

Research Article

Defending Women's Rights: The Inter-American Court's Role in Ensuring Justice for Gender-Based Violence Victims

"Access to justice is the first line of defense for the human rights of women victims of sexual violence"³⁵⁸

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Abstract

This paper argues that the Inter-American Court of Human Rights (IACtHR) has significantly enhanced the justiciability and remedies dimensions of women's right to access justice in cases of gender-based violence. Through a holistic approach, the Court has demonstrated a commitment to addressing not only individual acts of violence but also the structural and systemic factors that perpetuate such violations. By analysing key jurisprudence, the paper illustrates how the IACtHR has expanded the legal standards for state accountability, strengthened due diligence obligations, and advanced reparative frameworks that go beyond individual redress to include transformative measures. Furthermore, the paper examines how national jurisdictions and international legal bodies have engaged with and integrated the Court's jurisprudence, reinforcing its broader impact on the protection of women's rights. The findings suggest that the IACtHR has played a crucial role in shaping a more robust and enforceable legal framework for gender justice in the Inter-American system and beyond.

³⁵⁸ IACHR, "Access to justice for women victims of sexual violence In Mesoamerica", December 9, 2011, <https://www.oas.org/en/iachr/women/docs/pdf/women%20mesoamerica%20eng.pdf>.

I. Introduction

According to the World Health Organisation (WHO), 34% of women aged 15-49 in the Americas have suffered from gender-based violence (GBV) at least once in their lifetime.³⁵⁹ Such GBV is an extreme manifestation of discrimination against women, rooted in structural inequality and societal patterns of discrimination, that needs to be addressed in a gender-sensitive way.³⁶⁰ To effectively address this violence, courts adjudicating GBV cases must therefore apply a comprehensive approach that not only considers the individual harm but also the broader societal norms and dynamics that perpetuate it. A prerequisite to effectively applying this comprehensive approach is ensuring access to justice for women who have been victims of GBV. The Committee of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee), however, has observed several obstacles that keep women from realising their right to access to justice and asserts that these obstacles, in turn, occur in a context of structural inequality.³⁶¹ To ensure fair outcomes for women, courts must therefore apply a holistic approach that considers the impact of such structural inequality on both the occurrence of GBV and the challenges in its adjudication.

The Inter-American Court of Human Rights (IACtHR) is known for its progressive case law and holistic methodologies, offering innovative solutions to complex human rights issues.³⁶² Adjudicating the right to access to justice after gender-based violence is a particularly complex issue due to the interplay of structural inequality and individual cases of violence. In its case law on GBV, the Court has demonstrated the required nuanced understanding of this interplay, showcasing innovative legal reasoning to

³⁵⁹ WHO, "Violence against women prevalence estimates, 2018 - Region of the Americas", March 9, 2021, <https://iris.who.int/bitstream/handle/10665/341337/9789240022256-eng.pdf?sequence=1>.

³⁶⁰ Committee on the Elimination of Discrimination against Women (CEDAW Committee), "General recommendation No. 19: violence against women", 1992, UN Doc. A/47/38, §7, <https://www.refworld.org/legal/resolution/cedaw/1992/en/96542>; Rashida Manjoo, "Report of the Special Rapporteur on violence against women, its causes and consequences", April 23, 2010, UN Doc. A/HRC/14/22, §24, <https://docs.un.org/en/A/HRC/14/22>; Inter-American Commission on Human Rights (IACHR), "Eradicating violence against women requires normative and institutional frameworks focused on prevention, punishment, and redress", November 25, 2024, https://www.oas.org/fr/CIDH/jsForm/?File=en/iachr/media_center/PReleases/2024/292.asp.

³⁶¹ CEDAW Committee, "General recommendation No. 33 on women's access to justice", August 3, 2015, UN Doc. CEDAW/C/GC/33, §3, <https://digitallibrary.un.org/record/807253?v=pdf>.

³⁶² See, for example, their case law regarding indigenous rights; Enzamaría Tramontana, "The Contribution of the Inter-American Human Rights Bodies to Evolving International Law on Indigenous Rights over Lands and Natural Resources" *Int'l J on Minority & Group Rts* no. 17 (2010): 241.

establish state responsibility and define reparations, as will be demonstrated below.

After addressing the relevant framework and definitions, the essay will argue that the IACtHR has effectively enhanced the “justiciability” and “remedies” dimensions of women’s right to access justice in cases relating to gender-based violence. Specifically, it will demonstrate that the Court has enhanced these dimensions by (1) accepting its jurisdiction under the *Belém do Pará* Convention, (2) developing a due diligence obligation for states, and (3) ordering transformative reparations in GBV cases, highlighting the Court’s commitment to addressing the root causes of GBV while ensuring comprehensive and effective remedies for victims.

II. Framework and definitions

Before assessing the IACtHR’s contributions to access to justice after GBV, it is essential to identify the relevant legal instruments in the Inter-American System and to define the key concepts, as they underpin the evaluation of the Court’s impact in this area of international law.

A. Legal framework - *Belém do Pará* Convention

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (the *Belém do Pará* Convention) is the key instrument in the Inter-American System for addressing gender-based violence.³⁶³ It was also the first women’s rights convention specifically designed to address violence against women (VAW).³⁶⁴ The convention provides a comprehensive framework for addressing VAW, as it is not limited to an enumeration of rights³⁶⁵, but also contains provisions relating to specific state obligations³⁶⁶, and to the protection mechanisms available to women, including an individual complaint mechanism.³⁶⁷ These characteristics distinguish the

³⁶³ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, 9 June 1994. (*Belém do Pará* Convention; hereinafter: the Convention).

³⁶⁴ 32 states have ratified the Convention, which makes it the most ratified instrument in the Inter-American System; Ciara O’Connell, “Women’s Rights and the Inter-American System.” in *International Human Rights of Women*, ed. Niamh Reilly (Springer Singapore, 2019), 141; James L. Cavallaro and others “Women’s rights, gender, and sexuality” in *Doctrine, Practice, and Advocacy in the Inter-American Human Rights System*, ed. James L. Cavallaro and others (Oxford Academic, 2019), 550.

³⁶⁵ Art. 3-6 *Belém do Pará* Convention.

³⁶⁶ Art. 7-9 *Belém do Pará* Convention.

³⁶⁷ Art. 12 *Belém do Pará* Convention.

Belém do Pará Convention from other international instruments on women's rights, such as the CEDAW Convention³⁶⁸ and the Maputo protocol³⁶⁹, which more generally aim to eradicate discrimination against women. The only other convention that is specifically concerned with violence against women is the Istanbul Convention³⁷⁰, which does not, however, provide a complaint mechanism that allows women to enforce their rights. The provisions of the CEDAW do include such an individual complaint mechanism.³⁷¹ Nevertheless, this mechanism cannot lead to a binding court decision.³⁷² The *Belém do Pará* Convention, therefore, remains the only international convention aimed at eradicating VAW with a complaint mechanism that can lead to a binding court decision. Of course, it does not operate in a vacuum: other instruments adopted within the Organization of American States must be considered when assessing access to justice after gender-based violence in the Inter-American System. The most important provisions in this regard are art. 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights.³⁷³

B. Relevant legal definitions

1. Gender-based violence

Art. 1 of the *Belém do Pará* Convention defines "Violence against Women" as:

"[...] any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."

The CEDAW Committee has also elaborated on the concept in its general

³⁶⁸ Convention on the Elimination of All Forms of Discrimination against Women, 3 September 1981, 1249 UNTS 1.

³⁶⁹ Protocol to the African Charter on human and people's rights on the rights of women in Africa, 11 July 2007, 3268 UNTS 1.

³⁷⁰ Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, 11 May 2011, 3010 UNTS 107.

³⁷¹ Art. 2 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 6 October 1999, 2131 UNTS 83 (hereafter: Optional Protocol).

³⁷² Art. 7(3) Optional Protocol.

³⁷³ American Convention of Human Rights, 22 November 1969, 1144 UNTS 123; Violations are often found in relation to violations of article 7 of the *Belém do Pará* Convention: *Maria da Penha v. Brazil*, Case no. 12.051 (IACHR, April 16, 2001); *Gonzalez, et al. ("Cotton Field") v. Mexico* (IACtHR November 16, 2009); *Angulo Losada v. Bolivia* (IACtHR November 18, 2022).

recommendations, providing the following definition:

“[...] violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”³⁷⁴

While these definitions vary slightly, their main elements largely correspond: GBV concerns (1) acts of violence, (2) directed against women based on their gender, that (3) cause (or threaten to cause) harm. It is worth mentioning that the terms “gender-based violence”, “violence against women”, and “gender-based violence against women” are used interchangeably to refer to the same concept.³⁷⁵

2. Access to justice

The normative content of “access to justice” has been explored by the CEDAW Committee in its general recommendation No. 33 on women’s access to justice³⁷⁶. The Committee has identified six interrelated elements that are essential to ensuring access to justice: justiciability, availability, accessibility, good quality, provision of remedies, and accountability of justice systems. For this paper, the “justiciability” and “provision of remedies” aspects are particularly important, as the contributions of the IACtHR are related to these dimensions. “*Justiciability*” refers to women’s ability and empowerment to claim their rights as legal entitlements.³⁷⁷ This dimension requires states, *inter alia*, to ensure that justice system professionals handle cases in a gender-sensitive manner³⁷⁸ and to ensure that rights and correlative legal protections are recognised and incorporated into the law.³⁷⁹ The “*Provision of remedies*” dimension, on the other hand, requires that remedies provide viable protection and meaningful

³⁷⁴ CEDAW Committee, “General recommendation No. 19”, §6 and CEDAW Committee, “General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19”, July 26, 2017, UN Doc. CEDAW/C/GC/35, §9, <https://docs.un.org/en/CEDAW/C/GC/35>.

³⁷⁵ See for example CEDAW Committee, “General Recommendation No. 19”.

³⁷⁶ CEDAW Committee, “General recommendation No. 33”.

³⁷⁷ *Ibid.*, §14(a).

³⁷⁸ *Ibid.*, §15(c).

³⁷⁹ *Ibid.*, §15(a).

redress to women.³⁸⁰

With the legal framework and relevant definitions in mind, the next sections will address the jurisprudence of the Inter-American Court, highlighting three areas in which the Court has demonstrated innovative legal reasoning to enhance women's access to justice after GBV.

III. Contributions from the Inter-American Court

A. Acceptance of jurisdiction

Article 12 of the *Belém do Pará* Convention states that:

“Any person [...], may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, [...].”

Given that this provision does not explicitly mention the Court, Mexico challenged its jurisdiction in the *Cotton Field* case in 2009.³⁸¹ The Court had at that point already established a violation of the Convention in the *Miguel Castro-Castro Prison v. Peru* case (2006)³⁸², but because the parties had not disputed the jurisdiction of the Court, an extensive analysis of the issue was never conducted. Following Mexico's challenge, the Court therefore decided to resolve the issue, taking away any doubt about its jurisdiction.

In a systematic interpretation, the Court found that the explicit mention of the Commission could only lead to the conclusion that the Court implicitly has jurisdiction, for the American Convention on Human Rights allows the Commission to refer cases to the Court.³⁸³ The teleological interpretation of the provision confirmed this interpretation, as “*the purpose of the existence of a system of individual petitions [...]*

³⁸⁰ Ibid., §14(e); for further elaboration, see: UNGA, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, December 15, 2015, Resolution 60/147, <https://www.ohchr.org/sites/default/files/2021-08/N0549642.pdf>.

³⁸¹ Gonzalez, et al. (“Cotton Field”) v. Mexico (IACtHR November 16, 2009); Cavallaro, “Women's rights, gender, and sexuality”, 555.

³⁸² Miguel Castro-Castro Prison v. Peru, (IACtHR November 25, 2006).

³⁸³ Ibid., §43-58.

is to achieve the greatest right to judicial protection possible”.³⁸⁴ This, in combination with the “principle of effectiveness”, provided for a further argument to accept the Court’s jurisdiction under the *Belém do Pará* Convention.³⁸⁵ Another topic of discussion was the Court’s jurisdiction over articles 8 (specific measures) and 9 (intersectionality), as article 12 only mentions article 7 (due diligence) explicitly. Here, the Court found that it could not use systematic or teleological interpretation to establish such jurisdiction, given that the literal meaning of article 12 is very clear on the matter.³⁸⁶ However, this does not prevent the Court from using these articles for the interpretation of article 7.³⁸⁷

The acceptance of its jurisdiction on the Convention through systematic and teleological interpretation is a first sign of the Court’s willingness to comprehensively adjudicate women’s rights following instances of GBV. Its interpretation of the purpose of article 12 also showcases an understanding of the importance of justiciability in the development of comprehensive strategies to prevent, punish and eliminate violence against women.³⁸⁸ This jurisprudence relates to the “justiciability” aspect of women’s access to justice, as this broad interpretation of art. 12 increases the opportunities for women to enforce their rights, allowing them to obtain a binding Court judgment after having suffered violations of the Convention, even when they are unable to do so in their national jurisdictions. In this sense, the Court functions as a court of last resort, providing a crucial avenue for justice when domestic legal systems fail to uphold women’s rights.

³⁸⁴ *Ibid.*, §61.

³⁸⁵ *Ibid.*, §59-65.

³⁸⁶ Caroline Bettinger-López, “The Challenge of Domestic Implementation of International Human Rights Law in the Cotton Field Case” *CUNY L. Rev.* 15, no. 2 (2012): 321, <https://ssrn.com/abstract=2295060>; *Ibid.*, §79.

³⁸⁷ *Ibid.*

³⁸⁸ *Ibid.*, §61.

B. Due diligence obligation of states

A second contribution of the IACtHR relates to the development of due diligence obligations for states, which has significantly impacted the way private acts of gender-based violence are adjudicated.³⁸⁹

1. Velásquez-Rodríguez v. Honduras

The concept of “due diligence” was first developed by the Court in 1988, in its judgment in the *Velásquez-Rodríguez v. Honduras* case on forced disappearances.³⁹⁰ In this case, the Court acknowledged that states are not only responsible for “state-sponsored acts of violence”, but also for “private acts of violence”.³⁹¹ More specifically, the Court reasoned that:

“An illegal act which violates human rights and which is initially not directly imputable to a State [...] can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”³⁹²

States thus have a responsibility to prevent and respond to private acts of violence. This responsibility is triggered when a violation occurs with the “*support or acquiescence of the government*,” for instance, when the State fails to take reasonable preventive measures or respond adequately.³⁹³ The development of this principle has been crucial in bridging the gap between the public and private spheres, significantly expanding the scope of state responsibility. It ensures that states are held accountable and cannot escape liability for failing to exercise due diligence in addressing private

³⁸⁹ Elizabeth A.H. Abi-Mershed, “Due diligence and the fight against gender-based violence in the Inter American system.” in *Due diligence and its application to protect women from violence* ed. Carin Benninger-Budel (Brill, 2009), 129-131.

³⁹⁰ O’Connell, “Women’s Rights and the Inter-American System”, 145; Abi-Mershed, “Due diligence and the fight against gender-based violence in the Inter American system”.

³⁹¹ *Velásquez-Rodríguez v. Honduras* (IACtHR July 29, 1988), §172; Cavallaro, “Women’s rights, gender, and sexuality”, 562 & 572.

³⁹² *Velásquez-Rodríguez v. Honduras* (IACtHR July 29, 1988), §172.

³⁹³ *Ibid.*, §173; Abi-Mershed, “Due diligence and the fight against gender-based violence in the Inter American system”, 130.

violence.

2. Influence of the jurisprudence

Even though the *Velásquez-Rodríguez* case related to enforced disappearances, it has been a key case for the development of jurisprudence and normative frameworks relating to GBV in the Inter-American System and in the international sphere as a whole.³⁹⁴

An example of such an influence on normative frameworks can be found within the Inter-American System, more specifically in art. 7(b) of the *Belém do Pará* Convention:

“The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to [...] *apply due diligence to prevent, investigate and impose penalties for violence against women; [...]*”
(emphasis added)

The impact of the jurisprudence, however, extends beyond the Inter-American System.³⁹⁵ In the European context, Article 5 of the Istanbul Convention imposes a similar due diligence obligation on states. The European Court of Human Rights has also embraced this obligation, explicitly referencing the *Velásquez-Rodríguez* case in its judgments.³⁹⁶

At the international level, the due diligence obligation is reflected in the work of various United Nations bodies (UN bodies), including the CEDAW Committee’s general recommendations and country reports, as well as the reports of the UN Special

³⁹⁴ For a more elaborate analysis, see: Paulina García-Del Moral and Megan Alexandra Dersnah “A feminist challenge to the gendered politics of the public/private divide: on due diligence, domestic violence, and citizenship” *Citizenship Stud* 18, no. 6-7 (2014): 665-671, <https://doi.org/10.1080/13621025.2014.944772>.

³⁹⁵ CAHVIO, “The Duty of Due Diligence”, May 21, 2010, CAHVIO (2010), 7, <https://rm.coe.int/1680593fc8>.

³⁹⁶ *Opuz v. Turkey*, Case No. 33401/02 (ECtHR June 9, 2009), §83-88.

Rapporteurs on violence against women.³⁹⁷ Notably, the report of the Special Rapporteur on the due diligence standard explicitly mentions the *Velásquez-Rodríguez* case as a foundational precedent.³⁹⁸ In the same report, the Special Rapporteur also concluded that “there is a rule of *customary international law* that obliges States to prevent and respond to acts of violence against women with due diligence”.³⁹⁹ The existence of such a due diligence obligation in customary international law indicates that the Court’s jurisprudence has enhanced women’s access to justice after GBV worldwide, as the obligation now arguably applies to all states, regardless of their participation in relevant human rights conventions. The Court’s jurisprudence has thus been fundamental in shaping the normative frameworks regarding due diligence obligations of states concerning private acts of violence against women.⁴⁰⁰ However, the relationship between the Court’s jurisprudence and these normative frameworks is not one-sided, as the frameworks, and more specifically the *Belém do Pará* Convention, have, in turn, allowed the Court to determine the specific due diligence obligations of states in GBV cases.

3. Further development of the due diligence obligation

In 2000, the *Maria da Penha v. Brazil* case marked the first application of the *Belém do Pará* Convention in the Inter-American System.⁴⁰¹ In this decision, the Commission articulated the due diligence obligation in relation to domestic violence, focusing on impunity and existing patterns of violence.⁴⁰² Given that it took more than seventeen years for a final sentence to be delivered in the case, the Commission found that Brazil

³⁹⁷ CEDAW Committee, “General recommendation 19”, §9; CEDAW Committee, “Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico”, January 27, 2005, UN Doc. CEDAW/C/2005/OP.8/MEXICO, <https://www.un.org/womenwatch/daw/cedaw/cedaw32/CEDAW-C-2005-OP.8-MEXICO-E.pdf>; Radhika Coomaraswamy, “Report of the Special Rapporteur on violence against women, its causes and consequences, submitted in accordance with Commission on Human Rights Resolution 1995/85”, February 5, 1996, UN Doc. E/CN.4/1996/53, §36, <https://digitallibrary.un.org/record/228137?v=pdf>; Yakin Ertürk, “The due diligence standard as a tool for the elimination of violence against women”, January 20, 2006, UN Doc. E/CN.4/2006/61, <https://docs.un.org/en/E/CN.4/2006/61> (Accessed June 1, 2025).

³⁹⁸ Ertürk, “The due diligence standard as a tool for the elimination of violence against women”, §20.

³⁹⁹ *Ibid.*, §29, (emphasis added).

⁴⁰⁰ *Ibid.*

⁴⁰¹ Cavallaro, “Women’s rights, gender, and sexuality”, 574; *Maria da Penha v. Brazil*, Case no. 12.051 (IACHR, April 16, 2001).

⁴⁰² *Maria da Penha v. Brazil*, Case no. 12.051 (IACHR, April 16, 2001), §55-58.

had violated its due diligence obligations.⁴⁰³

In the aftermath of this case, Brazil adopted the “Maria da Penha law”⁴⁰⁴, aiming, *inter alia*, to “restrain domestic and family violence against women and to determine several mechanisms and measures for prevention, protection and assistance to women in situations of violence.”⁴⁰⁵ Through the creation of (1) mechanisms to prevent and restrain domestic GBV, (2) special courts on domestic GBV, and (3) assistance and protection measures for women, this law has enhanced women’s access to justice for cases related to domestic violence in Brazil. The IACHR has been a catalyst for bringing about these changes.⁴⁰⁶ Both the Inter-American Court and Commission have applied the due diligence obligation in several women’s rights cases since then.

In the 2006 *Miguel Castro-Castro Prison v. Peru* case, for example, the Court further specified the due diligence obligations concerning the investigation of GBV, stating that “State authorities must open, ex officio and without delay, a serious, impartial and effective investigation as soon as they become aware of facts that constitute violence against women, [...]”⁴⁰⁷

The preventive aspects of the obligation were further developed in the *Cotton Field* case (2009), as the Court decided that states must ensure their due diligence obligations through “permanent education and training programs and courses for public officials on human rights and gender, [...] and judicial proceedings concerning gender-based discrimination, abuse and murder of women and to overcome stereotyping about the role of women in society”.⁴⁰⁸ In the same case, the Court also found that there is an *ex officio* obligation for States to consider the potential relation between systematic practices and the individual case under investigation.⁴⁰⁹ This reasoning reflects the Court’s nuanced understanding of the intersection between

⁴⁰³ Ibid., § 58; Paula Spieler, “The Maria da Penha Case and the Inter-American Commission on Human Rights: Contributions to the Debate on Domestic Violence Against Women in Brazil”, *IND. J. GLOBAL LEGAL STUD.* 18, no.1 (2011): 133, <https://doi.org/10.2979/indjglolegstu.18.1.121>.

⁴⁰⁴ Law no. 1134/2006 (Brazil).

⁴⁰⁵ Ibid., 138.

⁴⁰⁶ Ibid., 139.

⁴⁰⁷ *Miguel Castro-Castro Prison v. Peru*, (IACtHR November 25, 2006), §378.

⁴⁰⁸ *Ibid*; Gonzalez, et al. (“Cotton Field”) v. Mexico (IACtHR November 16, 2009), §602(22).

⁴⁰⁹ Gonzalez, et al. (“Cotton Field”) v. Mexico (IACtHR November 16, 2009), §368.

systemic discrimination and individual cases of gender-based violence.

An in-depth analysis of this intersection was provided in 2016 when the Court rendered its judgment in the *Velásquez Pais et al. v. Guatemala* case.⁴¹⁰ Referring to the *Miguel Castro-Castro prison* case, the Court went into further detail as to how the existence of gender stereotypes had resulted in the failure to investigate the case properly, stating that the *Belém do Pará* Convention requires states to apply a gender perspective during the investigation of GBV.⁴¹¹ According to the Court, a failure to do so

“Promotes an environment of impunity that facilitates and promotes the repetition of acts of violence in general and sends a message that violence against women may be tolerated and accepted. This encourages its perpetuation and the social acceptance of the phenomenon and causes women to feel unsafe and develop a permanent mistrust in the system for the administration of justice”⁴¹²

With this paragraph, the Court demonstrates its nuanced, holistic understanding of the interplay between the occurrence of individual cases of violence, the existence of societal patterns of structural discrimination, and issues related to access to justice. In this case, the Court also further substantiated the due diligence obligations in contexts of increased violence against women. It stated that, whenever a report is made regarding the disappearance of a woman, a duty of strict due diligence arises from the very first hours. This duty requires authorities to conduct thorough research activities immediately. The Court further stated that it must be presumed that the missing woman is still alive until there is evidence to the contrary.⁴¹³ Since the Court judgment, Guatemala has, *inter alia*, (1) adopted a national strategy to achieve an effective and immediate search for missing women and (2) implemented permanent educational programmes for public officials who are involved in the investigation of acts of homicide

⁴¹⁰ *Velásquez Pais et al. v. Guatemala*, (IACtHR November 19, 2015).

⁴¹¹ *Ibid.*, §173-200.

⁴¹² *Ibid.*, §176.

⁴¹³ *Ibid.*, §122.

against women.⁴¹⁴

Lastly, in a more recent case regarding sexual violence in a familial context (*Angulo Losada v. Bolivia*, 2022), the Court had the opportunity to explore the intersectionality between gender and childhood.⁴¹⁵ In this case, the Court has created enhanced due diligence obligations for states when dealing with children who were victims of GBV, enumerating very concrete measures to be taken by states.⁴¹⁶ Once again, this highlights the Court's ability to apply a holistic perspective, considering victims' specific vulnerabilities and deepening our understanding of states' due diligence obligations in specific circumstances.

In conclusion, the Inter-American Court of Human Rights has shaped our comprehension of state responsibilities regarding private acts of violence against women through the introduction and further development of the due diligence obligation of states regarding GBV. The Court's gender-sensitive articulation of state obligations has opened new avenues for women to enforce their rights, allowing them to hold states accountable for failing to prevent, investigate, and punish gender-based violence. This impact extends beyond the Inter-American System, influencing global case law, treaty provisions, and the development of customary international law. Additionally, the national implementations of the Court's judgments have enhanced the justiciability of women's rights in national jurisdictions, as the newly created laws, protocols, and training programmes are tackling the underlying issues of structural discrimination and inequality that were keeping women from enforcing their rights. The Court has therefore clearly contributed to the "justiciability" aspect of access to justice for women who have been the victims of GBV through the development of the due diligence obligation of states.

⁴¹⁴ IACtHR, "Caso Velásquez Paiz y otros Vs. Guatemala: reparaciones declaradas cumplidas", June 19, 2024, <https://www.corteidh.or.cr/docs/supervisiones/SCS/guatemala/velasquez/velasquezc.pdf>.

⁴¹⁵ *Angulo Losada v. Bolivia* (IACtHR November 18, 2022), §95.

⁴¹⁶ *Ibid.*, §106; These measures include that children cannot be interviewed more than strictly necessary and that the interview must be conducted by a specialised psychologist.

IV. Transformative reparations

Lastly, the Court has played a significant role in developing a "holistic gender approach to reparations".⁴¹⁷ Rubio-Marín and Sandoval identify two main components that are necessary to apply such a gender approach: (1) the preconditions for the application of gender-sensitive reparations and (2) the ability to craft gender-sensitive reparations.⁴¹⁸ The preconditions identified by Rubio-Marín and Sandoval include the proper identification of the relevant facts, violations, and victims in each case, as well as the correct assessment of the harm caused by these violations.⁴¹⁹ This last component requires courts to take into account the "gendered nature of the harms that women endure".⁴²⁰ Courts should therefore mainstream a gender-sensitive approach in their decision-making processes, allowing them to successfully consider women's unique experiences and needs.⁴²¹ To subsequently order gender-sensitive reparations, courts must consider adequate and transformative remedies.⁴²² From the remedies included in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation⁴²³, "guarantees of non-repetition" offer the greatest transformative potential, allowing courts to order states to adopt legislative reforms, public policies, or change of practices, thereby addressing the root causes of violence against women.⁴²⁴

⁴¹⁷ Ruth Rubio-Marín and Clara Sandoval, "Engendering the reparations jurisprudence of the Inter-American Court of Human Rights: the promise of the cotton field judgment" *Human rights quarterly* 33, no. 4 (2011): 1062. <https://ssrn.com/abstract=3134058>; Bettinger-López, "The Challenge of Domestic Implementation of International Human Rights Law in the Cotton Field Case", 325; For a more in-depth analysis of the Court's reparation judgments: Gina Donoso, "Inter-American Court of Human Rights' Reparation Judgments. Strengths and Challenges for a Comprehensive Approach" *Inter-American Institute of Human Rights Journal*, no. 49 (2010): 29, <https://www.corteidh.or.cr/tablas/r24577.pdf>.

⁴¹⁸ *Ibid.*, 1064.

⁴¹⁹ *Ibid.*

⁴²⁰ Ruth Rubio-Marín, "The Gender of Reparations in Transitional Societies." in *The Gender of Reparations* ed. Ruth Rubio-Marín (Cambridge University Press, 2009), 91.

⁴²¹ Manjoo, "Report of the Special Rapporteur on violence against women, its causes and consequences", §26.

⁴²² Rubio-Marín and Sandoval "Engendering the reparations jurisprudence of the Inter-American Court of Human Rights", 1070.

⁴²³ UNGA, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", December 15, 2015, Resolution 60/147.

⁴²⁴ Manjoo, "Report of the Special Rapporteur on violence against women, its causes and consequences", §62; Pablo Saavedra Alessandri, "A Broader Look at the Transformative Impact of the Inter-American Court of Human Rights' Decisions", in *The Impact of the Inter-American Human Rights*

The IACtHR has demonstrated its willingness to apply a gender-sensitive approach and its ability to craft transformative reparations on several occasions. Although the incorporation of a gendered analysis has not always been straightforward and, at times, the Court has failed to fully adopt a gendered perspective (for example, in the *Artavia Murillo* case, where it distanced the issue from the abortion rights movement by framing it as a reproductive disability matter and relied on gendered stereotypes about “motherhood” in its reasoning on the right to private life),⁴²⁵ its contributions to this field of international law remain significant, as will be highlighted in the following paragraphs.

In its 2009 *Cotton Field* ruling, for example, the Court recognised that reparations should be informed by a transformative agenda to adequately address the issues at hand, stating that:

“When the violations occur in a context of structural discrimination, reparations cannot simply return victims to the situation they were in before the violation took place [...]; instead, reparations should aim to transform or change the pre-existing situation.”⁴²⁶

In concreto, the Court ordered the state to provide several “guarantees of non-repetition”, including (1) further standardisation of its investigative protocols in relation to cases of sexual violence,⁴²⁷ (2) the creation of a national database with information on all missing women and girls⁴²⁸, and (3) an obligation to provide training to personnel involved in the prevention, investigation, and prosecution of GBV, as well as education on the issue to the general public.⁴²⁹ These guarantees of non-repetition are closely related to the 'due diligence' obligations discussed above, as they aim to address

System: Transformations on the Ground eds. Armin von Bogdandy and others (Oxford University Press 2024), 540.

⁴²⁵ See, for example: Patricia Palacios Zuloaga, “The Path to Gender Justice in the Inter-American Court of Human Rights” *Tex J Women & L* 17, no. 2 (2008): 227, <http://hdl.handle.net/2152/27999>; O’Connell “Women’s Rights and the Inter-American System”, 147-148; *Artavia Murillo et al. (‘In vitro fertilization’) v. Costa Rica*, (IACtHR November 28, 2012).

⁴²⁶ *Gonzalez, et al. (‘Cotton Field’) v. Mexico* (IACtHR November 16, 2009), §450.

⁴²⁷ *Ibid.*, §497-502.

⁴²⁸ *Ibid.*, §503-512.

⁴²⁹ *Ibid.*, §531-543.

systemic failures within states in relation to these obligations.⁴³⁰

The *Cotton Field* case is often referred to as a landmark ruling for the development of the framework regarding transformative reparations, as it “changed the way we understand reparations for acts of gender-based violence”.⁴³¹ Additionally, it is argued that this case has (indirectly) led to the adoption of the “Latin American Model Protocol for the investigation of gender-related killings of women” and the adoption of an operational protocol for the investigation of the crime of femicide in San Salvador, further underlining its significance.⁴³²

Over the years, the Court has further refined its jurisprudence on transformative reparations through a case-by-case approach, ordering creative, context-sensitive reparations to address particular issues in the relevant countries.

In a 2016 case regarding forced sterilisation (*IV v. Bolivia*), for example, the Court ordered Bolivia to publish a leaflet that sets out the rights of women in relation to their sexual and reproductive health.⁴³³ Additionally, the Court found that Bolivia must adopt permanent education programmes for medical students and professionals on issues relating to informed consent and gender-based violence.⁴³⁴ The Court deemed this

⁴³⁰ Rubio-Marín and Sandoval, “Engendering the reparations jurisprudence of the Inter-American Court of Human Rights”, 1089.

⁴³¹ LSE Blogs, “Gonzalez, Monreal and Monarrez (“Cotton Field”) v. Mexico”, June 3, 2016, <https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/gonzalez-et-al-v-mexico/>; See also: Manjoo, “Report of the Special Rapporteur on violence against women, its causes and consequences”, §77; International Commission of Jurists, “Women’s Access to Justice for Gender-Based Violence A Practitioners’ Guide”, February 2016, 76-77, <https://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-accesss-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf>; Ricardo Arrendondo, “Note on Convention of *Belém do Pará* (Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women)” (Oxford Public International law 2021), <https://opil.ouplaw.com/display/10.1093/law-oxio/e463.013.1/law-oxio-e463>.

⁴³² ELLA, “The cotton field case in Mexico: setting legal precedents for fighting gender-based violence – Policy Brief”, https://assets.publishing.service.gov.uk/media/57a08a0be5274a31e00003c2/130810_GOV_GenVio_BRIEF2.pdf (Accessed June 1, 2025); UN Women, “Femicide in Latin America”, 4 April 2013, <https://www.unwomen.org/en/news/stories/2013/4/femicide-in-latin-america>; UN Women and UNHCHR, “Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)”, 2015, <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/LatinAmericanProtocolForInvestigationOfFemicide.pdf>.

⁴³³ *IV v. Bolivia*, (IACtHR November 30, 2016), §341.

⁴³⁴ *Ibid.*, §342.

necessary, as it had previously established that the violations of the rights of the individual involved were the consequence of negative gender-based stereotypes. Bolivia has complied with most of the Court's orders, the development of the education programme being the only exception.⁴³⁵

More recently, in the *Angulo Losada v. Bolivia* case (2022), the Court ordered Bolivia to reform its legislation to make the absence of consent, rather than the use of physical force, the constitutive element of sexual violence crimes.⁴³⁶ Through this reform, the Court seeks to remove obstacles and help secure justice for victims of sexual violence.⁴³⁷ Additionally, the Court instructed Bolivia to integrate sexual education into the official curriculum, emphasising the importance of education on consent.⁴³⁸ The Bolivian authorities have already taken steps to amend the relevant laws, and a commission to review femicide cases was established in 2022.⁴³⁹ The Constitutional Court has also ordered the Criminal Chamber of the Supreme Court to give priority to judicial proceedings related to femicide and to evaluate the training curricula for judges and judicial personnel.⁴⁴⁰

The Court's focus on both the damages for victims and the underlying causes of GBV through reparations offers meaningful redress for women, aiming not only to right past wrongs but also to prevent future violations. This effectively enhances the "provision of remedies" dimension of women's access to justice. Moreover, the Court's jurisprudence extends beyond individual cases, offering principles that can be applied region-wide, potentially driving systemic change and improving access to justice for women throughout the Inter-American System. As a result of the *Angulo Losada v. Bolivia* case, for example, all states in the region are now required to ensure that "lack

⁴³⁵ IACtHR, "Caso I.V. Vs. Bolivia: reparaciones declaradas cumplidas", November 17, 2021, https://www.corteidh.or.cr/docs/supervisiones/IV_17_11_21.pdf.

⁴³⁶ *Angulo Losada v. Bolivia* (IACtHR November 18, 2022), §198; Yale Law School, "Court Issues Landmark Sexual Violence Ruling, Agreeing with Lowenstein Clinic Brief", January 21, 2023, <https://law.yale.edu/yls-today/news/court-issues-landmark-sexual-violence-ruling-agreeing-lowenstein-clinic-brief#:~:text=In%202012%2C%20Brisa%20Liliana%20De,when%20she%20was%20a%20child.>

⁴³⁷ *Ibid.*, §197.

⁴³⁸ *Ibid.*, §216.

⁴³⁹ "Comisión de Revisión de Casos de Violación y Femicidio"; Edyta Lis, "Gender Perspective in the Recent Case Law of the Inter-American Court of Human Rights" *International Community Law Review* 26, no. 6 (2024): 611, <https://doi.org/10.1163/18719732-bja10126>.

⁴⁴⁰ *Ibid.*; Tribunal Constitucional Plurinacional de Bolivia, Sentencia N° 0001/2022, March 31, 2022.

of consent” is the constitutive element of sexual violence crimes in their domestic legislation, making it easier for women to enforce their rights.⁴⁴¹ Through these transformative remedies and their implementation in national jurisdictions, the Court has thus also enhanced the “justiciability” dimension of women’s access to justice.

V. Conclusion

The Inter-American Court of Human Rights has played a crucial role in advancing access to justice for victims of gender-based violence, setting important legal precedents that address both individual violations and systemic inequalities. By applying a gender-sensitive perspective, the Court has shown its capability to understand the interplay between individual cases of violence, the subsequent issues regarding access to justice, and the societal patterns that underpin both these phenomena. This approach has allowed the Court to develop innovative legal concepts to effectively address these issues.

Two notable contributions are the development of due diligence obligations for states and the implementation of transformative reparations. The due diligence obligations have deepened our understanding of states’ responsibilities regarding GBV and have made it possible for women to hold states accountable when they fail to act. These obligations enhance the “justiciability” dimension of women’s right to access justice. Transformative reparations, on the other hand, aim to address systemic failures within states, requiring reforms such as organising training for state officials, implementing changes to judicial systems, and introducing new legislation. These measures provide comprehensive remedies for victims, targeting the underlying causes of GBV and promoting societal change. Consequently, the Court has enhanced the “remedies” dimension of access to justice.

While many states have made efforts to implement the principles advanced in these judgments, effective implementation on the national level has not always been achieved.⁴⁴² The cornerstone of the Court's efforts to enhance access to justice for

⁴⁴¹ Yale Law School, “Court Issues Landmark Sexual Violence Ruling, Agreeing with Lowenstein Clinic Brief”.

⁴⁴² See, for example: Rashida Manjoo, “Reflections on the Concept and Implementation of Transformative Reparations” *Int'l J Hum Rts* 21, no. 9 (2017): 1198, doi:

women after GBV is therefore its acceptance of jurisdiction over the *Belém do Pará* Convention; through this jurisdiction, the Court can now operate as a “court of last resort” in GBV cases and rectify the failure of states to fulfil their obligations.

In conclusion, the Court has firmly established itself as a powerful guardian of women’s right to access to justice after GBV, driving meaningful legal innovations that challenge systemic barriers and empower women.

<https://doi.org/10.1080/13642987.2017.1366666>; Caroline Bettinger-López, “The Challenge of Domestic Implementation of International Human Rights Law in the Cotton Field Case”, 315.

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