

Violence Against Women in the Inter-American System of Human Rights: The *Case of Women Victims of Sexual Torture in Atenco v. Mexico* and the Consolidation of a Gender Perspective*

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1. The Progressive Emergence of a Gender Perspective in the Inter-American System of Protection of Human Rights

Over time, the Inter-American Court has developed a remarkable case law regarding the defence of women's rights. The San José judges have been dealing with the violation of the most basic of women's rights in the context of armed conflict and in situations of democratic stability. This case law shows that the condition of structural discrimination that many women in Latin America experience is the perfect breeding ground for violence, especially against women in situations of greater vulnerability. Indeed, many of the cases analysed concern intersectional situations, those in which there is a combination of several discrimination factors (such as being a woman, young, native and poor).

In the framework of the Inter-American system, the fight to discrimination and violence against women is also a concern of the Commission¹. The Inter-American

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¹ The work of the Inter-American Commission can be followed by reading the latest report on the topic: see Report on *Violence and Discrimination Against Women and Girls in Latin America and the Caribbean*, available at <https://www.oas.org/es/cidh/informes/pdfs/ViolenciaMujeresNNA.pdf>. Cfr. also CIDH, *Plan estratégico 2017-2021. Aprobado por la CIDH durante su 161º período de sesiones*, 2017. As early as 2007, in the Report on *Acceso a la Justicia para las Mujeres Víctimas de Violencia en las Américas* (available at

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Commission states that women, young girls, and teenagers are often in a situation of structural discrimination. However, even though the Commission has produced many thematic reports, the doctrine has brought to light a certain reluctance to submit «individual applications concerning gender-related issues» to the Inter-American Court², at least until 2002³. There are cases in which women are victims of a violation of their rights, such as in the cases *Loayza Tamayo v. Peru* of 17 September 1997 or *Maritzá Urrutia v. Guatemala* of 27 November 2003⁴. This case law, however, lacks a clear gender perspective in the examination of the cases⁵. In the early stages, the institutions of the American Convention on Human Rights display a rather cautious attitude⁶. In *Loayza Tamayo v. Peru*, for example, this attitude results in the Inter-American Court not recognising the rape carried out by State agents on the plaintiff, a university professor, who was being detained in the framework of counter-terrorism

<https://www.cidh.oas.org/women/acceso07/cap1.htm>) it had stressed that «the women's right to live free from violence and discrimination has been established as a priority challenge in the systems of human rights protection at the regional and international levels. The implementation of international instruments on human rights that protect women's right to live free from violence reflects a consensus and an acknowledgement by the States concerning the discriminatory treatment traditionally suffered by women in their societies».

² L. Clérico – C. Novelli, *La violencia contra las mujeres en las producciones de la comisión y la Corte Interamericana de Derechos Humanos*, in *Estudios Constitucionales*, 12, 1, 2014, p. 16, states precisely that «sin embargo, el accionar activista de la CIDH no se condice con su reticencia en la remisión de demandas individuales referidas a cuestiones de género a la Corte IDH».

³ L. Clérico – C. Novelli, *op cit.*, p. 16, where it is stressed that «hasta el año 2002 habría remitido sólo un caso entre todos los trabajados, los otros finalizaron en la Comisión como resultado de una solución amistosa o con la publicación de un informe final. Esto tuvo consecuencias múltiples. En lo inmediato, se le privó a la víctima la compensación que podría haber recibido de haber ganado el caso. Pero más allá de esto, la reticencia a remitir los casos a la Corte imposibilitó consolidar una jurisprudencia sobre los derechos de las mujeres, en especial, en casos de violencia de género».

⁴ Two earlier advisory opinions should also be mentioned: the first one, *Advisory Opinion on Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, OC-4/84, 19 January 1984, and the second one *Juridical Condition and Rights of Undocumented Migrants*, OC-18/03, 17 September 2003.

⁵ We may recall the statement of judge García Ramírez in his Concurring Opinion in the *Case of the Miguel Castro-Castro Prison v. Peru*, 25 November 2006, para 6: «Up to today, the Inter-American Court had not received consultations or litigations whose main actor – or, at least one of its main actors, specifically–, was a woman. Obviously, the Court has dealt with matters in which the subject of equality of gender has been projected (such as Advisory Opinion OC-4/84, *Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica*, decided upon on January 19, 1984), and it has had before it cases regarding women as victims of violations to human rights or people in risk, whose situation required provisional measures of a precautionary and protective nature. However, in these cases the violation or risk did not, necessarily, put in evidence considerations linked directly and immediately with the victim's female condition». On this topic see P. Palacios Zuloaga, *The Path to Gender Justice in the Inter-American Court of Human Rights*, in *Texas Journal of Women and the Law*, 17, 2, 2008, p. 227 ss.

⁶ L. Clérico – C. Novelli, *op cit.*, p. 17.

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investigations, despite the number of testimonies provided⁷. As for the case *Maritza Urrutia v. Guatemala*, the physical and psychological violence suffered by the victim - an activist and member of the *Organización revolucionaria del Ejército Guerrillero de los Pobres* (EGP), and of the *Unidad Revolucionaria Nacional Guatemalteca* - are defined as torture, though with no particular concern for the «special impact»⁸ that such acts of violence had on the plaintiff as a woman⁹.

Gradually, greater attention has been paid to women victims of violence¹⁰. In 2006, namely from the *Case of the Miguel Castro-Castro Prison v. Peru*, a gender perspective has clearly appeared in Inter-American jurisprudence¹¹. In *Miguel Castro-Castro Prison* the Court states that «when analyzing the facts and their consequences, the Court will take into account that women were affected by the acts of violence differently than men, that some acts of violence were directed specifically toward women and others affected them in greater proportion than the men»¹². Hence, the gender perspective is finally introduced into the Court's reasoning and becomes one way in which the acts of violence suffered by women are classified. Today, this approach is an integral part of the way in which the San José judges operate¹³.

2. The Case of Women Victims of Sexual Torture in Atenco v. Mexico: Violence Against Women Who Participate in Political Life

⁷ IACtHR, *Case of Loayza-Tamayo v. Peru*, 17 September 1997, para. 58: «Although the Commission contended in its application that the victim was raped during her detention, after examination of the file and, given the nature of this fact, the accusation could not be substantiated».

⁸ L. Clérico – C. Novelli, *op cit.*, p. 29.

⁹ IACtHR, *Case of Maritza Urrutia v. Guatemala*, 27 November 2003, para 94: «In the case sub judice, it has been proved that Maritza Urrutia was subjected to acts of mental violence by being exposed intentionally to a context of intense suffering and anguish, according to the practice that prevailed at that time [...]. The Court also considers that the acts alleged in this case were prepared and inflicted deliberately to obliterate the victim's personality and demoralize her, which constitutes a form of mental torture, in violation of article 5(1) and 5(2) of the Convention to the detriment of Maritza Urrutia».

¹⁰ Therefore, as early as in the *Case of Plan de Sánchez v. Guatemala*, 29 April 2004, para. 49(19) the Court recalls the specific position of women in situations of internal armed conflict: «women who were raped by the State agents on the day of the massacre, and who survived the massacre, still suffer from that attack. The rape of women was a State practice, executed in the context of massacres, designed to destroy the dignity of women at the cultural, social, family and individual levels. These women consider themselves stigmatized in their communities and have suffered from the presence of the perpetrators in the town's common areas. Also, the continuing impunity of the events has prevented the women from taking part in the legal proceedings»

¹¹ Cfr. M. Fera-Tinta, *Primer caso internacional sobre violencia de género en la jurisprudencia de la Corte Interamericana de Derechos Humanos: el caso del penal Miguel Castro Castro, un hito histórico para Latinoamérica*, in *Revista CEJIL*, 3, 2007, p. 30 ss.

¹² IACtHR, *Case of Miguel Castro-Castro Prison v. Peru*, 25 November 2006, para. 223.

¹³ Think, for example, in addition to the cases mentioned in the following paragraphs, of the case of the IACtHR, *Case of "Las Dos Erres" Massacre v. Guatemala*, 24 November 2009 .

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A case in point in this branch of the Inter-American case law is the *Women Victims of Sexual Torture in Atenco v. Mexico*, in which a number of themes are combined: violence against women as the expression of a context of structural discrimination, the link between rape and torture, the duty to investigate and sanction the violation of women's rights, the fight against impunity, the 'transformative' reparations needed to prevent a reiteration of the violations¹⁴.

Furthermore, the judgment in the case *Women Victims of Sexual Torture in Atenco v. Mexico* appears to be relevant, not only because it includes and expands much of the reasoning contained in the precedents on similar themes, but also due to the context in which the violations of the rights occurred. The case originates from the actions taken by the police to repress a protest in Atenco, Mexico, on 3 and 4 May 2006. On that occasion, the eleven women victims of the case were arrested. While detained, and while being transferred to a detention centre, they suffered various forms of violence including – according to the Court – being beaten, kicked, insulted, dragged by the hair, ill-treated, and threatened, undressed, touched violently in their private parts, and in some cases even raped.

One element that characterises this case and distinguishes it from the previous ones in which the Court had to deal with violence against women, still in Mexico, is the fact that the acts of violence were committed during a demonstration, a situation in which women are exercising their right to protest, when they take part in public life. Therefore, as the Inter-American Court highlighted, in this case the various forms of violence committed against the women become a way to silence social dissent as well as women's participation in political life: the women were attacked with the aim of humiliating them, of punishing them for taking part in a public demonstration.

This factor marks a major difference from other judgments, including well-known ones, in which the Court analysed situations of structural discrimination. In the case of *González et al. ("Cotton Field")*, still versus Mexico, for example, the violence concerns very young women, usually aged 15 to 25¹⁵. In *González et al.*, there is no explanation whatsoever for the deaths and acts of violence, there are no culprits, the victims are apparently not related to each other. The only thing they have in common is that they are women, young, and often in a precarious financial situation. In this case, the Court decides to use the phrase «gender-based murder», also known as

¹⁴ See C. Cardinali, *The existing link between sexual violence and torture: some considerations on the "Mujeres Víctimas de Tortura Sexual en Atenco vs. Mexico" judgment*, in *DPCE on line*, 1, 2019, p. 921 ss.

¹⁵ IACtHR, *Case of González et al. ("Cotton Field") v. Mexico*, 16 November 2009, on which cfr. S.J. Vásquez Camacho, *El caso "Campo Algodonero" ante la Corte interamericana de derechos humanos*, in *Anuario mexicano de derecho internacional*, XI, 2011, p. 515 ss.; Y. Palacio Valencia, *Género en el derecho constitucional transnacional: casos ante la Corte interamericana de derechos humanos*, in *Revista de la Facultad de Derecho y Ciencias Políticas*, 41, 114, 2011, p. 131 ss.; E. Tramontana, *Hacia la consolidación de la perspectiva de género en el Sistema interamericano: avances y desafíos a la luz de la reciente jurisprudencia de la Corte de San José*, in *Revista IDH*, 53, 2011, p. 141 ss.

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femicide¹⁶. By using this term, the Court wishes to describe the phenomenon of dead and missing women in Ciudad Juárez. Indeed, femicide is the expression of a form of violence against women that is rooted in a family, work and educational culture that justifies it and makes it unpunishable – a culture that uses words and images to legitimise femicide, implicitly¹⁷. The use of the term femicide expresses the will to provide a political explanation for the death of women in Ciudad Juárez, as well as to use an analytical category that brings individual cases into the common framework of gender-based violence against women.

The second element that characterises *Women Victims of Sexual Torture in Atenco* is the fact that the acts of violence against the women perpetrated by State agents were committed in a democratic setting¹⁸. It is, therefore, a very different situation from the cases of war, internal armed conflict, or national emergency. This is certainly a major police operation (the judgment speaks of 400 agents involved), but it is certainly not a war or a major internal conflict. However, most of the people detained during these police operations reported some form of abuse by the police, most of the women reporting sexual abuse as well. Therefore, sexual assault was not an isolated event that only concerned the 11 victims, but it was the expression of a general context of violence against women, which viewed «women's bodies as instruments to transmit their message of repression and condemnation of the protest measures employed by the demonstrators»¹⁹.

In the Inter-American case law, the systematic recourse to violence against women by State agents is usually part of a jurisprudence related to situations of crisis, such as internal armed conflicts²⁰. In *Women Victims of Sexual Torture in Atenco*, instead,

¹⁶ On the topic, see L.P.A. Sosa, *Inter-American case law on femicide: Obscuring intersections?*, in *Netherlands Quarterly of Human Rights*, 2, 2017, p. 85 ss.

¹⁷ The term femicide originates from the feminist culture and was used in J. Radford – D.E.H. Russell, *Femicide: The politics of woman killing*, New York, 1992; see also D.E.H. Russell – N. Van De Ven, *Crimes against woman: the proceeding of the international tribunal*, California, 1976. In Italy, see B. Spinelli, *Femminicidio. Dalla denuncia sociale al riconoscimento giuridico internazionale*, Milan, 2008.

¹⁸ On violence against women committed by state agents in Mexico, see the UN Human Rights Committee on the Case of Lydia Cacho Ribeiro victim of physical and psychological violence by the Mexican police (CCPR/C/123/D/2767/2016). In this case, the Interamerican Commission of Human Rights granted provisional measures (August 2009) after appeal by the victim.

¹⁹ IACtHR, *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, cit., para. 204: «the police agents used the detained women's bodies as instruments to transmit their message of repression and condemnation of the protest measures employed by the demonstrators. They objectified the women to humiliate, dominate and instill fear in the voices of dissent against their powers of command. Sexual violence was used as just one more weapon in the repression of the protest, as if, together with the tear gas and the anti-riot gear, it was merely an additional tactic to achieve the purpose of dispersing the protest and ensuring that the State's authority was not challenged again».

²⁰ See, for example, IACtHR, *Case of Espinoza González v. Peru*, 20 November 2014, para.62, in which the Court reminds that «during the conflict in Peru numerous acts of sexual violence were perpetrated against women by State agents and members of subversive groups and, although there were cases of sexual violence against men, it was mostly women who were victims of such acts, which 'allows

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the Court analyses a situation of violence perpetrated by State agents in a democratic context. Interestingly, the Inter-American Court stressed that violence against women, despite being remarkably more brutal in conflicts and rooted in a context of structural discrimination, persists even after the resolution of these conflicts, unless appropriate policies are put in place.

In this perspective, some recent cases against Guatemala can be mentioned. In these judgments, the Court remarks that, even after the end of armed conflict, violence against women is still present within the society at very high levels, as it was stated in the key cases *Veliz Franco v. Guatemala* and *Velásquez Paiz v. Guatemala*²¹. The first case, *Veliz Franco*, concerns the death of a 15-year-old girl who one day left her home to go to work never to come back; the second case is about the death of a 19-year-old university student who went to a party and was later found dead. The Court highlights the context of violence in which the death of these two young women occurred. Suffice to think that in 2012 Guatemala ranked third in the world for the violent deaths of women²². In many cases, this violence against women is characterised by brutality: rape is followed by the mutilation of their bodies. Similarly to *González et al. ("Cotton Field")*, here too the victims are mostly young women living in contexts of poverty and, just like in *Campo González et al. ("Cotton Field")*, there are no culprits. Impunity is an element that all these phenomena of enormous violence have in common, impunity being the other side of discrimination, which ends up feeding the violence.

Therefore, in situations of major internal conflict as well as democratic contexts like the Mexican one, assaults on women by State agents are related to structural discrimination, without which no acts of violence like those described in *Women Victims of Sexual Torture in Atenco* could be perpetrated, namely violent acts carried out in public, in the presence of numerous witnesses, as if they were a «macabre and intimidating spectacle»²³. About this, the Court recalls that also the African Commission on Human

[the Truth and Reconciliation Commission, CVR] to speak of 'gender-based violence' during the armed conflict in Peru, because the sexual violence affected women merely because they were women'. Over the period from 1980 to 2000: « that generalized context of sexual violence was inserted in a broader context of discrimination against women, who were considered vulnerable and whose body was used by the perpetrator without any apparent reason or strict relationship to the conflict»: *ivi*, para. 67b.

²¹ For example, in IACtHR, *Case of Velásquez Paiz et al. v. Guatemala*, 19 November 2015, para 45: «The report 'Guatemala: Memoria del Silencio' of the Commission for Historical Clarification (hereinafter CEH) stated that '[w]omen were victims of all forms of human rights violations during the armed conflict, but they also suffered from specific forms of gender-based violence'. The CEH reached the conviction that the devaluation of women was absolute and allowed members of the Army to attack them with total impunity, and it concluded that, during the internal armed conflict, the courts of justice revealed themselves to be incapable of investigating, processing, prosecuting, and punishing those responsible». Moreover, the Court stresses that « this situation had persisted following the end of the armed conflict and that it was reflected in a culture of violence that had continued over the years and that included a substructure of violence that especially affected women ».

²² IACtHR, *Case of Velásquez Paiz et al. v. Guatemala*, cit., para.46.

²³ IACtHR, *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, cit., para. -202.

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and Peoples' Rights, in the case of the rape of women during the 2005 demonstrations in Egypt, had stressed that rape can also be used in contexts where there is no armed conflict, as an instrument of repression²⁴.

In *Women Victims of Sexual Torture in Atenco* the Inter-American Court often cites other Courts and international organisations. This is a frequent occurrence in the Inter-American setting, which displays a remarkable tendency to refer to extra-systemic references. There are several reasons behind this comparative attitude. The San José judges certainly felt the need to legitimise their work in a context that was long characterised by authoritarian regimes. In other words, they have looked outside the continent to find the models and standards for the protection of rights that they could not have found locally. This element marks a major difference from the Court of Strasbourg, which has made very limited use of the Inter-American Court's case law in favour of the well-established legal traditions of Europe²⁵.

The most recent studies comparing both case laws – European and Inter-American – on the topic of sexual abuse, identify this asymmetry. Nonetheless, sexual violence is one of the very few cases in which the ECHR cites the Inter-American Court. Think of the case *Gjini v. Serbia*, 15th January 2019, in which a dissenting opinion (of judges Pastor Vilanova and Serghides) uses the Inter-American case law in a decision concerning the violence suffered by the plaintiff while detained in prison. The ECHR does not recognise rape due to the lack of sufficient evidence such as a medical certificate. Judges Pastor Vilanova and Serghides, on the contrary, on this specific element, claim that «it is true that the applicant did not produce a medical certificate concerning possible rape. Nevertheless, we consider that this omission does not suffice to automatically cast doubt on her allegations. This is the approach taken by the Inter-American Court of Human Rights [...], and with which we agree»²⁶. In more general

²⁴ African Commission on Human and Peoples' Rights, *Case of the Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt*, 12 December 2011, para. 166: «it is clear that the sexual assaults against the Victims which occurred on 25 May 2005 were acts of gender-based violence, perpetrated by state actors, and non-state actors under the control of state actors, that went unpunished. The violations were designed to silence women who were participating in the demonstration and deter their activism in the political affairs of the Respondent State which in turn, failed in its inescapable responsibility to take action against the perpetrators ».

²⁵ Cfr. T. Groppi – A. M. Lecis Cocco-Ortu, *Le citazioni reciproche tra la Corte europea e la Corte interamericana dei diritti dell'uomo: dall'influenza al dialogo?*, in *Federalismi*, 19, 2013. Also, on the dialogue between both Human Rights Courts see F.J. Ansuátegui Roig, *Human Rights and Judicial Dialogue between America and Europe: Toward A New Model Of Law?*, in *The Age of Human Rights Journal*, 6, 2016, p. 24 ss.; O. Parra Vera, *Algunos aspectos procesales y sustantivos de los diálogos recientes entre la Corte Interamericana de Derechos Humanos y el Tribunal Europeo de Derechos Humanos*, in P. Santolaya – I. Wences (eds.), *La América de los Derechos*, Madrid, 2016, p. 565 ss.

²⁶ This partial dissenting opinion continues stating: «We cannot overlook the existence of several factors which, in combination, justify this omission: (1) the fear of reprisals, (2) the shortage of doctors in the prison [...], (3) the failure of the prison authorities to act when injuries to prisoners were recorded [...], and (4) the fact that rape does not necessarily leave physical traces, especially after some time has elapsed», partly dissenting opinion of judges Pastor Vilanova and Serghides, para. 7.

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terms, following the doctrine on the topic, both regional Courts on human rights (namely, the European and Inter-American ones) agree on matters of violence against women, so much so that one may speak of the «*existencia de un diálogo interregional, tanto expreso como subliminal, en relación a la vulneración de los derechos humanos protegidos por el Convenio de Roma y la Convención de San José por la comisión de actos de violencia sexual*»²⁷, which is especially evident in «*soluciones cada vez más convergentes, tanto en términos sustantivos como procesales*»²⁸.

3. Sexual Violence, Rape, and Torture in Inter-American Jurisprudence

In *Women Victims of Sexual Torture in Atenco*, the Court examines mainly the disproportionate use of force by police agents during the protests. The Court uses its own precedents on the limits to the use of force, reaffirming a few well-known concepts, such as those stating that the use of force must respect the principles of legality, absolute necessity, and proportionality. On the contrary, during the protest in Atenco, the State puts in place an indiscriminate use of violence against anyone who was believed to be taking part in it. As a matter of fact, none of the victims was perpetrating violent acts. A few of the plaintiffs, for example, happened to be in the place where the protests were being carried out either because they were strolling with their family, or because they were on their way to work. The others, who had reached the area to study, to provide medical assistance, or as journalists, were not directly involved in the riots, or committing any violent acts. Consequently, the Court identifies a common element to all the violent acts committed, i.e., «an erroneous belief that the violence of some people justified the use of force against everyone»²⁹.

Further below, the judgment examines the violence suffered by the plaintiffs, using the notions of sexual violence, rape, and torture, which were already present in the Inter-American case law. In introducing its motivations, the Court recalls that

²⁷ M.M. Martín – I. Lirola, *El diálogo jurisdiccional interregional en la investigación y sanción de la violencia sexual*, in *Araucaria. Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones*, 40, 2018, p. 515 ss.

²⁸ M. M. Martín – I. Lirola, *op cit.*, p. 517. See ECtHR, *Mocanu et al. v. Romania*, 17 September 2014, Concurring Opinion of judge Pinto de Albuquerque, joined by judge Vučinić, in which it is stated: «In the European and American legal space, these soft-law instruments have been reinforced by judgments from regional international human-rights courts. Both the Court's judgments and those of the Inter-American Court of Human Rights have reiterated that criminal proceedings and sentencing in torture cases should not be time-barred». Remarkably, however, in the case of the European Court, most judgments concern domestic violence, on which, L. Hasselbacher, *State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International. Legal Minimums of Protection*, in *Northwestern Journal of International Human Rights*, 2, 2010, p. 190 ss.

²⁹ IACtHR, *Case of Women Victims of Sexual Torture in Atenco*, cit., para. 170. In opening its reasoning, therefore, the Court acknowledges an excessive, indiscriminate, and illegitimate use of force by the Mexican State. Indeed, the way in which the police operations were carried out shows, according to the San José judges, the lack of appropriate rules, of agent training, of supervision of the operations.

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torture and cruel, inhuman, or degrading treatment is forbidden under the international law of human rights. This prohibition, which falls within international *jus cogens*, has no exceptions whatsoever, as it must be respected even in situations of war, counter-terrorism actions, siege, state of emergency, conflict, etc.

In particular, the Court recalls its own precedents, and those of other international Courts (as the International Criminal Tribunal for the former Yugoslavia or the ECHR), to provide a wide-ranging definition of sexual violence, which includes several different instances. Indeed, following the case law of other Courts, it is stated that «sexual violence is constituted by actions of a sexual nature that are committed against an individual without their consent, and that in addition to including the physical invasion of the human body may include acts that do not involve penetration or even any physical contact». Thus, the Court distinguishes between sexual violence and rape. The latter «is any act of vaginal or anal penetration, without the victim's consent, using parts of the attacker's body or objects, as well as oral penetration by the penis. For an act to be considered rape, it is sufficient that penetration occurs, however superficial this may be»³⁰.

Based on the above definitions, the Court claims that all the violence perpetrated by the State agents against the women – including both physical and psychological violence – had a sexual connotation. Therefore, considering the testimonies and evidence gathered, the Court states that all the 11 plaintiffs were victims of sexual violence and 7 of them of rape as well. Having identified the type of violence suffered by the women, the Court goes on to tackle the issue of torture: can the sexual violence suffered be qualified as a form of torture as well?³¹

Unfortunately, torture makes a substantial part of the Inter-American Court's case law. However, the American Convention does not define torture itself. A definition of torture is provided in other treaties, such article 2 of the Inter-American Convention to prevent and punish torture (1984)³².

³⁰ IACtHR, *Case of Women Victims of Sexual Torture in Atenco*, cit., para. 181-182 ss. Here the Inter-American Court refers to the International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Anto Furundžija*, Judgment of 10 December 1998, case No. IT-95-17/1-T, para. 185; International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Kunarac et al.*, Judgment of 22 February 2001, case No. IT-96-23-T and IT-96-23/1-T, paras. 437 and 438; International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Kunarac et al.*, Judgment on Appeal of 12 June 2002, case No. IT-96-23-T and IT-96-23/1-T, para. 127.

³¹ The link between sexual violence and torture is already present in the reports of the Commission, which, as early as the case *Raquel Martín de Mejía v. Perú*, case 10.970 Informe No. 5/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 168 (1996), considers it appropriate to qualify sexual violence as torture. See 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*, 44, 121, 2014, p. 461 ss.

³² Art. 2, para 2: «for the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive

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Hence, to interpret art. 5 of the CADH, the Court had recourse to art. 2 of the Inter-American Convention on Torture. This link between the two norms is already present in the Inter-American case law. In *Buenos Alves v. Argentina*, for example, the Inter-American Court devises a sort of test to find out whether an instance of torture is present or not. In particular, the Court states that we are faced with torture when the ill-treatment: a) is intentional; b) causes major physical or mental suffering, and c) is committed with a specific purpose.

Intentionality is understood as the circumstance whereby the acts were deliberate and not the result of negligence, accident, or force majeure³³. As for the major suffering, the Court states that the specific circumstances of each case must be considered, considering both objective and subjective factors. Therefore, there is not an abstract criterion to define suffering, but the specific circumstances of each single case must be considered, including both the objective characteristics of the violence suffered - such as duration, method, physical, and mental consequences - and the victim's specific conditions - such as age, gender, and all other personal circumstances³⁴.

However, in 2010, with the *Fernández Ortega y Rosendo Cantú* cases, both versus Mexico, the Court further developed more deeply its reasoning on the relationship between torture and sexual violence³⁵. These two judgements, that could be defined as the twin judgements on sexual torture within the Inter-American context, are indeed crucial to understand how the prohibition of torture is guaranteed and how it is intertwined with sexual violence.

Both victims, Fernández Ortega, and Rosendo Cantú, are two young indigenous women (Rosendo Cantú is even younger), who live in poverty. In both cases violence

measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish». See L. Galdámez, *La noción de tortura en la jurisprudencia de la Corte Interamericana de Derechos Humanos*, in *Revista CEJIL*, 2006, p. 89 ss.; C. Nash Rojas, *Alcance del concepto de tortura y otros tratos crueles, inhumanos y degradantes*, in *Anuario de derechos constitucional latinoamericano*, 2009, p. 585 ss.

³³ IACtHR, *Bueno-Alves v. Argentina*, 11 May 2007, para. 81.

³⁴ *Ivi*, para 83.

³⁵ Already in the *Case of the Miguel Castro-Castro Prison v. Peru*, cit., displays a combination of torture and sexual violence. In dealing with the issue of the vaginal "examination" which was undergone by one detained woman, the Court first qualifies it as rape following the case law of the other supranational Courts and then, «due to its effects», it states that it can be viewed as torture: «The Court acknowledges that the sexual rape of a detainee by a State agent is an especially gross and reprehensible act, taking into account the victim's vulnerability and the abuse of power displayed by the agent. Similarly, sexual rape is an extremely traumatic experience that may have serious consequences and it causes great physical and psychological damage that leaves the victim 'physically and emotionally humiliated', situation difficult to overcome with time, contrary to what happens with other traumatic experiences», para 311. Also on the seriousness of the consequences of rape, the Court highlights that «this Tribunal acknowledges that sexual violence against women has devastating physical, emotional, and psychological consequences for them, which are exacerbated in the cases of women who are imprisoned», para 313.

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against the plaintiffs was perpetrated by some soldiers who were present in the State of Guerrero to suppress unlawful activities such as organised crime. The violence reported by the plaintiffs is not an isolated event. In both decisions, the Court recalls that rape perpetrated by members of the Army is indeed one of the various acts of violence affecting women in the State of Guerrero.

In the case of Fernández Ortega, the victim is an indigenous woman belonging to the Me'paa Community who, at the time of the events, was aged 25. Mrs Fernández Ortega was in her home located in a secluded mountain area when some soldiers entered her house without her consent. After turning their guns on her, they started asking some questions (asked her several times «where did your husband go to steal meat»³⁶), that she didn't answer. Later she was raped by one of the soldiers. The case of Rosendo Cantú is, in some respects, quite similar³⁷. Rosendo Cantú was a young 17-year-old woman, who belonged to the same indigenous Me'paa Community and lived in a very secluded mountain area. One afternoon, while standing near a stream to wash herself and some clothes, she was approached by eight soldiers who, after turning their guns on her, asked her some questions about a few individuals. Feeling very scared, Rosendo Cantú did not answer their questions, so she was beaten and raped.

Very important statements on rape and sexual violence can be found in these judgements. A first point to highlight is the victims' credibility, as the San José judges state that rape is a form of violence that normally has no witnesses, apart from the victim and the aggressors. Therefore, in the view of the Court, given the nature of this form of violence, the existence of «await graphic or documentary evidence» cannot be envisaged, hence the statement by the victim turns out to be a fundamental element³⁸. In this perspective, the Court analyses the topic of the victim's credibility when some inconsistencies are found in the facts reported. Based on the judgement of the European Court in the case *Aydın v. Turkey*, the Court claims that this occurrence does not lessen the victim's credibility³⁹.

In the view of the Court, there are some significant pieces of data that, when combined, make the victims' statements truthful. For instance, it is pointed out that Mrs Fernández Ortega lived in an isolated mountain area, so she had to walk a long distance to lodge her complaint, and she finally had to discuss with local officers who did not speak her language. Furthermore, Mrs Fernández Ortega was perfectly aware not only of the possible negative consequences of her complaint on her own community, but also of the fact that the soldiers she had decided to sue were still

³⁶ IACtHR, *Fernández Ortega v. Mexico*, 30 August 2010, para 82.

³⁷ IACtHR, *Rosendo Cantú and other v. Mexico*, 31 August 2010.

³⁸ IACtHR, *Fernández Ortega v. Mexico*, cit., para 100: «First, the Court finds it evident that rape is a special type of violence, which is generally characterized as taking place in the absence of persons other than the victim and the aggressor or aggressors. In view of the nature of this type of violence, one cannot await graphic or documentary evidence, thus the victim's statement becomes the fundamental proof of that which occurred».

³⁹ Cfr. ECtHR, *Aydın v. Turkey*, 25 September 1997, paras. 72 and 73.

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present in that area⁴⁰. As regards this last point, it is worthwhile recalling the supervision measures adopted by the Court to protect Mrs Fernández Ortega's and her relatives' life and physical integrity, starting from the Resolution of the President of the Inter-American Court of 9th April 2009. The provisional measures first adopted toward Mrs Fernández Ortega, and then toward Rosendo Cantú, make us understand to what extent, in some specific contexts, reporting violence may expose to serious risks for one's safety⁴¹.

Furthermore, according to the Court, the main facts reported by the plaintiff (her being at home and the presence of the soldiers in the area) have been established. In the light of the above elements, the Court finds that the victim's statements cannot be challenged on the ground that, for instance, Mrs Ortega had first reported to have been raped by three soldiers, while on another occasion only by one⁴² (and that, in her first statements at the hospital, Rosendo Cantú did not report any sexual violence, stating that her abdominal pain was caused by an accident occurred earlier)⁴³. According to the San José judges, and as also demonstrated by other Courts, this kind of inconsistencies is frequently found in rape cases, without being by itself sufficient to question the truthfulness of the facts⁴⁴.

Even more interesting is the fact that in *Fernández Ortega* there is no sign of physical coercion. In this regard, the San José judges are always in line with international case law. Indeed, according to them, rape can occur even without the use of force which «cannot be considered an essential element to punish non-consensual sexual acts». On the contrary, the circumstance where «there are coercive elements in the conduct» can be considered as a relevant element⁴⁵. On that matter, the Inter-

⁴⁰ IACtHR, *Fernández Ortega v. Mexico*, cit., para. 107.

⁴¹ Order of the Inter-American Court of Human Rights of 2 February 2010 Provisional Measures regarding Mexico Matter of Rosendo Cantú and other *et al.*

⁴² IACtHR, *Fernández Ortega v. Mexico*, cit., para. 102.

⁴³ IACtHR, *Rosendo Cantú and other v. Mexico*, cit., para. 75: «On February 18, 2002, Mrs. Rosendo Cantú, accompanied by her husband, went to a health care clinic in the community of Caxitepec for treatment for the injuries she had received, but there is no indication that she told the doctor who treated her that she had been raped. The doctor gave her pain and anti-inflammatory medications. On February 26, 2002, they walked for eight hours to Ayutla de los Libres to consult a doctor at the hospital. There she was treated in the General Consultation Service for a trauma to her abdomen, and she reported that '10 days ago a piece of wood [had fallen] on [her] stomach, causing the pain [there],' without stating she had been raped».

⁴⁴ ECtHR, *Aydın v. Turkey*, cit., paras. 72 and 73.

⁴⁵ IACtHR, *Fernández Ortega v. Mexico*, cit., para. 115.

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American Court cites both the Strasbourg judgement *M.C. v. Bulgaria*⁴⁶, and that of ICTY, *Case of Kunarac et al. "Foča"*⁴⁷.

Finally, in *Fernández Ortega and Rosendo Cantú*, it is also stated, and it will be always re-stated in the following judgements, that sexual violence implies the violation of article 11 of the ACHR, as the protection of private life also includes sexual life⁴⁸.

After ascertaining rape, the Court focuses on the violation of article 5 of the ACHR, that would allow to consider it also a form of torture. Always according to the definition of torture laid down in the Inter-American Convention aimed at preventing and punishing torture, as well as to the way it was applied in the case *Buenos Alves*, the Court considers that an act can be classified as torture in the presence of the following elements: a) intentionality; b) severe physical or psychological suffering, and c) a purpose⁴⁹.

The Court recalls that an act of torture can consist either of acts of physical violence or of acts causing severe mental or moral damage to the victim. And notably rape «is an extremely traumatic experience that can have severe consequences and cause significant physical and psychological damage that leaves the victim "physically and emotionally humiliated", a situation that is difficult to overcome with the passage of time, contrary to other traumatic experiences»⁵⁰. Hence, in the view of the Court, even when there is no evidence of physical injuries, rape causes deep psychological suffering to the victim. As Jean Amery writes in *At the Mind's Limits: Contemplations by a Survivor on Auschwitz and its Realities*, torture makes the tortured lose his confidence in the world, becoming thereby always a tortured person.

⁴⁶ ECtHR, *M.C. v. Bulgaria*, 4 December 2003, para 166. The European Court of Human Rights analyses the rape case of a 14-year-old girl, whose rapists were not punished by the State on the ground that there was no proof of the young woman's physical resistance: «In the light of the above, the Court is persuaded that any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardizing the effective protection of the individual's sexual autonomy. In accordance with contemporary standards and trends in that area, the member States' positive obligations under articles 3 and 8 of the Convention must be seen as requiring the penalization and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim».

⁴⁷ ICTY, *Case of Kunarac et al. "Foča" (Prosecutor v. Kunarac, Kovac and Vukovic)*, 22 February 2001, paras. 452 and 464.

⁴⁸ IACtHR, *Case of Fernández Ortega v. Mexico*, cit., para. 129: «the concept of private life is a wide-ranging term, which cannot be defined exhaustively, but includes, among other protected forums, sexual life, and the right to establish and develop relationships with other human beings. The Court finds that the rape of Mrs. Fernández Ortega violated essential aspects and values of her private life, represented an intrusion in her sexual life, and annulled her right to decide freely with whom to have intimate relations, causing her to lose total control over these most personal and intimate decisions, and over her basic bodily functions».

⁴⁹ IACtHR, *Case of Buenos Alves v. Argentina*, cit., para 79.

⁵⁰ IACtHR, *Case of Fernández Ortega v. Mexico*, cit., para. 124 and *Case of Women Victims of Sexual Torture in Atenco*, cit., para. 196.

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Moreover, according to the San José judges, the purpose of rape – like that of torture – is to intimidate, degrade, humiliate, punish, and control a person.⁵¹ The rape of Mrs. Fernández Ortega was committed after the soldiers had not obtained the required information; thus, the Court considers that the rape had the specific purpose of punishing the victim because she didn't provide it⁵².

The reasoning and standards of judgment outlined in *Fernández Ortega e Rosendo Cantú* are applied in the case *Women Victims of Sexual Torture in Atenco*. The Court recalls that the agents intentionally acted against the women; that sexual violence and rape cause deep suffering to the victim even in the absence of physical injuries; that the purpose of the violent acts was that of humiliating and intimidating the women to prevent them from taking part in political life and from expressing their own dissent. Consequently, the State of Mexico was also condemned for violating article 5 of the ACHR.

4. The Relationship Between Sexual Violence and Torture in the Most Recent Cases: Towards a Strong Protection of Women's Rights

A recent case where the Court also applies these precedents is *Azul Rojas Marín et al. v. Peru*, which concerns the detention and subsequent sexual violence inflicted upon the plaintiff, who belonged to the LGTB community⁵³. In this judgment, the Court still applies its own standards to the issue of rape and torture. In particular, the Court underlines that victims not always report the sexual assault they suffer due to the stigma associated with it. This would explain, according to the Court, that Mrs Rojas Marín did not mention the rape when she spoke to the police⁵⁴.

Later, once the occurrence of a rape had been established, the three elements required to classify the violence suffered as torture are indicated (intentionality, severe suffering, and purpose): ill-treatment was a deliberate choice, executed by State agents; the victim's suffering resulted from the fact that sexual violence is a highly traumatic experience (the consequences of rape on physical health are also demonstrated by medical evidence); rape, just like torture, pursues, among other things, the goal of

⁵¹ IACtHR, *Case of Fernández Ortega v. Mexico*, cit., para 127.

⁵² *Ibidem*. Moreover, the Court recalls that «this Court finds that rape may constitute torture even when it is based in a single fact alone and takes place outside State facilities, such as in the victim's home. This is so because the objective and subjective elements that classify an act as torture do not refer either to the accumulation of facts or to the place where the act is committed, but to the intention, the severity of the suffering, and the purpose of the act, requisites that, in the present case, have been fulfilled»: *ivi*, para. 128.

⁵³ IACtHR, *Case of Azul Rojas Marín v. Peru*, 12 March 2020.

⁵⁴ *Ivi*, para. 148.

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intimidating, humiliating, or controlling the person who is subject to it⁵⁵. Moreover, in this case, it is underlined that the violent acts had a discriminatory purpose too, due to the plaintiff's homosexuality. Hence, this recent ruling further demonstrates that, so far at least, according to the Inter-American case law, rape constitutes torture, given the presence of the elements required for classifying as such the violence suffered by the victims.

The Inter-American case law went a little further in the case *López Soto et al v. Venezuela*. The violation of article 5 ACHR and the prohibition of torture resulting from the conduct of private individuals and not from State agents are acknowledged for the first time⁵⁶. Indeed, in the case law discussed thus far, torture was acknowledged in those cases where sexual violence had been perpetrated by State agents. The Inter-American Court had already grappled with this issue in *González et al. ("Cotton Field") v. Mexico*, even though, in its view, the violence suffered by the victims could not be classified as torture. It is worthwhile recalling that in *González et al. ("Cotton Field")*, the common elements to the victims' deaths were not only the victims' gender and age, but also that they were abducted, kept in captivity, and their bodies found on empty lots, days or months later with signs of violence, rape, sexual abuse, torture, and mutilation⁵⁷. Nevertheless, the Court considers that the violence suffered by the victims cannot be classified as torture. In this respect, it should be mentioned the concurring opinion of Judge Medina Quiroga, according to whom the fact that a conduct is imputable to a state agent is not one of the necessary requirements to classify the conduct as torture.

The problem of State responsibility for the behaviour of a third party is solved by the Interamerican Court using the notions of respect and guarantee found in article 1 of the Convention, which were considered since the first litigation, *Velasquez v. Honduras*, of 1988. As it is widely known, the notion of 'respect' is equal to a negative obligation: it limits the arbitrary use of force. Whereas that of 'guarantee' can be developed in different ways, depending on the violated right as well as the specific circumstances of the case, and can be defined as the obligation to guarantee the free and full exercise of fundamental rights (positive obligation). For instance, a guaranteed obligation encompasses the duty to set up the entire government apparatus and, more generally, all public powers in such a way that the full and free exercise of rights can be legally ensured⁵⁸.

⁵⁵ *Ivi*, para. 163.

⁵⁶ IACtHR, *Case of López Soto et al v. Venezuela*, 26 September 2018. Cfr. D. Kravetz, *Holding States to Account for Gender-Based Violence: The Inter-American Court of Human Rights' decisions in López Soto vs. Venezuela and Women Victims of Sexual Torture in Atenco vs. Mexico*, in *EJIL:Talk!*, *Blog of the European Journal of International Law*, 2019.

⁵⁷ IACtHR, *Case of González et al. ("Cotton Field") v. Mexico*, cit., para. 125.

⁵⁸ For a reconstruction of State obligations in the inter-American case law, see C. Medina Quiroga, *Las obligaciones de los estados partes bajo la Convención Americana sobre derechos humanos*, in *La Corte interamericana de derechos humanos: un cuarto de siglo 1979-2004*, San José de Costa Rica, 2005, p. 209 ss.; E.

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Cases related to the violation of the right to life provide a clear example of the guaranteed obligation and its function. The combined provisions of articles 1 and 4 of the Convention induce the Court to state that the duty of prevention includes all the legal, political, administrative, and cultural measures aimed at promoting the protection of human rights, while ensuring that their violation is really treated as an offence and therefore punished. One element repeatedly contemplated by the San José judges is the behaviour of public authorities. In particular, the Court verifies whether the death occurred in lack of preventive measures, or without any subsequent conviction.

The above case law highlights how failure to fulfil the duty of prevention is not only related to the violation of a right but stems from the knowledge of a situation of real and immediate risk, for an individual or group of individuals, combined with a reasonable possibility to prevent, or avoid that risk. In *González et al. ("Cotton Field")*, for example, the Court points out that two different phases should be analysed in more detail: the first one prior to the disappearance of the girls, and the second one when the members of their families decide to report it. In this second phase, the State is aware of the real and immediate risk of the girls being beaten and killed. From this moment, the action of the State must be subject to a more stringent scrutiny since the duty of protection becomes even more evident.

In *López Soto et al v. Venezuela*, the same kind of reasoning is applied to torture. The case is about the abduction as well as physical and psychological violence inflicted upon an 18-year-old woman by a private citizen, for about 4 months. First, the Court finds that, based on all international rules on torture, it cannot be inferred that the conduct has to be necessarily ascribed to a state agent. In fact, the State may be held liable even for «instigation, consent, acquiescence and failure to act to prevent such acts when this is possible»⁵⁹. Hence, the fact that the State did not take immediate action or did not avoid the violence against the girl implies its responsibility for torture.

From this angle, the behaviour of public authorities is examined after the girl's family members have reported the facts and the State has become aware of the real risk the victim might run. In this case, significant information on the identity of the abductor and his telephone data were also available to the authorities. Therefore, the State could have taken concrete actions to stop the violence suffered by Linda López Soto. Hence, the Court holds the State guilty, when violence against women is perpetrated with tolerance and acquiescence on the part of the State, for not having deliberately avoided it⁶⁰. Referring to the reasoning found in *Velásquez Rodríguez vs. Honduras*, the Court asserts that its task is to verify whether the violation of rights has occurred with the support, consent, or negligence of the State, i.e., because of the

Ferrer Mac-Gregor, *Art. 1*, in C. Steiner – M.-C. Fuchs (eds.), *Convención Americana sobre Derechos Humanos. Comentario*, Berlin-Bogotá, 2019, p. 31 ss.

⁵⁹ IACtHR, *Case of López Soto et al v. Venezuela*, cit., para 192.

⁶⁰ *Ivi*, para 197.

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State's failure to respect and guarantee fundamental rights, as is required in the opening of the Convention⁶¹.

All these judgements are steps of the long case law evolution characterized by the San José judges being committed to condemn the States in gender-based violence cases, through the joint interpretation of articles 5 and 1 of the ACHR. At least up to the present, the idea that rape constitutes torture has been gaining ground within the Inter-American case law. The three elements defined by the Court as necessary to conclude that there has been torture, are also those we find when the Court analyses cases of rape.

5. Measures of Reparation and Transformative International Justice: The Inter-American System and the Fight Against Gender Violence

Unlike the European Court of Human Rights, the Inter-American Court usually asks the State for a series of remedial measures that do not end with the claim for the damages suffered. Indeed, over time, the Inter-American Court has developed a vast arsenal of remedial measures, ranging from asking to disclose the judgement via the media; to officially acknowledging the State's international responsibility by inviting the plaintiffs and their families together with the highest representatives of the State to a special ceremony; from erecting a monument in the memory of the victims; to modifying constitutional or legislative standards as well as to implementing programs specifically intended for policemen, judges, military representatives and any other public officer, aimed at sustaining a culture of human rights⁶².

Furthermore, the San José judges have developed a body of case law where the principle of *restitutio ad integrum* prevails over monetary compensation. Decisions on the re-opening of judicial proceedings, release of detainees and annulment of decisions on criminal matters, are in line with this logic⁶³. Remedial measures reflect the "fragility" of the country, almost as if there was a kind of inverse relationship between the robust constitutional domestic systems for the protection of human rights and the invasiveness of reparation measures. These measures display another distinctive feature of the Inter-American system which – as pointed out by Burgorgue-Larsen – is on the one hand a "traditional" system of international protection of rights, being the result of an international agreement and establishing a regional jurisdiction for the

⁶¹ IACtHR, *Case of Velásquez-Rodríguez v. Honduras*, 29 July 1988, para. 173.

⁶² Cfr. F. Calderón Gamboa, *La reparación integral en la jurisprudencia de la Corte Interamericana de Derechos Humanos: estándares aplicables al nuevo paradigma mexicano*, México, 2013; J.S. Pinacho Espinosa, *El derecho a la reparación del daño en el Sistema Interamericano*, Mexico, 2019.

⁶³ See, among the others, the decisions IACtHR, *Case of Castillo Petruzzi et al. v. Peru*, 30 May 1999; *Case of Loayza Tamayo v. Peru*, 17 September 1997; and *Case of Cantoral-Benavides v. Peru*, 3 December 2001.

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protection of the freedoms recognized in the agreement; and on the other an “innovative” system as its «traditional nature gave rise to its impressive *originality*»⁶⁴.

About violence against women, according to the doctrine, it is only since the *Cotton Fields* case onwards that remedial measures have taken into due consideration «*los impactos diferenciados que la violencia causa en hombres y en mujeres*», as well as the need that reparation measures have «*una vocación transformadora de dicha situación*», es decir “*un efecto no solo restitutorio sino también correctivo*”⁶⁵. Even in *Women Victims of Sexual Torture in Atenco* the Court asks the State to adopt different remedial measures. First, it asks to carry out adequate investigations leading to the prosecution and punishment of the offenders. In this case, the Court considers it necessary to extend the scope of the investigations to assess the possible involvement of high-ranking officials and all other officials whose conduct revictimized the plaintiffs. The State is asked to publish the judgement; to acknowledge publicly the State’s responsibility; to provide physical, psychological, and mental care to the victims; as well as to offer scholarships to the three victims who were attending university courses and whose life projects had been interrupted by the events. It is also required to implement training programs intended for public officers aiming at making law enforcement fully aware of the safeguarding of human rights.

The last report on the execution of the judgement shows that many of the requests, such as the publication of the judgement and the provision of medical treatment, have been met; the victims are still considering different options of scholarships, but most of the payments have already been made⁶⁶. On the contrary, as for the investigations on the events, the Court recalls that, despite the commencement of several proceedings, no State responsibility was determined upon the adoption of the Decision.

As a positive element, it should be noted that on 22 March 2019, the present Special Prosecutor’s Office of the National Prosecutor’s Office entrusted with the investigation of violent crimes against women and human trafficking has initiated a federal investigation on the torture suffered by the eleven victims. This initiative is particularly relevant since it is a crucial element for unifying the investigations⁶⁷. However, the report underlines that the National Prosecutor’s Office of the State of

⁶⁴ L. Burgogue-Larsen, *El sistema interamericano de protección de los derechos humanos: entre lasicismo y creatividad*, in A. Von Bogdandy – C. Landa Arroyo – M. Morales Antoniazzi (eds.) *¿Integración suramericana a través del derecho? Un análisis interdisciplinario y multifocal*, Madrid, 2009, p. 287.

⁶⁵ E. Tramontana, *Hacia la consolidación de la perspectiva de género en el Sistema Interamericano: avances y desafíos a la luz de la reciente jurisprudencia de la Corte de San José*, cit., p. 175.

⁶⁶ IACtHR, *Case of Women Victims of Sexual Torture in Atenco*, Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, 19 November 2020.

⁶⁷ IACtHR, *Case of Women Victims of Sexual Torture in Atenco*, Monitoring Compliance with Judgment, cit., para. 7

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Mexico was «hindering the investigations since the whole dossier had not been yet forwarded to the attorney general's office»⁶⁸.

Although not all the remedial measures were adopted, the transformative potential of the Inter-American case law should not be underestimated. Indeed, remedial measures often imply changes to national legislation. A positive example can be given by the events following the judgement of the *Rosendo Cantú* case⁶⁹. The report on the execution of the 2020 decision states that, in compliance with what is set out in the judgement, Mexico has referred the case to the judges in ordinary courts, thereby allowing for the subsequent sentencing of a soldier and a corporal to nineteen years' imprisonment in June 2018. It was precisely the amendment to the code of military justice provided for by the Inter-American Court in the remedial measures that allowed for the intervention of the ordinary judges⁷⁰. Through this amendment, in line with the Court's position on military justice, violations of human rights committed by soldiers against civilians shall be referred to ordinary criminal courts.

Furthermore, the Court recalls that the national judgement followed the standards adopted by the Inter-American system for rape cases, also from a gender perspective. It recalls that the victim's statements were credible even when the gynaecological tests undergone by Rosendo Cantú long after the violence she had suffered could not prove her rape⁷¹.

The development of shared standards for the protection of women victims of violence is a step forward in the fight against gender-based violence. The conviction of the aggressors of Rosendo Cantú feeds the hope also for the eleven women in *Women Victims of Sexual Torture in Atenco*, who are still awaiting justice, thus showing that the synergy between national and supranational judges is crucial to combat gender-based discriminations.

Abstract: The Inter-American Court of Human Rights declared Mexico responsible for acts of sexual violence, rape and torture suffered by 11 women in the *Case of Women Victims of Sexual Torture in Atenco v. Mexico* (28 November 2018). The importance of this decision lies in the fact that the Court considered that the acts of torture (including sexual torture) perpetrated by state agents against women during a public demonstration, were used as a method of social control, with the aim of

⁶⁸ *Ibidem*.

⁶⁹ See IACtHR, *Case of Rosendo Cantú and other v. Mexico*, Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, 12 March 2020.

⁷⁰ On this point, see IACtHR, *Cases of Radilla Pacheco, Fernández Ortega and others, y Rosendo Cantú and other v. México*, Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, 17 April 2015.

⁷¹ IACtHR, *Case of Rosendo Cantú and other*, Monitoring Compliance with Judgment, cit., para 7.

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intimidating and silencing the victims. This article analyzes the relationship between sexual violence and torture in the most recent cases, showing the tendency towards strong protection of women's rights in the InterAmerican system. Finally, the paper analyzes the measures of reparation and the transformative role of international justice.

Abstract: La Corte interamericana dei diritti umani ha dichiarato il Messico responsabile di atti di violenza sessuale, stupri e torture subiti da 11 donne nel caso di *Women Victims of Sexual Torture in Atenco v. Mexico* (28 novembre 2018). L'importanza di questa decisione risiede nel fatto che la Corte ha ritenuto che gli atti di tortura (compresa la tortura sessuale) perpetrati da agenti statali contro le donne durante una manifestazione pubblica, fossero usati come metodo di controllo sociale, con l'obiettivo di intimidire e mettere a tacere le vittime. Il presente articolo analizza il rapporto tra violenza sessuale e tortura nei casi più recenti, mostrando la tendenza a una forte tutela dei diritti delle donne nel sistema interamericano. Infine, il contributo analizza le misure di riparazione e il ruolo trasformativo della giustizia internazionale.

Keyword: Violence – gender – torture – Inter-American Court – human rights.

Parole chiave: Violenza – genere – tortura – Corte interamericana – diritti umani

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