not act, as could reasonably be expected, in accordance with the generalized context of violence of which the State was aware<sup>15</sup>.

Finally, in reference to the third key point, the obligation to guarantee requires States to investigate the facts. Such investigations must be conducted diligently to prevent impunity, as such as state encourages the repetition of violations of human rights. The failure to promptly start a serious, effective, and adequate investigation allows and encourages the existence of an environment of impunity and the insufficiency of measures adopted by the Mexican State to resolve the matter.

#### *4. How to Provide Reparation Using a Gender Perspective*

In the “*Cotton Field*” decisions, the Court applied for the first time the gender perspective in the identification and definition of the appropriate measures of reparation, considering it as a fundamental guideline in the obligation to repair the damage, contemplated in article 63.1 of the ACHR. The obligation to respect and ensure the rights and liberties (article 1 ACHR) would be a dead letter without the obligation to repair the damage generated by the violations of human rights. It is about an integral reparation, which stems from the international responsibility attributable to the State. Consequently, the reparation is a right for those affected but also an obligation of the State<sup>16</sup>. In this regard, the measures of reparation must respect the following guidelines: 1) they must refer directly to the violations declared by the Tribunal; 2) they must repair proportionately the pecuniary and non-pecuniary damage; 3) they must not make the beneficiaries richer or poorer; 4) they must restore the victims to their situation prior to the violation; and, 5) they must design them in order to identify and eliminate the factors that cause discrimination.

The measures of reparation applied using a gender perspective are fundamental in a context of structural discrimination for its ability to offer a “transforming vocation”: this means that the reparations not only have the effect of “restitution”, but also a “remedial” one, focused on intervening in a context of discrimination and structural violence. This principle has been interpreted as applying in relation to the following specific measures<sup>17</sup>: first and foremost, the Court set out certain measures in

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<sup>15</sup> *Ivi*, para. 284.

<sup>16</sup> See A.J. Rousset Siri, *El concepto de reparación integral en la jurisprudencia de la Corte Interamericana de Derechos Humanos*, in *International Journal of Human Rights*, 1, 2011, p. 59 ss.

<sup>17</sup> These are the measures of satisfaction and guarantees of non-repetition that consider and apply the gender perspective; however, the Court also set out measures of rehabilitation consisting of

relation to the "obligation to investigate" the facts and identify, judge, and, where appropriate, sanction the people responsible for the violations<sup>18</sup>, requiring the Mexican State to undertake specific lines of inquiry on sexual violence, which entails investigating patterns of discrimination and violence against women in the area.

Furthermore, the Court set out to the State the need for the investigations to be conducted following protocols and manuals which consider the gender perspective, and which instruct the State to provide the victims' families with updated information on the progress of investigations, as well as to guarantee full access to the case files. Finally, it set out that the investigations needed to be conducted by highly trained officials in similar cases and which dealt with victims of discrimination and gender-based violence<sup>19</sup>. Second, among the measures of satisfaction applying a gender-perspective<sup>20</sup>, the Court asked the State to build a monument to commemorate the women who were victims of the femicide in Ciudad Juárez, as a way of dignifying them and as a memorial to the context of violence they suffered.

A fundamental role has been assumed by the gender perspective also in reference to the guarantees of non-repetition and to those that forced the State to reinforce its policies in order to effectively guarantee the prevention of gender-based violence against women, as well as to ensure that sufficient attention is paid to victims and the needs of an immediate search. In that sense, in its decision, the Court highlighted the need for the State to continue harmonizing all of its protocols, manuals, prosecutorial investigation criteria, expert services and provision of justice, used to investigate the crimes related to the disappearance, sexual abuse and murders of women, in accordance with the 1999 Manual on Effective Investigation and Documentation of

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giving medical, psychological, and psychiatric attention, in an immediate, adequate and effective way, through the State's specialized medical institutions to every family member considered to be a victim (IACtHR, *Case of González et al. ("Cotton Field") v. Mexico*, cit., paras. 544 et seq.) and of compensation (*ibid.* paras. 550 et seq.).

<sup>18</sup> Originally conceived as a measure of satisfaction and non-repetition, in 1998, with the decision in the *Case of Benavides-Cevallos v. Ecuador*, 19 June 1998 (Merits, Reparations and Costs), the Court stipulated as a specific and autonomous measure of reparation an obligation for the State to investigate the facts and guarantee justice.

<sup>19</sup> IACtHR, *Case of González et al. ("Cotton Field") v. Mexico*, cit., paras. 452-463.

<sup>20</sup> As measures of satisfaction, the Court ordered the State to do the following: 1) the publication of certain extracts of the judgment in the Federation's Official Gazette, in a daily newspaper with widespread national circulation, and a newspaper with widespread circulation in the state of Chihuahua, as well as on an official web page of the Federal State, and of the State of Chihuahua (*Case of González et al. ("Cotton Field") v. Mexico*, cit., para. 468); and 2) the organization of a public act acknowledging international responsibility in which the state would have to refer to the human rights violations declared by the Court, and that would have to include the participation of the next of kin of the victims and the organizations that represented the next of kin before the national and international courts. In particular, the Court specified that: «The organization and other details of this public ceremony must be duly consulted previously with the three victims' next of kin. In case of disagreement between the victims' next of kin or between the next of kin and the State, the Court will decide» (IACtHR, *Case of González et al. ("Cotton Field") v. Mexico*, cit., para. 469).

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the so called Istanbul Protocol), the 1991 Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, both from the United Nations, and the international standards to search for disappeared persons, using a gender perspective<sup>21</sup>.

Furthermore, the Court applied the gender perspective in the guidelines for the immediate search indicating how all the activities that must be conducted in these cases (e.g., the implementation of searches *ex officio* and without any delay in cases of disappearance, or the coordination of the efforts of different security agencies to find the person, among others) should be even more urgent and rigorous when the victim is a girl or a woman<sup>22</sup>.

Finally, the Court ordered the State to continue implementing permanent education and training programs and courses in human rights and gender aimed not only at the public servants involved in the preliminary investigations and judicial proceedings in relation to discrimination, abuse and murders of women based on their gender, but also to the Chihuahua population in general. The objective of this measure of reparation is to eliminate the stereotypes of women’s role in society and to develop the capacity of the population to recognize the discrimination that women suffer in their daily life<sup>23</sup>.

##### 5. *Where do we Stand Ten Years after the “Cotton Field” Decision? Final Remarks*

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<sup>21</sup> IACtHR, *Case of González et al. (“Cotton Field”) v. Mexico*, cit., para. 502.

<sup>22</sup> *Ivi*, paras. 509-512. In that regard, the Court requested that the State create, within six months of notification of the judgment, a web page that would be updated continually with the necessary personal information on all the women and girls who had disappeared in Chihuahua since 1993 and who remain missing. The objective of this web page is to allow any individual to communicate with the authorities by any means, including anonymously, to provide relevant information on the whereabouts of the disappeared women or girls or, if applicable, of their remains (*Ivi*, paras. 507-508). Also, the Court established that the State would have to create a database with the personal information available on the disappeared women and girls at the national level and including the necessary information, principally DNA and tissue samples, of those next of kin of the disappeared who consented – or where ordered by a judge – with the sole purpose of locating the person, and the genetic information and tissue samples from the body of any unidentified woman or girl deprived of life in the State of Chihuahua (*ivi*: paras. 509-512).

<sup>23</sup> IACtHR, *Case of González et al. (“Cotton Field”) v. Mexico*, cit., para. 531. On the matter regarding the measures of reparation established by the Court with a gender perspective, see I. Spigno - M.B. Hinojosa García, *Reparar con perspectiva de género a las mujeres víctimas de desaparición forzada de personas: González y otras (“Campo Algodonero”) vs. México [2009]*, in L.E. Ríos Vega - I. Spigno (dirs.), *Vol. X. Los derechos de las víctimas de desaparición forzada de personas en el sistema interamericano*, Mexico, 2020, p. 111 ss.

With the “*Cotton Field*” decision, the gender perspective was incorporated in the Inter-American case law, when it comes to the contextual analysis of the facts, as well as the definition of State obligations whose non-compliance generates international responsibility, and in the measures of reparation set out. Since then, more than ten years have passed and during that time the Court has made pronouncements in relation to 15 cases concerning gender-based violence<sup>24</sup>, elaborating a rich case law with a profound transforming vocation<sup>25</sup>.

Nevertheless, unfortunately, such vocation has not transformed itself into a tangible reality since discrimination and violence rates against women in Mexico and Latin America are still very high. In 2017, almost 3,000 women were murdered in the areas of Latin America and the Caribbean by their previous or current partner, with Brazil leading the list with 1,133 women murdered for reasons based on their gender<sup>26</sup>.

In Mexico, the data on violence against women is concerning according to data provided by the Executive Secretariat of the National System of Public Security in

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<sup>24</sup> This is up to date as far as 15 July 2020; it concerns the following IACtHR cases: *Case of the Miguel Castro-Castro Prison v. Peru*, *op cit.*; *González et al. (“Cotton Field”)*, *cit.*; *Fernández Ortega et al. v. Mexico*, 30 August 2010 (Preliminary Objections, Merits, Reparations, and Costs); *Rosendo Cantú et al. v. Mexico*, 31 August 2010 (Preliminary Objections, Merits, Reparations and Costs); *Véliz Franco et al. v. Guatemala*, 19 May 2014 (Preliminary Objections, Merits, Reparations and Costs); *Espinoza González v. Peru*, 23 June 2015 (Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs); *Velásquez Paiz et al. v. Guatemala*, 19 November 2015 (Preliminary Objections, Merits, Reparations and Costs); *Yarve et al. v. Colombia*, 22 November 2016 (Preliminary Objection, Merits, Reparations and Costs); *I.V. v. Bolivia*, 30 November 2016 (Preliminary Objections, Merits, Reparations and Costs); *Favela Nova Brasília v. Brazil*, 16 February 2017 (Preliminary Objections, Merits, Reparations and Costs); *Gutiérrez Hernández et al. v. Guatemala*, 24 August 2017 (Preliminary Objections, Merits, Reparations and Costs); *V.R.P., V.P.C. et al. v. Nicaragua*, 8 March 2018 (Preliminary Objections, Merits, Reparations and Costs); *López Soto et al. v. Venezuela*, 26 September 2018 (Merits, Reparations and Costs); *Women Victims of Sexual Torture in Atenco v. Mexico*, 28 November 2018 (Preliminary Objections, Merits, Reparations and Costs); and *Azul Rojas Marín et al. v. Peru*, 12 March 2020 (Preliminary Objections, Merits, Reparations and Costs).

<sup>25</sup> On this point see F. Piovesan, *Sistema interamericano de derechos humanos y el constitucionalismo regional transformador en América Latina*, in L.E. Ríos Vega - I. Spigno (dirs.), F.G. Ruz Dueñas (coord.), *Estudios de casos líderes interamericanos. Vol. XX. La jurisprudencia interamericana más relevante de 2018 a debate*, Mexico, 2020, p. 3 ss.; and A. von Bogdandy, *Ius Constitutionale Commune en América Latina: una mirada a un constitucionalismo transformador*, in *Revista Derecho del Estado*, 34, 2015, p. 3 ss.

<sup>26</sup> Nevertheless, if we compare the rate for every 100,000 women, the phenomenon has a reach in El Salvador that is not seen in any other place in the area: 10.2 femicides per 100,000 women. In 2016, Honduras registered 5.8 femicides per 100,000 women. Guatemala, Dominican Republic, and Bolivia also showed high rates in 2017, equal or superior to 2 cases per 100,000 women. In the region, only Panama, Peru and Venezuela have rates lower than 1.0. On this data, see I. Spigno, *Gender violence against low-income women in Mexico. Analysis of the Inter-American doctrine*, in *Rivista di Diritti Comparati*, Special Issue 1, 2019, p. 170.

2019, 983 presumed cases of femicide were registered and, so far in 2020 (January to May period), 375 cases have been counted for the same crime<sup>27</sup>.

According to data produced by the National Institute of Statistics and Geography, out of the 46.5 million women aged 15 and over in the country, 66.1% (30.7 million) have suffered violence of some kind (physical 34%, emotional 49%, economic 29% or sexual 41.3%), by any perpetrator, throughout their life<sup>28</sup>.

In light of this data, perhaps it would be worth reflecting on the meaning of the Inter-American system in the continent and on the responsibility that has been attributed to it —without at the same time endowing it with enforcement powers— in order to solve issues of structural power that perhaps should be the responsibility of States that, for their part, often fail to show themselves as being cooperative with the system. The status of the (non)compliance of the “*Cotton Field*” decision is clear proof of that<sup>29</sup>.

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**Abstract:** On 16 November 2009, the Inter-American Court of Human Rights delivered the leading decision in the the *Case of González et al. (“Cotton Field”) v. Mexico*, declaring the Mexican State liable internationally for the disappearance and subsequent death of three young women in Ciudad Juárez (Chihuahua). The paper analyses the “*Cotton Field*” judgment, underlining that this was the first time in which the IACtHR carried out a contextual analysis incorporating the gender perspective, highlighting the generalized discrimination and violence against women. Furthermore, the gender perspective was used for the first time by the IACtHR as an enriching element of the standard of due diligence and the gender perspective was applied when defining reparation measures.

<sup>27</sup> Executive Secretariat of the National System of Public Security, Information on violence against women (Crime incidence and 9-1-1 emergency calls), May 2020. In: <https://drive.google.com/file/d/1V3v-fzNLHq7N4UnpIz-py1vodfll7tc/view> [Accessed on 15 July 2020].

<sup>28</sup> Additionally, it has been highlighted that 43.9% of the women in Mexico has faced attacks by a current partner or the previous one during their relationship and that 53.1% suffered violence by a perpetrator who was not their partner. Between 2014 and 2016, the Entities with the highest rates of femicides were: Baja California, Colima, Chihuahua, Guerrero, State of Mexico, Michoacán, Morelos, Oaxaca, Sinaloa, Tamaulipas, and Zacatecas. See the following documents: National Institute of Statistics and Geography (INEGI by its name in Spanish), *National Survey on the Dynamics of Household Relationships (ENDIREH by its name in Spanish)*, 2016; National Survey of Victimization and Perception of Public Security, 2018; and *Census of Social Assistance Accommodations*, 2015.

<sup>29</sup> See I. Spigno, González y otras (“Campo algodonero”) vs. Estados Unidos Mexicanos [2009]. *La obligación de garantizar, respetar y reparar derechos y libertades con perspectiva de género y el (in)cumplimiento del Estado mexicano*, cit.

Irene Spigno

*Ten Years After the Decision in the Case of González et al. (“Cotton Field”) v. Mexico [2009]*

**Abstract:** Il 16 novembre 2009, la Corte interamericana dei diritti umani ha adottato la sentenza *González y otras (“Campo algodnero”) c. Messico*, dichiarando lo Stato messicano responsabile a livello internazionale per la sparizione e successiva morte di tre giovani donne a Ciudad Juarez (Chihuahua). Il contributo analizza la sentenza, sottolineando che questa è stata la prima volta in cui la IACtHR ha svolto un’analisi contestuale incorporando la prospettiva di genere, evidenziando la discriminazione e la violenza generalizzate contro le donne. Inoltre, la prospettiva di genere è stata utilizzata per la prima volta dalla Corte interamericana come elemento nella definizione del principio di *due diligence* e la prospettiva di genere è stata applicata nella definizione delle misure di riparazione.

**Keywords:** Inter-American Court of Human Rights – gender perspective – reparation measures – women – Mexico.

**Parole Chiave:** Corte interamericana dei diritti umani – prospettiva di genere – misure di riparazione – donne – Messico.

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