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# KEYNOTE ADDRESS

Gender Justice and Human Rights in the Americas Convening  
University of Miami School of Law  
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## Women's Citizen Security

SUSANA CHIAROTTI BOERO\*

### I. INTRODUCTION: VIOLENCE AGAINST WOMEN AS A HUMAN SECURITY PROBLEM

I am grateful to the conference organizers for the invitation to participate in this conference, which has brought together experts from all around the hemisphere and which allows us to debate, in a distinguished setting, very important problems faced by our countries.

The theme that I will speak about is gender violence. I will analyze the efforts being made to follow up on the Convention of Belém do Pará (“the Convention”) in the hemisphere, especially through the Organization of American States’<sup>1</sup> (“OAS”) Mechanism to Follow Up on Implementation (“MESECVI”),<sup>2</sup> and the advances made in some countries’ legal frameworks. I will also touch on the challenges we face and the need for collaboration around the transformation of certain paradigms, such as security. Finally, I will consider some additional topics ripe for debate.

This year, the topic of the 41st General Assembly of the OAS, which will take place on June 5–7 in El Salvador, is “Citizen Security in the Americas.”<sup>3</sup> Governments of this hemisphere find themselves facing some serious challenges in attempting to guarantee the life and integrity

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1. ORG. OF AM. STATES, <http://www.oas.org/en/default.asp> (last visited Apr. 27, 2011).

2. Follow-Up Mechanism to the Implementation of the Inter-American Convention to Prevent, Punish And Eradicate Violence Against Women, “Convention Of Belem Do Para” (MESECVI), CIM Res. 259 (XXXV-O/10), ORG. OF AM. STATES, 5th Plenary Sess. (Nov. 4, 2010) [hereinafter MESECVI], *available at* <http://www.state.gov/p/wha/rls/112228.htm>.

3. 41 General Assembly, ORG. OF AM. STATES, <http://www.oas.org/en/41ga/> (last visited Apr. 27, 2011).

of their populations. However, the perspective that is given to the problem is hardly objective.

In the background documents that will form the basis for discussion of the OAS General Assembly, the main issues addressed are arms control, terrorism, organized crime, and drug dealing. But nothing is said about the citizen security of over half of the region's population—its women—which is clearly affected by other factors, such as gender violence. In the last meeting of the OAS Committee on Hemispheric Security, some countries talked about making their countries “a safer country, where the constitutional rule of law is respected and where family life can thrive without fear . . . .”<sup>4</sup> Absent, however, was any mention of the fear that women can experience from acts of aggression within their home. Many of the themes addressed could be enriched if analyzed from a gender perspective.

Such a perspective would allow us, for example, to demonstrate the relationship between the number of arms within a community and the number of women killed at the hands of their partners. In the majority of countries in our region, homicides carried out by partners or ex-partners represent either the first- or second-leading cause of violent death of women. We see a similar picture when it comes to physical and psychological harm caused through gender violence. If we accept that human security involves guaranteeing the integrity of human beings—both men and women—then gender violence should be included in analytical documents on this topic.

I argue that it is the responsibility of OAS member states, as well as civil society (including human rights defenders), to ensure that the next OAS General Assembly culminates in a declaration on security that addresses the security problems of both men and women and that incorporates gender violence.

## II. THE CONVENTION OF BELÉM DO PARÁ AND EFFORTS UNDERWAY TO GUARANTEE ITS IMPLEMENTATION

Our region possesses an exceptional instrument for guiding policies on the citizen security of women. In June 1994, the OAS General Assembly adopted, in Belém do Pará, Brazil, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”).<sup>5</sup> The Convention of

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4. See Comm. on Hemispheric Security, Permanent Council of the Org. of Am. States, Meeting of Experts on Public Security in Preparation for the Third Meeting of Ministers of Public Security, Santiago, Chile, Nov. 18–19, 2010, *Rapporteur's Report*, at 5, MISPA-III/RE/doc.8/10 rev. 1 (Jan. 19, 2011), available at <http://www.oas.org/csh/english/PrepMISPA-III.asp#DocsW>.

5. Inter-American Convention on the Prevention, Punishment and Eradication of Violence

Belém do Pará allows us to see that the conditions of inequality in which women's lives are marked by discrimination and violence. The Convention sets out the following principles:

- “violence against women constitutes a violation of their human rights and fundamental freedoms;”<sup>6</sup>
- violence “impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms;”<sup>7</sup> and
- violence is “a manifestation of the historically unequal power relations between women and men.”<sup>8</sup>

The Convention defines as a (new) human right the “right to be free from violence,”<sup>9</sup> putting an idea that had been previously inferred by various human rights treaties and declarations into precise words. It 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.”<sup>10</sup> Such violence is defined as “physical, sexual and psychological violence”<sup>11</sup> that “occurs in the family or domestic unit,”<sup>12</sup> “in the community,”<sup>13</sup> or is “perpetrated or condoned by the state.”<sup>14</sup> It “includ[es], among other[] [things], rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace.”<sup>15</sup> Furthermore, the Convention recognizes “[t]he right of [all] women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.”<sup>16</sup>

States' obligations are delineated in Articles Seven and Eight of the Convention. They are quite comprehensive. In addition to encouraging States Parties to adopt necessary legal reforms,<sup>17</sup> the Convention urges them to promote the education and training of state agents,<sup>18</sup> organize

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Against Women: “Convention of Belém do Pará,” Org. of Am. States, Inter-Am. Comm'n on Human Rights, 24th Sess. (June 9, 1994) [hereinafter Convention of Belém do Pará], available at <http://www.cidh.oas.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm>.

6. *Id.* at preamble.

7. *Id.*

8. *Id.*

9. *Id.* at Chp. 2, Art. III.

10. *Id.* at Chp. 1, Art. I.

11. *Id.* at Chp. 1, Art. II.

12. *Id.* at Chp. 1, Art. II(a).

13. *Id.* at Chp. 1, Art. II(b).

14. *Id.* at Chp. 1, Art. II(c).

15. *Id.* at Chp. 1, Art. II(b).

16. *Id.* at Chp. 2, Art. VI(b).

17. *Id.* at Chp. 3, Art. VII.

18. *Id.* at Chp. 3, Art. VIII(c).

awareness-raising campaigns,<sup>19</sup> guarantee access to justice and reparations for women subjected to violence,<sup>20</sup> and “apply due diligence to prevent, investigate and impose penalties for violence against women.”<sup>21</sup> Eventually the Inter-American Court of Human Rights elaborated on this due diligence standard and the Convention of Belém do Pará transformed the standard into binding legislation.<sup>22</sup>

In 2006, the Inter-American Court established its authority to hear and decide cases regarding violations of the Convention when it decided the case *Penal Miguel Castro-Castro v. Peru* (“*Miguel Castro-Castro Prison v. Peru*”).<sup>23</sup> Despite the precedent established by this case, the Court’s authority to rule on violations of the Convention was later questioned by Mexico in the case *Campo Algodonero* (“*Cotton Field*”), in which Mexico claimed that the Court lacked jurisdiction.<sup>24</sup> The Court rejected Mexico’s petition and, after an exhaustive analysis, put an end to the debate over its jurisdiction.<sup>25</sup> The Court established that although it did not have jurisdiction over claims brought directly under Articles Eight and Nine of the Convention of Belém do Pará, it did have jurisdiction over claims brought under Article Seven, since Article Twelve of the Convention implied that the Court’s competence for deciding petitions and individual cases was limited to the obligations established in Article Seven.<sup>26</sup> At the same time, the Court signaled that this did not exclude the possibility that other articles of the Convention, including Articles Eight and Nine, could be used to aid interpretation.<sup>27</sup>

#### A. *The MESECVI: Composition and Function*

In 2003, ten years after the adoption of the Convention, the Inter-American Commission of Women commenced an evaluation of states’ compliance with the Convention.<sup>28</sup> The results showed that much remained to be done and that implementation of the Convention needed

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19. *Id.* at Chp. 3, Art. VIII(a).

20. *Id.* at Chp. 3, Art. VII(f)–(g).

21. *Id.* at Chp. 3, Art. VII.(b).

22. See Velásquez-Rodríguez v. Honduras, Inter-Am. Ct. H.R. (Ser. C) No. 4 (July 29, 1988), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_04\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf); Convention of Belém do Pará, *supra* note 5.

23. See *Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. (Ser. C) No. 160 (Nov. 25, 2006), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_160\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf).

24. See González et al. (“Cotton Field”) v. Mexico, Inter-Am. Ct. H.R. (Sec. C) No. 205 (Nov. 16, 2009), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf).

25. *Id.*

26. *Id.*

27. *Id.*

28. Annual Rep. of the Inter-Am. Comm’n of Women, 34th Sess., at 16 (2004), available at <http://www.oas.org/en/cim/docs/AnnualReport2003%5BEN%5D.pdf>.

to be encouraged.<sup>29</sup> It thus proposed creating a mechanism for monitoring implementation of the Convention.<sup>30</sup>

In 2004, the Mechanism to Follow-Up on Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (MESECVI) was created.<sup>31</sup> It consists of two entities: the Conference of national authorities or women's ministries, a political body in which participants promote the views of their governments; and the Committee of Experts (CEVI), a technical body consisting of as many experts as countries that ratified the Convention.<sup>32</sup> These experts, once nominated by their governments, function autonomously and independently.<sup>33</sup>

In August 2005, CEVI met in Washington for the first time.<sup>34</sup> Many of its experts hail from the women's movement in their respective countries and have a long history of working for the promotion and defense of women's rights, as well as for the prevention and eradication of violence against women. It was decided that the Committee would work in successive three-year rounds and would employ a methodology of government reports, for which we designed a questionnaire to be sent to all States party to the Convention.<sup>35</sup>

In order for us to design the questionnaire, we had to select themes that were not only priorities but also familiar to all countries. We designated the following topics as important and urgent:

1. Legal framework, national plans, and social measures taken to prevent, punish, and eradicate violence against women
2. Access to justice
3. Budgets
4. Statistics

It was also decided that the Committee would facilitate civil society participation in its work and that this collaboration would be formalized in various ways. First, civil society organizations would be invited to attend a hearing prior to each CEVI meeting; and second, they would be invited to submit alternative ("shadow") reports in order provide CEVI with supplementary information.<sup>36</sup>

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29. *Id.*

30. *Id.*

31. MESECVI, *supra* note 2.

32. *Id.*

33. *Id.*

34. See Agenda for Comm. of Experts on Violence (CEVI) Meeting, Aug. 22–24, 2005, Wash., D.C., available at [http://www.scm.oas.org/idms\\_public/ENGLISH/hist\\_06/cim01588e02.doc](http://www.scm.oas.org/idms_public/ENGLISH/hist_06/cim01588e02.doc).

35. *Id.*

36. See Report of Activities of the Expert Committee on Violence Against Women (CEVI), July 12, 2006 (on file with author).

B. *The Hemispheric Report on Implementation of the Convention:  
Its Four Priorities and Recommendations*

In July 2008, the Conference of States Party to the MESECVI adopted the Hemispheric Report,<sup>37</sup> a product of CEVI's first working round of the work. The report consists of an evaluation made by the experts based on twenty-eight states' responses to the questionnaire, and contains information through July 2007.<sup>38</sup> Furthermore, the Committee of Experts on Violence against women (CEVI) considered five shadow reports presented by nongovernmental organizations,<sup>39</sup> as well as shadow reports presented before other international bodies and complementary documentation.<sup>40</sup>

CEVI had important reasons for selecting the four themes for its questionnaire mentioned above.

1. LEGAL FRAMEWORK

The first topic, legal framework, was selected principally for five reasons:

1. The mandate to consider violence against women as a violation of human rights still was not being realized by our countries at the normative level. Many of our countries' laws were drafted between 1989 and 1996, some of them before the ratification of the Convention, where the focus was much more limited. In many countries, violence against women is considered a minor conflict, to be resolved by administrative authorities.

2. More than twenty years after ratification of the Convention, just a few countries boast a legal framework that addresses violence in all spheres: the domestic sphere, community sphere, and the state. With regard to violence against women perpetrated within the community—especially urban violence, such as in public transportation, other public spaces, or the work environment—legislation is scarce. In addition, a legal vacuum exists in relation to state-perpetrated gender violence. Such violence is conducted by state agents in schools, foster homes, hospitals, geriatric homes, prisons, and other spaces, where authoritarian conduct—the result of innumerable dictator-

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37. See Comm. on Hemispheric Report, Permanent Council of the Org. of Am. States, Second Meeting of the Conference of States Party to the Mechanism to Follow Up on Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, Caracas, Venezuela, July 9–10, 2008, *Rapporteur's Report*, OEA/Ser.L/II.7.10 - MESECVI-II/doc.16/08 rev. 1 (July 9, 2008) [hereinafter MESECVI Hemispheric Report].

38. *Id.*

39. The Technical Secretariat of MESECVI received shadow reports from Argentina (CLADEM), El Salvador (CLADEM), Honduras (CLADEM), Peru (CMP Flora Tristán), and Uruguay (CLADEM).

40. MESECVI Hemispheric Report, *supra* note 37.

ships—is frequent and naturalized; and in many cases, the state has both left such conduct unexamined and failed to adopt legislation allowing for the advancement toward more democratic institutions.

3. Legislation approved in the region tackles primarily domestic violence against women, leaving women unprotected from other forms of violence, such as obstetric violence, violence against reproductive freedom, sexual harassment in the workplace, media violence, institutional violence, etc.

4. The majority of laws addressing family violence are focused on the protection of the family nucleus and not on the guarantee of women's rights, and their language is decidedly neutral: all members of the family are protected from violence that could arise from any of its members. Although such laws on the prevention and protection of intra-familial violence—which protect all members of the family—are necessary, alone, they are not sufficient for ensuring compliance with the Convention of Belém do Pará, which requires that States Parties adopt laws specifically aimed at preventing, punishing, and eradicating violence against women.

5. Furthermore, the Committee wanted to draw attention to the need for laws to be accompanied by national plans that implement necessary social measures and do not limit themselves simply to proclaiming the need to eradicate violence. In many cases, we have observed that laws exist without any plans for their implementation.

In sum, in our region, a grand leap is required in order to move from the mere passage of laws on family violence to the genuine implementation of comprehensive laws on the prevention, punishment, and eradication of violence against women, which address the various forms of violence that occur in all spheres, and which are accompanied by national plans and adequate budget allocations.

## 2. ACCESS TO JUSTICE

The second theme, access to justice, reflects a preoccupation shared by thousands of women in the region who confront judicial systems that are unreceptive or reproduce discriminatory stereotypes, resulting in impunity in the majority of cases concerning violence, especially sexual violence. As we were preparing the first questionnaire for states, the Rapporteurship on the Rights of Women was in the process of drafting its report *Access to Justice for Women Victims of Violence in the Americas*.<sup>41</sup> Several experts from CEVI collaborated on the preparation of sub-regional seminars that gave inputs for this report and also shared their

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41. See Inter-Am. Comm'n on Human Rights, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, Jan. 20, 2007, available at <http://www.cidh.oas.org/women/Access07/Report%20Access%20to%20Justice%20Report%20English%20020507.pdf>.



concerns with the Rapporteurship. We helped reinforce this effort by including a section on access to justice in CEVI's questionnaire.

Our states' judicial systems must acknowledge that international treaties are obligatory for all three branches of government—executive, legislative, and judicial—and that these three powers are also responsible for the implementation of such treaties. Very few judges have cited international treaties in their decisions; and of those decisions, Convention for the Elimination of All Forms of Discrimination Against Women<sup>42</sup> (CEDAW) and the Convention of Belém do Pará rarely appear. In addition, neither attorneys general nor public defenders have incorporated these norms into their daily work.

Unfortunately, the MESECVI Hemispheric Report's conclusions in this chapter were not the assurances we had hoped for.

Despite its importance, in general this section has received the least attention from States . . . , the information provided is not detailed but rather general and at times confusing or vague, and in no case is it clear whether there effectively exists access to justice for women victims of violence . . . .<sup>43</sup>

We also observed that many countries use mechanisms

such as reconciliation or mediation between the victim and her aggressor as part of the services offered to women subjected to violence. . . . CEVI is deeply concerned that they continue to use such methods, which should not be applied in cases of violence where there is no room for such negotiation when fundamental human rights have been violated. Therefore, the Committee emphasizes that mediation or reconciliation mechanisms should not be used prior to the legal process, whether established or not, nor in any phase of the legal process nor in services offered to female victims.<sup>44</sup>

Aristotle's ghost still seems to wander through our region's tribunals. The Greek philosopher believed that citizens have the right to equality before the law. But "citizens" were just the hundred-some male adult property holders born in an area of Athens who went to the Agora. The themes brought before justice were conflicts between these men over land, cattle, water, and merchandise. Conflicts with wives, concubines, children, slaves, and other habitants of the home were not addressed by the justice system. Rather, they stayed in the hands of the father of the family, who made decisions regarding others' lives and

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42. Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981), *available at* <http://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-8.en.pdf>.

43. *See* MESECVI Hemispheric Report, *supra* note 37, at 25 (unofficial translation).

44. *Id.*

property at his will. In other words, problems in the home, in addition to being regarded as minor, were resolved within the home. For Hannah Arendt, “[t]he distinction is very clear in the first paragraphs of the Ps. Aristotelian *Economics*, because it opposes the despotic one-man rule (*mon-archia*) of the household organization to the altogether different organization of the *polis*.”<sup>45</sup> “The *polis* was distinguished from the household in that it knew only ‘equals,’ whereas the household was the center of the strictest inequality.”<sup>46</sup>

This conception, 2400 years after Aristotle, persists today in the minds of many operators of justice. Violence against women is considered a minor issue, which can be reconciled, and which shouldn't be brought before tribunals to simply add more work to judges' already-full plates. Among the most severe problems that women confront, we detect the following.

The first is a lack of due diligence for the prevention, investigation, prosecution, and non-repetition of crimes against women. The judicial branch is the first line of defense for the protection against human rights violations of which women are victim. Looking at the problems that we can identify with the judicial branch in general, we see that in the Latin American countries, women—especially indigenous, Afro-descendants, and rural women—deal daily with the lack of due diligence in these distinct phases: prevention, investigation, prosecution, and non-repetition. The Inter-American Court of Human Rights has established that investigations

must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.<sup>47</sup>

In many cases, the victim is attended to by ill-trained police and/or judicial personnel in unsuitable locations lacking privacy. In general, there exists a lack of human, financial, and technical resources within the judiciary that gravely affects the investigation, judgment, and punishment in cases of violence against women. “The public prosecutors offices, the police and the courts have neither the economic nor human

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45. See HANNAH ARENDT, *THE HUMAN CONDITION* 86 (University of Chicago Press 1998).

46. *Id.* at 44.

47. *Godínez-Cruz v. Honduras*, Inter-Am. Ct. H.R. (Ser. C) No. 5, ¶ 188 (Jan. 20, 1989), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_05\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_05_ing.pdf); see also *Velásquez-Rodríguez v. Honduras*, Inter-Am. Ct. H.R. (Ser. C) No. 4, ¶ 177 (July 29, 1988), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_04\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf); Inter-Am. Comm'n on Human Rights, *supra* note 41, ¶ 40.

resources essential to conducting effective investigations and prosecuting the cases through to the sentencing phase. This problem is particularly acute in rural, marginal and poor areas."<sup>48</sup>

Women who suffer violence, especially sexual violence, are investigated (their private life, sexual history, behavior, and manner of dress, among other things); their word is not credible, and many times they are re-victimized through ill treatment from forensic technicians, as well as abusive interrogations. It is necessary to map the discriminatory stereotypes that persist within our tribunals and, following the advice of Rebecca Cook,<sup>49</sup> expose and denounce them in order to eradicate them.

In many cases, treatments are promoted in which women participate without being able to count on adequate assistance and in which the programs' coordinators fail to consider the gender inequalities at play within the couple's relationship.

There are no adequate follow-up mechanisms for verifying compliance with court orders.

It is urgent that fast, flexible oral procedures are established that allow for direct contact between judicial officials and the parties to a case. In addition, judicial personnel should possess knowledge of gender discrimination and violence.

In a majority of countries, protective measures and institutions cover only a small spectrum of beneficiaries, who generally reside in the capitals, leaving residents of rural or remote areas and women from indigenous communities uncovered.

Justice for indigenous women deserves its own paragraph and in the future will require more attention from CEVI, which has not yet tackled the issue in all its complexity. At least five Latin American countries have plural legal systems in which state law coexists with community or indigenous law. Legal pluralism has been consecrated in various national constitutions, including those of Bolivia<sup>50</sup> and Ecuador, paving the way for systems that recognize a country's ethnic and racial diversity; and in this sense, such systems are encouraging. Given the newness of this process, states are only beginning to take the first steps to harmonize the various jurisdictions. Although legal texts propose that communitarian justice will be exercised within a framework that respects human rights,<sup>51</sup> in daily practice this is difficult to implement

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48. Inter-Am. Comm'n on Human Rights, *supra* note 41, at ¶ 185.

49. See REBECCA COOK, *GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES* (University of Pennsylvania Press 2010).

50. One example is the Constitution of Bolivia, which, in articles 1, 13, 30, 109, 119, 190, and 191, makes reference to the jurisdictional powers and procedures of community justice. CONSTITUCIÓN DE 2009 DE LA REPÚBLICA DEL BOLIVIA.

51. See Convention 169 of the International Labour Organisation (ILO), at Art. 8, *available at*

due to a variety of factors—among them, the oral nature of community justice; the lack of awareness of international norms among community authorities; contempt for such norms as being “Western;” the arbitrariness of some community authorities; and the historic discrimination and oppression of women within certain cultures. To this, we must then add one more complicating factor: in judicial demarcation, efforts by the state and community authorities to introduce a gender perspective are scarce or altogether absent. Patriarchal notions and sexist stereotypes predominate in both systems, making it difficult for the state to oblige its community judicial authorities to incorporate sexual equality norms.

Furthermore, within these communities, mechanisms for community justice are being used as a tool for reaffirming identity. Therefore, a woman who appeals to state justice after being denied justice in her community will be seen as a traitor to her culture.

The question of access to justice is a constant concern for the CEDAW Committee as well, which has addressed the issue in numerous general recommendations, concluding observations to states, and judgments issued under the Optional Protocol. In its General Recommendation 28 on the obligations of states, the Committee states,

Where discrimination against women also constitutes an abuse of other human rights, such as the right to life and physical integrity in, for example, cases of domestic and other forms of violence, States parties are obliged to initiate criminal proceedings, to bring the perpetrator(s) to trial and to impose appropriate penal sanctions. States parties should financially support independent women's legal resource associations and centres in their work to educate women about their rights to equality and to assist them in pursuing remedies for discrimination.<sup>52</sup>

Furthermore, the UN Secretary-General, in his report, *Ending Violence Against Women: From Words to Action*, argues that access to justice is one of the priority themes that should be addressed in order to prevent, sanction, and eradicate violence against women.

When the State fails to hold the perpetrators of violence accountable, this not only encourages further abuses, it also gives the message that male violence against women is acceptable or normal. The result of such impunity is not only denial of justice to the individual victims/survivors, but also reinforcement of prevailing inequalities that affect

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[http://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—normes/documents/publication/wcms\\_100897.pdf](http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—normes/documents/publication/wcms_100897.pdf).

52. See Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, 47th Session, at ¶ 34 (2010), available at <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf>.

other women and girls as well.<sup>53</sup>

In addition, the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, has referred to this issue in a variety of her reports. The Rapporteur, Rashida Manjoo, in her latest report, addresses the topic of reparations for women subjected to violence: "Since violence perpetrated against individual women generally feeds into patterns of pre-existing and often cross-cutting structural subordination and systemic marginalization, measures of redress need to link individual reparation and structural transformation. Additionally, women who experience violence have traditionally encountered obstacles to accessing the institutions that award reparations."<sup>54</sup>

### 3. BUDGET ALLOCATIONS

The third theme that CEVI addresses is related to the budget allocations that states should designate in order to comply with their obligations under the Convention. We believe that states' formal commitments should be translated into specific and real budget allocations in order to adequately implement national plans and to give sustainability to the process of eradication of violence. Here it is not important whether or not the country is rich. It is important, rather, to see whether the issue is a priority and what percentage of resources it receives. When a problem is deemed important, it is assigned budget allocations accordingly.

We have witnessed a glaring difference in the budget allocations for addressing violence against women between those countries that have specialized government institutions on gender and those that do not. According to the MESECVI's Hemispheric Report:

CEVI's attention is called to the fact that those States with dedicated entities for the execution of plans and programs in favor of women, including gender equity and violence, report investments, while those States that do not have these offices do not report or have specific budget allocations. This demonstrates the need for a governmental organism specialized in gender with its own budget.<sup>55</sup>

This observation is interesting because it can generate a synergy that allows for mutual strengthening, both for women's spaces in the state and for the Follow-Up Mechanism to the Convention. The majority of governmental institutions devoted to gender have adopted the prob-

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53. See U.N. Secretary-General, *Ending Violence Against Women: From Words to Action*, 2006, at iv-v, (Oct. 9, 2006), available at <http://www.un.org/womenwatch/daw/vaw/launch/english/v.a.w-exeE-use.pdf>.

54. See Special Rapporteur on Violence Against Women, Its Causes and Consequences, U.N. Doc. A/HRC/14/22, ¶ 24 (Apr. 23, 2010) (by Rashida Manjoo), available at <http://www.unhcr.org/refworld/docid/4c0cb3812.html>.

55. See MESECVI Hemispheric Report, *supra* note 37, at 38 (unofficial translation).

lem of violence against women as one of their main foci of work. Strong financial support to help address this question would further strengthen this space.

#### 4. THE NECESSITY FOR STATISTICS AND DATA

The fourth priority theme for CEVI is part of a global need: the necessity for statistics and data on the magnitude of the problem, properly adjusted, in order to intervene opportunely in the problem's solution. In accordance with the Convention of Belém do Pará,<sup>56</sup> states should ensure the investigation and collection of statistics and information pertinent to the causes, consequences, and frequency of violence against women. Indeed, the MESECVI's Hemispheric Report demonstrates that

[t]he majority of States do not have consolidated statistical information on denunciations, detentions, or sentences in cases of violence against women. The grand majority of States do not have this information, or have only partial estimates, or have only databases with information received from a few police stations or courts of just a few regions of the country.<sup>57</sup>

In addition, there are no states with mechanisms for evaluating the underreporting of cases.

#### 5. THE GENERAL AND SPECIFIC RECOMMENDATIONS

Finally, the MESECVI's Hemispheric Report contains general and specific recommendations for states. The general recommendations are related to the absences reported in governments' reports and the need to have more information both for access to justice and for creating legislation on violence that occurs in the community or at the hands of the state. The specific recommendations offer a useful guide for the proper implementation of Articles Seven and Eight of the Convention, along the lines of the questionnaire's four themes, meticulously detailing the steps incumbent on states.

It is also important to more widely disseminate the Hemispheric Report to other spaces, such as social movements and academia, and to keep it in mind for political debates and electoral agendas. The report could also be used as a sort of baseline for measuring subsequent advances. In this manner, the work of the Committee will be able to achieve a greater and more effective impact.

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56. Convention of Belém do Pará, *supra* note 5, at Art. 8(h).

57. MESECVI Hemispheric Report, *supra* note 37, at 40 (unofficial translation).

C. *The Second Round: Why We Could Not Change the Priority Themes*

In July 2009, CEVI's second round began. When the Committee was created, we imagined that every three years—that is, each round—we would adopt distinct themes in order to be able to ultimately explore all angles of the problem of violence against women. Nevertheless, we could not change the themes because the results of CEVI's first round demonstrated that many problems within the first four themes had yet to be resolved.

D. *Limits of the Mechanism, Comparison with Other Similar Mechanisms in Member States (e.g., MESICIC, MEM), Funding, Meeting Days . . .*

The MESECVI has very little funding available for its operation. It can meet only two days out of every year. During these brief sessions, it must agree on an agenda, review and approve country reports, and resolve other questions brought to the Committee for discussion. No time is left for our experts to debate complex themes for which it is often very difficult to reach agreement.

If we compare the resources of the MESECVI with those of other similar mechanisms, we see that we are the “Cinderella” of the Inter-American System's mechanisms. The Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption (“MESICIC”), for example, dedicated to following up on the Inter-American Convention Against Corruption (adopted in 1996), came into effect in 2002<sup>58</sup>—a much faster process than that undertaken by the MESECVI. Its members meet more frequently, in sessions no less than a week, and it has a budget for hiring consultants, analyzing thorny issues, and debating with detail. The MESICIC has an exclusive online space within the OAS' website<sup>59</sup>—something the MESECVI requested years ago—that disseminates all its information in a clear and friendly manner. One of the elements marking the difference between these two mechanisms is the fact that the United States and Canada ratified the Convention Against Corruption and are, furthermore, part of its follow-up mechanism.<sup>60</sup>

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58. *What Is the MESICIC?*, DEPT. OF LEGAL COOPERATION, OAS, [http://www.oas.org/juridico/english/mesicic\\_intro\\_en.htm](http://www.oas.org/juridico/english/mesicic_intro_en.htm) (last visited Apr. 28, 2011).

59. *Anti-Corruption Portal of the Americas*, DEPT. OF LEGAL COOPERATION, OAS, <http://www.oas.org/juridico/english/fighcur.html> (last visited Apr. 28, 2011).

60. Inter-Am. Conv. Against Corruption, Mar. 29, 1996, 35 I.L.M. 724 (entered into force Mar. 6, 1997), available at <http://www.oas.org/juridico/english/Sigs/b-58.html> (listing both the United States and Canada as ratifiers).

Another example is the Multilateral Evaluation Mechanism ("MEM"), an instrument for measuring the progress of actions taken to control drug trafficking and abuse.<sup>61</sup> Its membership is made up of the thirty-four member states of the OAS. The MEM's rounds last two years each and its principal function is to follow up on strategies to combat drugs and eliminate money laundering and other crimes.<sup>62</sup> Also, the United States and Canada form part of the mechanism and contribute vital funds to its budget.<sup>63</sup>

E. *The Need for Canada and the United States to Ratify the Convention and Join the Mechanism*

What factors impede the United States and Canada from ratifying the Convention of Belém do Pará and incorporating themselves into the MESECVI? I think this is a pertinent question. Just as they ratified the MESICIC and the MEM, they can ratify the Convention of Belém do Pará and join its mechanism. This would strengthen the Convention in the sense that both the Convention and the MESECVI would gain more legitimacy. Their membership would be important not just because of the economic support that they could provide but also because of their experience in public policies and social measures aimed at preventing, punishing, and eradicating violence against women. In addition, both countries have extensive jurisprudence on the issue that would enrich the Committee's work. This is a question that human rights and women's organizations in both countries should incorporate into their agendas.

III. ACHIEVEMENTS AND ADVANCES IN THE REGION

At the same time that we describe the obstacles facing us, we should also consider our accomplishments. The very existence and functioning of the follow-up mechanism, as well as the Convention itself, signals important achievements in comparison with other regions in the world.

The approval of comprehensive laws on violence that consider all spheres in which violent acts occur (domestic, community, and state) can be seen as another advancement. This has already been achieved in six countries in the region: Argentina, Colombia, Costa Rica, Guatemala, Mexico, and Venezuela, which have comprehensive laws on vio-

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61. *Multilateral Evaluation Mechanism*, CICAD & OAS, [http://www.cicad.oas.org/MEM/eng/\\_mem/AbouMEMMay02.htm](http://www.cicad.oas.org/MEM/eng/_mem/AbouMEMMay02.htm) (last visited Apr. 28, 2011).

62. *Multilateral Evaluation Process*, CICAD & OAS, [http://www.cicad.oas.org/MEM/eng/\\_mem/AbouMEMMay02.htm#BACKGROUND](http://www.cicad.oas.org/MEM/eng/_mem/AbouMEMMay02.htm#BACKGROUND) (last visited Apr. 28, 2011).

63. See, e.g., *Prevention and Control of the Illicit Consumption of and Trafficking in Narcotics and Psychotropic Substances and Related Crimes*, SECOND SUMMIT OF THE AMERICAS (June 7, 2001), <http://www.summit-americas.org/DRUGS/drugs.htm>.



lence against women in all spheres (domestic, community, and state). Furthermore, these norms incorporate new issues, such as obstetric violence, reproductive freedom, and media. For example, Venezuela's law considers nineteen forms of violence. Additionally, the Argentine law incorporates symbolic violence, regarding it as "that which through stereotypical patterns, messages, values, icons, or signs transmits and reproduces domination, inequality, and discrimination in social relations, normalizing women's subordination in society."<sup>64</sup>

In January 2010, utilizing this conception, the Gender, Law and Development Institute<sup>65</sup> ("INSGENAR"), to which I belong, demanded that Renault International retract a video advertisement for one of its car models, the Sandero Stepway. In the video, a young man taking a trip with his girlfriend gets his camera ready to take a picture.<sup>66</sup> While he does this, she disappears into a web-like plant. Upon noting her disappearance, the young man puts the camera away, returns to the car, and says calmly, "At least I didn't have to work today." His indifference in the face of her disappearance is stunning. We contacted Renault International in France and the French Embassy in Argentina.<sup>67</sup> We urged both of them to comply with international treaties prohibiting discrimination against women and with national laws, invoking the notion of symbolic violence in Law 26.485. We also asked that they show respect for social sensitivity around the issue of disappeared women, given that more than four-hundred women disappear in Argentina each year through trafficking and that trials are currently taking place on the forced disappearances of thousands of people, including women. Within a week, Renault removed its video from the internet and television and demanded a letter of apology from its management in Argentina.

Another important feature of this law is violence against reproductive freedom, considered as that which "violates the right of women to decide freely and responsibly the number of pregnancies or the interval between births . . . ."<sup>68</sup> In addition, the law emphasizes the concept of obstetric violence, which is defined as "that which health personnel exercise over the body and reproductive processes of women, expressed

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64. Law No. 26.485, at Art. 5(5), Mar. 2009 (Arg.) (unofficial translation).

65. GENDER, LAW & DEV. INST., <http://www.insgenar.org.ar/english/index.htm> (last visited Apr. 28, 2011).

66. *La Violencia de Género en un Spot de Renault Obligó a Levantarlo: La publicidad del Renault Sandero Stepway*, INSGENAR (Dec. 14, 2009), <http://insgenar.org/drupal-6.14/content/la-violencia-de-g%C3%A9nero-en-un-spot-de-renault-oblig%C3%B3-levantarlo-la-publicidad-del-renault-san>.

67. Letter from INSGENAR to Carlos Ghosn, Chairman & CEO, Renault Internacional (Dec. 12, 2009), available at <http://insgenar.org/drupal-6.14/content/carta-del-intituto-de-genero-derecho-y-desarrollo-por-publicidad-discriminatoria-y-respuesta>.

68. Law No. 26.485, at Art. 6(d), Mar. 2009 (Arg.) (unofficial translation).

by dehumanizing treatment, abuse of medicalization, and pathologization of natural processes . . . ."<sup>69</sup>

Furthermore, these laws propose the creation of national plans that permit the application of policies promoted by law; they aim to create statistical registers and demand budget allocations for the implementation of the plans. These norms, very auspicious, are still in the implementation stage. But with adequate support and follow up, their potential can be increased. It would be ideal if all countries in the region adopted and implemented such comprehensive norms on violence.

Another significant advancement is the creation of Observatories on Violence, Femicide, and Institutional Violence. Such observatories have been installed in almost all of the region's countries, some by the state (women's councils, public prosecutors' offices, women's ministries), and others through the efforts of civil society. Some countries also have indicators for measuring advances in the implementation of norms on violence. Many educational institutions have introduced postgraduate courses on gender violence.

#### IV. CHALLENGES AHEAD

##### A. *Paradigm Shift*

In order to ensure change, we must promote a shift in paradigms that purport to benefit us but ultimately convert themselves into a trap for women. Among the most worrying, I limit myself to highlighting two:

##### 1. WOMEN AS VICTIMS

Many governmental programs utilize victimizing and paternalistic paradigms instead of promoting a paradigm of rights. That is, the woman is treated as a vulnerable victim instead of as a citizen deserving to the right to live free from violence. In criminology, the role of the victim holds an important place, and many efforts have been made to guarantee victims' participation in trials. However, in the case of women, we have to be very careful about how we apply that word and try to use it as little as possible. While a man circumstantially can be a victim, for women, that circumstance can be transformed into essence. I propose we change our focus and transform our thinking from the protection of victims to the guarantee of citizens' human rights.

##### 2. CITIZEN SECURITY THAT DOES NOT INCLUDE GENDER VIOLENCE

Gender violence continues to be an isolated and minor theme that

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69. *Id.* art. 6(e).

has not been incorporated into security policies for the population. Security continues to be administered in a segmented manner (in its analysis, causes, connections, and methods of prevention). If we observe citizen security laws, we see that states have not prioritized the inclusion of domestic violence in the laws' provisions or budgets. It is possible that there is a spatial division of the risks that citizens face, resulting in the ranking of social space (social violence) above private space. This is dire because more than eighty percent of the injuries suffered by women in the region are inflicted in the home. But furthermore, social space is analyzed in a fragmented manner that fails to observe which problems women have when they participate in this space.

My proposal here is to move from gender violence as an isolated theme to human security with a gender perspective. Among other possibilities, I suggest organizing an event before the OAS General Assembly, scheduled to take place in June in El Salvador,<sup>70</sup> with the aim of issuing a comprehensive Declaration on Human Security that addresses the problems that affect men and women and that includes gender violence.

*B. Embrace an Appropriate Legal Framework: Take the Leap from Laws on Family, Domestic, or Intrafamilial Violence to Comprehensive Laws on Violence Against Women in All Spheres*

The design of laws and programs on gender violence has not adopted the spirit of the Convention of Belém do Pará, which defines violence as a violation of women's and girls' human rights. Countries that have issued laws against violence have done so in the framework of "intrafamilial" or "family" violence, and not as violence against women. Under many of these laws, women end up being prosecuted for child abuse while thousands of men remain immune.

It is urgent that all signatories to the Convention of Belém do Pará adjust their legal frameworks and implement comprehensive laws on violence against women in all its forms and spheres of occurrence, framing gender violence as a human rights violation. These laws should be accompanied by specific and real budget allocations that accurately reflect the dimension of the problem.

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70. 41 General Assembly, ORG. OF AM. STATES, <http://www.oas.org/en/41ga/> (last visited Apr. 27, 2011).

C. *Transform Justice: Guarantee Access to Justice for Women Who Have Suffered Violence; Eradicate Stereotypes; Train and Sensitize*

For decades, women's difficulty in accessing justice has been signaled in international, regional, and local arenas, allowing us to infer that the problem is an extensive, permanent, and global one. This issue has been addressed in the international and regional human rights systems by special rapporteurs, treaty monitoring bodies, assemblies, and other mechanisms. For years, we have talked about the need to sensitize judges and other judicial personnel, and accordingly we have invested many efforts in seminars and capacity-building sessions. Perhaps the time has come to shift the focus of our claims. We should urge judges to adequately apply the international commitments to which states have agreed. To states in general, we should recommend that they introduce specific criteria for selecting judges, prosecutors, defenders, and other operators of justice: an understanding of the human rights framework and norms on discrimination (including gender discrimination), and an ability to navigate international treaties, including those that refer to women's rights, such as CEDAW and the Convention of Belém do Pará. In order to achieve justice for women, training in human rights and gender theory should be a criterion for admission to the judiciary.

The CEDAW Committee has addressed this problem on several occasions, such as in its concluding observations to states, general recommendations, and judgments issued under the Optional Protocol. This year, the Latin American and Caribbean Committee for the Defense of Women's Rights<sup>71</sup> ("CLADEM") specifically requested that the CEDAW Committee prepare a general recommendation on access to justice. In addition, CLADEM has requested that the Specialized Women's Conference of Mercosur ("REM") include this topic in its agenda during its next meeting, which will take place in mid-2011 in Asunción, Paraguay. We have knowledge that the UN Special Rapporteur on Violence Against Women will dedicate her next global report to the issue of due diligence in the investigation, judgment, and punishment of cases concerning violence. The combined force of human rights and civil society mechanisms will allow us to generate a positive synergy around this issue.

D. *Develop Reliable Statistics*

The lack of statistics on violence against women is another obstacle on a regional scale. No government can expect to design adequate poli-

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71. CLADEM, <http://www.cladem.org> (last visited Apr. 28, 2011).

cies for solving a problem without understanding its true dimension. None of the region's countries have databases that can help us understand the extent and gravity of violence against women. The scarce statistics that do exist make reference to the accusations that affected people have made in distinct areas—but we have reason to believe that this is just a small percentage of cases. We also do not know anything about the background of these violent actions nor about the follow-up, if any, that was done.

In cases where observatories have been established for registering the number of femicides, the data on women's deaths have not been cross-checked with data on previous complaints made. We have evidence of women whose deaths represent the "chronicle of an announced death,"<sup>72</sup> given that they had already filed three or four denunciations before the homicide, without any preventative measures being taken to prevent their death.

#### E. *Promote Investigation and Debate on Issues Related to Violence*

At the same time that we follow up on the implementation of the Convention of Belém do Pará, we should open spaces for debate to analyze controversial issues. Terms like "victim" should continue to be discussed in the search for a lexicon that portrays women not as weak and vulnerable but rather as citizens whose rights are not respected. Another burning issue is whether a specific penal concept is needed to prosecute cases of femicide. The Inter-American Court of Human Rights, in the *Cotton Field* case, refers to femicide without defining it.<sup>73</sup> Concretely speaking, does femicide require the design of a specific crime in penal codes? What results have been achieved in countries that have developed such a concept? Was there a reduction in cases? Starting in January of this year, CLADEM began to organize a study group for analyzing these very questions and is planning a regional roundtable to expand the discussion this May.

#### F. *Introduce Gender into the Academy*

The academy plays a critical role in the training of operators of justice. Most law faculties in the region have not incorporated a gender perspective into their curricula and devote very little attention to gender discrimination or violence against women. Once judges enter the profes-

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72. This is a reference to a well-known novella. GABRIEL GARCÍA MÁRQUEZ, *CHRONICLE OF A DEATH FORETOLD* (Ballantine Books 1984).

73. González et al. ("*Cotton Field*") v. Mexico, Inter-Am. Ct. H.R. (Sec. C) No. 205, ¶ 83(g) (Nov. 16, 2009), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf).

sion, it is already too late because they have formed a patriarchal theoretical basis that becomes very difficult to transform.

G. *Design Policies of Judicial Harmonization in Countries with Legal Pluralism*

For the countries that have adopted legal pluralism, it is critical to introduce a gender perspective into jurisdictional demarcation laws.

V. CONCLUSION

The prevention, punishment, and eradication of violence against women presents important challenges because it requires states to implement legislative measures, government programs, training, and reforms in the sphere of the administration of justice, among other things, and accompany such changes with national-level campaigns that contribute to a cultural transformation required for the eradication of violence against women. All of us who are concerned with the eradication of violence against women form part of and are leaders of an accelerated cultural change that has taken place in just thirty years and that has transformed the acceptance of violence into its delegitimation. Violence against women appears on the public agendas of all countries in the world; laws have been created and social measures have been taken, such as the creation of shelters, telephone hotlines, and support groups; and there is literature and cultural activities on sensitization. What we have achieved in this field is enormous and to a large extent is due to the lasting force of the women's movement. It is true that much remains to be done—but what we have achieved in just thirty years should give us inspiration to persevere.

