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ARTICLES

The Rights of Women in the Inter-American System of Human Rights: Current Opportunities and Challenges in Standard-Setting

ROSA M. CELORIO*

I. INTRODUCTION

The development of standards related to the human rights of women within the context of the inter-American system of human rights has been gradual and recent, mostly gathering steam after 1994. This process reached an important climax on November 16, 2009, when the Inter-American Court of Human Rights issued its first comprehensive ruling on women's rights issues in the case of *González et al. v. Mexico* (hereinafter "*Cotton Field*").¹

Cotton Field relates to the unresolved investigation of "the disappearance and subsequent death" of three young women² in the locality of Ciudad Juárez, Mexico—deaths that occurred in a highly publicized context of irregularities, delays, and impunity.³ The representatives alleged before the Court that the State of Mexico had failed to act with the due diligence necessary to prevent, investigate, and sanction these crimes.⁴ The Court found a significant number of violations under the American Convention on Human Rights (hereinafter the "American Convention")⁵ and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (hereinafter

* Human Rights Specialist, Special Rapporteurship on the Rights of Women, Inter-American Commission on Human Rights; Professional Lecturer in Law, George Washington University Law School. The views expressed are solely those of the author and do not necessarily reflect the views of the Inter-American Commission on Human Rights, the Secretary General of the Organization of American States, or the Organization of American States.

1. *González et al. v. Mexico (Cotton Field)*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205 (Nov. 16, 2009).

2. The victims in this case were Laura Berenice Ramos Monárrez (seventeen years of age), Claudia Ivette González (twenty years of age), and Esmeralda Herrera Monreal (fifteen years of age). *Id.* ¶ 2; Application (Cases 12.496–12.498), *infra* note 12, ¶ 1.

3. *Id.*

4. *Id.* ¶ 109.

5. Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

the “Convention of Belém do Pará”).⁶ This ruling was followed by two judgments from the same tribunal in the cases of *Fernández Ortega et al. v. Mexico* and *Rosendo Cantú and other v. Mexico*—issued on August 30 and 31, 2010, respectively—related to the rape and torture of two indigenous women by members of the military in the locality of Guerrero, Mexico, and the lack of investigation and sanction of these crimes.⁷

These three rulings in a way represent the conclusion of a process that began with the adoption of the Convention of Belém do Pará in 1994. The Convention of Belém do Pará is the most ratified instrument in the inter-American system of human rights and is still the only multi-lateral treaty in the world that centers exclusively on the problem of violence against women.⁸ This process was also undoubtedly propelled by a wave of historic case decisions and country and regional thematic reports published by the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission” or “Commission”),⁹ emphasizing crucial principles pertaining to the rights of women.¹⁰ The Commission also submitted the cases of *Cotton Field*, *Fernández Ortega*,

6. *Cotton Field*, ¶ 602 (4–9).

7. *Fernández Ortega et. al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 215 (Aug. 30, 2010); *Rosendo Cantú and other v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216 (Aug. 31, 2010).

8. The Convention of Belém do Pará has been ratified by thirty-two member states of the Organization of American States. See *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women* pmbl. & arts. 1–9, June 9, 1994, 27 U.S.T. 3301, 1438 U.N.T.S. 63.

9. The Inter-American Commission on Human Rights is one of two bodies of the Inter-American System on Human Rights that has been entrusted by the Member States of the Organization of American States to promote the observance and defense of human rights throughout the hemisphere. In the exercise of its mandate, it receives, reviews, and investigates individual petitions that allege human rights violations, including those with gender-specific causes, based on the principles advanced by key regional human rights instruments, such as the American Convention, the American Declaration, and the Convention of Belém do Pará. Any person, group of persons, or nongovernmental organization may present a petition to the Commission alleging violations of the rights protected in the American Convention and other regional instruments. Petitions can also be presented before the inter-American system of human rights under the American Declaration in cases involving States that are not state parties to the American Convention. See *American Convention on Human Rights*, *supra* note 5, at arts. 34–51.

10. See, e.g., *Martín de Mejía v. Peru*, Case 10.970, Inter-Am. Comm’n H.R., Report No. 5/96, OEA/Ser.L./V/II.91, doc. 7 (1996); *Morales de Sierra v. Guatemala*, Case 11.625, Inter-Am. Comm’n H.R., Report No. 4/01, OEA/Ser.L./V/II.111, doc. 20 (2001); *González Pérez v. Mexico*, Case 11.565, Inter-Am. Comm’n H.R., Report No. 53/01, OEA/Ser.L./V/II.111, doc. 20 (2001); *da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm’n H.R., Report No. 54/01, OEA/Ser.L./V/II.111, doc. 20 (2001); Inter-Am. Comm’n H.R. [IACHR], *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L./V/II, doc. 68 (Jan. 20, 2007); IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, OEA/Ser.L./V/II.117, doc. 44 (Mar. 7, 2003).

and *Rosendo Cantú* for the contentious review of the Court when it considered the State of Mexico had not complied with the recommendations issued in the context of its merits rulings.¹¹

Four themes had been the cornerstone of the precedent of the Commission related to the rights of women before the Court judgments in the cases of *Cotton Field*, *Fernández Ortega*, and *Rosendo Cantú*: (1) violence against women; (2) discrimination; (3) due diligence; and (4) access to justice.¹² Most of the precedent of the Commission related to these four themes had been geared toward shedding light on the content of the States' obligation to organize their structure—including the work of all sectors such as justice, health, and education—to prevent, investigate, sanction, and offer reparations for acts of violence and discrimination against women in different settings and sociopolitical contexts.

This Article offers a contemporary analysis of women's rights standards in the inter-American system of human rights by reviewing the legacy of the aforementioned three judgments of the Inter-American Court of Human Rights in four key areas: (1) violence against women; (2) discrimination; (3) due diligence; and (4) access to justice. The analysis is undertaken in light of the precedent of the inter-American system related to human rights and the rights of women, and international legal developments. It is important to note that even though this Article centers mostly on the case decisions issued by the Inter-American Commission and the Inter-American Court of Human Rights, the precedent of the inter-American system related to women's rights also consists of a

11. In cases where the State at issue "has accepted the jurisdiction of the Inter-American Court in accordance with Article 62 of the American Convention, and the Commission [deems] that the State has not complied with the recommendations [issued in a] report approved" under the American Convention, it can refer the case to the Court for its review. See Rules of Procedure of the Inter-American Commission on Human Rights, art. 45 (2009), available at <http://www.cidh.org/basicos/english/Basic18.RulesOfProcedureIACHR.htm>; see also Application to the Inter-American Court of Human Rights, Case of Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez (Cases 12.496–12.498) against the United Mexican States, (Inter-Am. Comm'n H.R. Nov. 4, 2007), available at <http://www.cidh.oas.org/demandas/12.496-7-8%20Campo%20Algodonero%20Mexico%204%20noviembre%2007%20ENG.pdf>; Application to the Inter-American Court of Human Rights, Case of Valentina Rosendo Cantú (Case 12.579) against the United States of Mexico, (Inter-Am. Comm'n H.R. Aug. 2, 2009), available at <http://www.cidh.org/demandas/12.579%20Valentina%20Rosendo%20Cantu%20Mexico%202ago09%20ENGLISH.pdf>; Application to the Inter-American Court of Human Rights, Case of Inés Fernández Ortega (Case 12.580) against the United Mexican States, (Inter-Am. Comm'n H.R. May 7, 2009), available at <http://www.cidh.oas.org/demandas/12.580%20Ines%20Fernandez%20Ortega%20Mexico%207mayo09%20ENGLISH.pdf>.

12. It is also important to note that the Commission has delved into the content of other rights contained in the American Convention in some cases, such as the right to privacy established in Article 11 and the right to protection of the family in Article 17, but it has done so with a more limited scope. See, e.g., *X v. Argentina*, Case 10.506, Inter-Am. Comm'n H.R., Report No. 38/96, OEA/Ser.L.V/II.95, doc. 7 rev. (1997).

diversity of pronouncements and recommendations issued by the Commission in the realm of thematic reports, country reports, and in the resolution of precautionary measures.¹³ A series of advisory opinions and provisional measures adopted by the Inter-American Court are also part of this precedent.¹⁴

This Article suggests that the three Inter-American Court of Human Rights judgments represent both a culmination and beginning for the inter-American system of human rights in regards to women's rights issues. On the one hand, they consolidate what the Inter-American Commission and other international human rights monitoring bodies have been stating for years about the interrelated problems of discrimination and violence against women, and the scope of state obligations to prevent, investigate, sanction, and offer reparations for these acts. On the other hand, they represent a beginning and a crucial point of departure by setting groundbreaking standards in the fields of due diligence, access to justice, and reparations for victims and their family members in cases of violence and discrimination against women.

The Article also discusses the legacy of these three judgments—in the four areas identified above—in terms of the opportunities and challenges they present to the inter-American system of human rights in setting legal standards related to the human rights of women. In the author's view, a human rights standard adopted by the inter-American system has two sets of implications for the State at issue in regards to the protection of women's rights. On the one hand, a human rights standard constitutes a legal obligation for the State involved and sheds light on the content of this obligation. In this sense, the Commission and Court decisions discussed in this Article primarily constitute legal and authoritative pronouncements related to the scope of individual articles of the American Convention and other regional instruments. On the other hand, a human rights standard issued by the inter-American system offers an important guideline for the State implicated of how to adequately and effectively implement, at the national level, the individual rights contained in the governing instruments of the inter-American sys-

13. See *Martín de Mejía; Morales de Sierra; González Pérez; da Penha Maia Fernandes; Access to Justice for Women Victims of Violence in the Americas*, *supra* note 10; *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, *supra* note 10; see also IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L.V/II, doc. 69 (June 6, 2010); IACHR, *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L.V/II, doc. 67 (Oct. 18, 2006). A complete list of the country and regional thematic reports and precautionary measures issued by the Commission pertaining to the rights of women is available at <http://www.cidh.oas.org/>.

14. Information related to advisory opinions and provisional measures adopted by the Inter-American Court of Human Rights can be found at <http://www.corteidh.or.cr/>.

tem of human rights. Therefore, the development of standards within the framework of the inter-American system of human rights, and the current opportunities and challenges offered by the recent Court judgments, will be reviewed in this Article in light of these considerations.

This Article is divided into five parts. In the first part, it discusses the development of women's rights standards in the inter-American system of human rights leading to the *Cotton Field*, *Fernández Ortega*, and *Rosendo Cantú* judgments, as background to the discussion related to the legacy of these Inter-American Court of Human Rights judgments. The second part of this article delves comprehensively into each of the three judgments of the Court, reviewing the main allegations presented by the Commission and the petitioners before this tribunal, and the main violations and legal conclusions reached in each case. The author discusses in the third part the legacy of these three Court judgments in the spheres of violence, discrimination, due diligence, and access to justice, and highlights its contributions to standard-setting related to the rights of women within the framework of the inter-American system of human rights. The fourth part reviews various opportunities that these judgments provide to the system to continue developing women's rights standards, and the challenges ahead. The Article closes with some final conclusions and observations.

II. STANDARDS RELATED TO THE RIGHTS OF WOMEN IN THE INTER-AMERICAN SYSTEM: FROM THEIR ORIGINS TO THE PRESENT

The development of women's rights standards within the framework of the inter-American system of human rights, between 1994 and the decision of the Court in *Cotton Field* at the end of 2009, happened mostly at the level of the Inter-American Commission. The most significant component of this progression was a line of decisions on the merits adopted by the Inter-American Commission related to the problems of violence and discrimination against women. It is important to note that this development has also been complemented by the Commission's publication of country reports, country chapters, and thematic reports delving into priority themes for women in the Americas, and the issuance of precautionary measures with a bearing on the rights of women.¹⁵

A. *Legal Developments at the Inter-American Commission Related to Cases*

In the sphere of merits decisions, two significant and distinct phases can be identified in this standard-setting process at the Commis-

15. *See id.*

sion level between 1994 and 2009: There is a first line of merits decisions decided between 1996 and 2001 that laid the groundwork for what the system's standards are today in the fields of violence, discrimination, due diligence, and access to justice. Some noteworthy cases that were decided by the Commission in this phase related to the issues discussed in this Article, and include *Raquel Martín de Mejía v. Peru* (1996), *Maria Eugenia Morales de Sierra v. Guatemala* (2001), *Ana, Beatriz, and Celia González Pérez v. Mexico* (2001), and *Maria Da Penha Maia Fernandes v. Brazil* (2001), among others. There is a second line of merits decisions decided between 2007 and 2009 that gave more content to the existing standards and opened the ground for Court rulings related to women's rights. These include decisions in the cases of *Claudia Ivette González and others v. Mexico (Cotton Field)* (2007), *Inés Fernández Ortega v. Mexico* (2008), *Valentina Rosendo Cantú v. Mexico* (2009), and *Karen Atala v. Chile* (2009), among others.

It is important to note that the Commission also published, between 1995 and 2009, a number of admissibility reports and friendly settlement agreements addressing legal obligations related to the civil, political, economic, social, and cultural rights of women.¹⁶

B. *First Line of Merits Rulings by the Inter-American Commission (1994–2001)*

The first line of merits decisions issued by the Commission was mostly devoted to analyzing cases raising violations under the American Convention for presumed acts of discrimination and violence against women committed by different States, and the problem of impunity toward these crimes. Even though most of these cases were decided under the provisions of the American Convention, in the case of *Maria Da Penha Maia Fernandes v. Brazil*—probably the most well-known case decided in this phase—the Commission applied the Convention of Belém do Pará for the first time.¹⁷ The Commission also found violations under the Inter-American Convention to Prevent and Punish Tor-

16. See, e.g., *Sánchez Villalobos v. Costa Rica*, Case 12.361, Inter-Am. Comm'n H.R., Report No. 25/04, OEA/Ser.L./V/II.122, doc. 5 (2004); *I.V. v. Bolivia*, Petition 270-07, Inter-Am. Comm'n H.R., Report No. 40/08, OEA/Ser.L./V/II.134, doc. 5 (2008); *Del Rosario Guzmán Albarracín v. Ecuador*, Petition 1055-06, Inter-Am. Comm'n H.R., Report No. 76/08, OEA/Ser.L./V/II.134, doc. 5 (2008); *Télliz Blanco v. Costa Rica*, Petition 712-03, Inter-Am. Comm'n H.R., Report No. 29/07, OEA/Ser.L./V/II.130, doc. 22 (2007); *Véliz Franco v. Guatemala*, Petition 95-04, Inter-Am. Comm'n H.R., Report No. 92/06, OEA/Ser.L./V/II.127, doc. 4 (2007); *Gonzales v. United States*, Petition 1490-05, Inter-Am. Comm'n H.R., Report No. 52/07, OEA/Ser.L./V/II.130, doc. 22 (2007); *Mestanza Chávez v. Peru*, Petition 12.191, Inter-Am. Comm'n H.R., Report No. 71/03, OEA/Ser.L./V/II.118, doc. 5 (2003); *Carabantes Galleguillos v. Chile*, Petition 12.046, Inter-Am. Comm'n H.R., Report No. 33/02, OEA/Ser.L./V/II.117, doc. 1 (2002).

17. *Da Penha Maia Fernandes*, ¶¶ 51–58.

ture in the case of *Ana, Beatriz, and Celia González Pérez v. Mexico*.¹⁸

The author observes that, in this legal phase, the Commission began to set standards in the following thematic areas: (1) the obligation of States, including their respective judicial branches, to act with the due diligence necessary and without delay to prevent, investigate, sanction, and offer reparations for acts of violence against women, even when these are perpetrated by non-State actors; (2) the obligation to guarantee a de jure and de facto access to adequate and effective judicial remedies when acts of violence against women occur; (3) the obligation of public officials working in all branches of the government to treat victims and their family members with respect and dignity throughout the legal process; (4) the duty to adopt public measures to eradicate all forms of discrimination against women and stereotypical patterns of behavior that promote their unequal treatment in their societies; (5) the legal characterization of rape as torture when perpetrated by public officials; and (6) the duty to investigate and prosecute these crimes in impartial judicial avenues.¹⁹

This section briefly discusses the main allegations and findings of some of the most important cases of this first phase to exemplify how these principles were first developed in the Commission's case law. The section presents the cases in chronological order based on when they were decided.

1. RAQUEL MARTÍN DE MEJÍA V. PERU

In this merits report, the Commission first addressed the question of rape as torture in the context of an individual case and under the American Convention and the Inter-American Convention to Prevent and Punish Torture.²⁰ The petition alleged that Raquel Martín de Mejía was raped twice by Peruvian military personnel in June 1989, based on the accusation that she and her husband were considered subversive and members of the *Movimiento Revolucionario Túpac Amaru*.²¹

In its analysis, the Commission advanced a number of key legal principles related to the investigation, judgment, and sanction of acts of

18. *González Pérez*, ¶¶ 4, 46–52.

19. See generally *Martín de Mejía*; *Morales de Sierra*; *González Pérez*; *Da Penha Maia Fernandes*.

20. See generally *Martín de Mejía*. The Commission found, in the context of this case, several violations under the American Convention on behalf of Raquel Martín de Mejía, including a violation to the general obligation to respect and guarantee the rights contained in said instrument (Article 1.1); the right to humane treatment (Article 5); the right to protection of honor and dignity (Article 11); the right to due process (Article 8); and the right to an effective recourse (Article 25). See *id.* § VI.

21. *Id.* ¶¶ 7–8.

rape when they are perpetrated by public officials. In addressing the rape itself, the Commission determined that each of the three elements set forth in the Inter-American Convention to Prevent and Punish Torture had been met to prove torture; namely, (1) “an intentional act through which physical and mental pain and suffering is inflicted on a person;” (2) “committed with a purpose;” and (3) “by a public official or by a private person acting at the instigation of the former.”²² When analyzing these elements, the Commission took into account the physical and psychological suffering caused by the rape, the potential for ostracism for the victim if she were to report these acts, and how rape can be performed with the intention to punish and intimidate the victim involved.²³

The Commission furthermore ruled that the right to judicial protection set forth in Article 25 of the American Convention is to be

understood as the right of every individual to go to a tribunal when any of his rights have been violated . . . to obtain a judicial investigation conducted by a competent, impartial[,] and independent tribunal that will establish whether or not a violation has taken place and will set, when appropriate, adequate compensation.²⁴

In the framework of this analysis, the Commission significantly considered that it would have been impossible for Raquel Martín de Mejía to access domestic recourses to remedy the human rights violations she suffered, in violation of the right to judicial protection and guarantees contained in Articles 8.1 and 25 of the American Convention.²⁵ The Commission also underscored that the investigation of an act of sexual violence should be “purposeful” in seeking the truth and should not depend on the initiative of the victim or her family, thereby furthering the possibility of a judicial remedy.²⁶

2. MARIA EUGENIA MORALES DE SIERRA V. GUATEMALA

In this case,²⁷ the Commission found violations of Articles 1, 2, 11, 17, and 24 of the American Convention, when the provisions of the Guatemalan Civil Code, addressing domestic relations, assigned different legal responsibilities and duties exclusively to the husband, based on his role as the income-provider, and to the wife, based on her role as mother

22. *Id.* § V(B)(2). The Commission additionally determined that the rape by military officers also violated the right of the victim to have her honor and dignity respected under Article 11 of the American Convention. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* § V(B)(2)(b).

26. *Id.*

27. *Morales de Sierra v. Guatemala*, Case 11.625, Inter-Am. Comm'n H.R., Report No. 4/01, OEA/Ser.L./V/II.111, doc. 20 rev. (2001).

and homemaker.²⁸ The Commission examined whether the distinction contained in the Civil Code based on sex was premised on “reasonable and objective criteria.”²⁹ The Commission assessed whether the distinction pursued a legitimate aim and employed means proportional to the end sought.³⁰

In ruling that the distinction violated the guarantees of equality and nondiscrimination contained in the American Convention, the Commission found that far from ensuring the “equality of rights and adequate balancing of responsibilities within marriage, the cited provisions institutionalized imbalances in the rights and duties of the spouses.”³¹ The analysis considered that the provisions “of the Civil Code appl[ied] stereotyp[ical] notions of the roles of women and men which perpetuate de facto discrimination against women in the family sphere.”³² The Commission also explicitly manifested its concern over the dismal consequences of discrimination against women and stereotypical notions of their social roles, including their potential for violence against women.³³

3. ANA, BEATRIZ, AND CELIA GONZÁLEZ PÉREZ V. MEXICO

In this case,³⁴ the petitioners alleged that the sisters Ana, Beatriz, and Celia González Pérez, members of the Tzeltal indigenous peoples, were separated from their mother and illegally detained, raped, and tortured by a group of military personnel during a period of two hours in the state of Chiapas, Mexico.³⁵ They also alleged that these crimes had remained in impunity due to the transfer of the investigation to the military jurisdiction, a forum devoid of the impartiality necessary to provide redress for human rights violations.³⁶

In finding several violations of the American Convention and the Inter-American Convention to Prevent and Punish Torture,³⁷ the Com-

28. *Id.* ¶ 83.

29. *Id.* ¶ 31.

30. *Id.*

31. *Id.* ¶ 44.

32. *Id.*

33. *Id.* ¶ 52.

34. González Pérez v. Mexico, Case 11.565, Inter-Am. Comm'n H.R., Report No. 53/01, OEA/Ser.L./V/II.111, doc. 20 rev. (2001).

35. *Id.* ¶ 2.

36. *Id.*

37. The Commission concluded that the State of Mexico was responsible for violating several rights contained in the American Convention, including the right to humane treatment and privacy (Articles 5 and 11); the right to personal liberty (Article 7); and the right to a fair trial and judicial protection (Articles 8 and 25) to the detriment of the three sisters. The Inter-American Commission also established that the Mexican State was responsible for the violation of Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. The Commission also held that these violations were particularly serious in the case of Celia González Pérez since she was

mission concluded that the State failed to fulfill its obligation under the American Convention "to guarantee the exercise of the rights and freedoms recognized in [said] instrument with respect to persons under their jurisdiction."³⁸ Citing the Inter-American Court of Human Rights decision in the case of *Velásquez Rodríguez v. Honduras*, the Commission established that under this obligation, the State had "the duty to organize [its] government apparatus, and, in general, all structures through which State power is exercised, in . . . a way . . . capable of ensuring the full and free exercise of human rights" at the national level.³⁹

In this general framework, the Commission held that the acts of rape committed by military officials against the sisters amounted to torture, referring to the precedent set in the case of *Raquel Martín de Mejía* described above, cases related to this issue decided by the International Criminal Tribunal for the former Yugoslavia, and pronouncements from the United Nations Special Rapporteur against Torture.⁴⁰ The Commission also observed that this case was characterized by complete impunity,⁴¹ highlighting that six years had passed since the alleged acts had occurred, and the State had failed to prosecute and sanction those responsible and had yet to compensate the victims for the injuries and losses resulting from these acts.⁴² The Commission also concluded that "the pain and humiliation suffered by the" victims were aggravated since, as indigenous women, they did not know the language of their aggressors and had suffered the repudiation of their own communities "as a consequence of the violations."⁴³

The Commission recommended to the Mexican State that it "[c]onduct a complete, impartial, and effective investigation" of these crimes "within the regular criminal courts in Mexico" and adequately

sixteen at the time of the events, finding a violation of Article 19 of the American Convention. *Id.* ¶¶ 60–61, 90, 94.

38. *Id.* ¶ 85.

39. *Id.* (citing *Velásquez Rodríguez v. Honduras*, Preliminary Objection, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 1, ¶ 91 (June 26 1987)).

40. *Id.* ¶¶ 45–52.

41. Impunity was defined as:

the failure by States to fulfill their obligation to investigate the violation of rights and to impose the appropriate measures on the perpetrators, in particular from a legal standpoint, so that they can be prosecuted and receive the appropriate penalties; to guarantee victims effective resources and remedy for prejudice suffered; and to take the measures necessary to avoid the repetition of these violations.

Id. ¶ 86.

42. In the process, the Commission underscored that the investigation had been "transferred to the military courts, which clearly ha[d] no competence . . . and lack[ed] the impartiality necessary to" investigate and sanction these acts. *Id.* ¶ 88.

43. *Id.* ¶ 95.

compensate the victims.⁴⁴

4. MARIA DA PENHA MAIA FERNANDES V. BRAZIL

The case of *Maria da Penha Maia Fernandes*⁴⁵ was presented to the Commission by a victim of domestic violence in Brazil who had tragically become a paraplegic as a consequence of the beatings and homicide attempts of her husband.⁴⁶ Even though the victim had submitted several complaints pertaining to these acts before the authorities, the petitioners alleged that this case had been pending over fifteen years before the criminal courts in Brazil without resolution.⁴⁷

In its ruling, the Commission applied the Convention of Belém do Pará for the first time and found that the State had violated its human rights obligation to exercise due diligence in preventing, sanctioning, and eradicating domestic violence by not condemning and sanctioning the perpetrator for seventeen years.⁴⁸ Furthermore, it found the existence of a general pattern of state tolerance and judicial inefficiency toward cases of domestic violence.⁴⁹ The Commission was emphatic in finding that the duty of the State to exercise due diligence goes beyond the duty to prosecute and convict, and also includes the duty “to prevent these degrading practices.”⁵⁰

In finding a violation of Articles 8 and 25 of the American Convention, the Commission considered that more than seventeen years had passed since the launching of the investigation and the case against the accused remained open without a final ruling.⁵¹ The Commission also held “that the domestic judicial decisions in this case reveal[ed] inefficiency, negligence, and [an avid] failure to act on the part of the Brazilian judicial authorities.”⁵² The Commission considered that “judicial ineffectiveness . . . creates a climate . . . conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.”⁵³

44. *Id.* ¶ 96.

45. *Da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm’n H.R., Report No. 54/01, OEA/Ser.L./V/II.111, doc. 20 rev. (2001).

46. *Id.* ¶ 2.

47. *Id.*

48. The Inter-American Commission found in this case that the State had violated the rights of the victim to effective judicial protection and guarantees protected under Articles 8 and 25 of the American Convention, in conjunction with “the general obligation to respect and guarantee these rights” under Article 1.1 of said instrument, as well as Article 7 of the Convention of Belém do Pará. *Id.* ¶ 60(2).

49. *Id.* ¶ 55.

50. *Id.* ¶ 56.

51. *Id.* ¶¶ 38–39, 44.

52. *Id.* ¶ 44.

53. *Id.* ¶ 56.

The Commission issued a series of concrete recommendations for the State to address the individual needs of the victim, as well as the pattern of State tolerance, including the prompt completion of the criminal proceedings against the perpetrator; the performance of “a serious, impartial, and exhaustive investigation to determine responsibilities for the irregularities”; and the continuance of the state reform process to end the tolerance of violence against women.⁵⁴

C. *Second Line of Merits Rulings by the Inter-American Commission (2007–2009)*

A noteworthy second line of cases is spearheaded at the Commission with the approval of merits reports in the cases of *Cotton Field* (March 9, 2007),⁵⁵ *Fernández Ortega* (October 30, 2008),⁵⁶ and *Rosendo Cantú* (March 27, 2009).⁵⁷ These cases constitute the basis for the three judgments later issued by the Court between 2009 and 2010.

In the case of *Cotton Field*, the petitioners alleged before the Commission that the State of Mexico had committed a number of human rights violations due to irregularities and inconsistencies in the investigation of the disappearance and subsequent death of three women in the locality of Ciudad Juárez.⁵⁸ It is important to note as background that the Commission had undertaken an on-site visit to Ciudad Juárez, in February 2002, upon numerous communications from hundreds of organizations and individuals reporting “that more than two hundred women had been brutally murdered in Ciudad Juárez since 1993.”⁵⁹ The communications claimed that most of these crimes were never duly investigated or sanctioned, due to the widespread discrimination against women ingrained in the behavior of public officials.⁶⁰ By publishing its report of the visit in March 2003, the Commission joined a variety of national

54. *Id.* ¶ 61.

55. Application (Cases 12.496–12.498), *supra* note 11, ¶ 48.

56. Application (Case 12.580), *supra* note 11, ¶ 26.

57. Application (Case 12.579), *supra* note 11, ¶ 17.

58. For a full description of the petitioners' allegations, see *González v. Mexico*, Petition 281/02, Inter-Am. Comm'n H.R., Report No. 16/05, OEA/Ser.L./V/II.124, doc. 5 ¶¶ 5–7 (2006); *Herrera Monreal v. Mexico*, Petition 282/02, Inter-Am. Comm'n H.R., Report No. 17/05, OEA/Ser.L./V/II.124, doc. 5 ¶¶ 5–7 (2006); *Ramos Monárrez v. Mexico*, Petition 283/02, Inter-Am. Comm'n H.R., Report No. 18/05, OEA/Ser.L./V/II.124, doc. 5 ¶¶ 5–7 (2006). During the processing of these cases, the Commission decided to accumulate them under Article 29.1(d) of its Rules for Procedure since they occurred in the same locality and time frame, they had been investigated jointly by the State of Mexico, and the petitioners alleged that the facts had unfolded in a context of impunity toward violent acts by the State authorities. See Application (Cases 12.496–12.498), *supra* note 11, ¶ 47.

59. *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, *supra* note 10, ¶ 2.

60. *Id.* ¶¶ 6–8.

entities, international agencies, Special Rapporteurs, and civil society organizations in expressing its concern over the pattern of disappearances and murders in the locality and the impunity that permeated these crimes.⁶¹ As part of its monitoring of the situation in Ciudad Juárez, the Commission processed since 2002 the cases of *Claudia Ivette González*, *Laura Berenice Ramos Monárrez*, and *Esmeralda Herrera Monreal*—better known as *Cotton Field*—as paradigmatic cases of the serious pattern of violence against women taking place in Ciudad Juárez, ruling on their merits on March 9, 2007.⁶²

In its merits decision, the Commission held that the Mexican State was responsible for several human rights violations under the American Convention and the Convention of Belém do Pará⁶³ for failing to adopt reasonable measures to protect the lives and prevent the murders of the three victims, even though it had knowledge of a pattern of disappearances and murders of women who were reported as missing and had not exercised due diligence to identify the persons actually responsible for these crimes.⁶⁴ Furthermore, the Commission considered in its decision that the family members of the victims had been consistently mistreated by the State authorities throughout the criminal investigation and had not been adequately informed of the progress of the investigations.⁶⁵ The Commission recommended that the State undertake a serious, impartial, and exhaustive investigation of the three murders to identify and sanction those actually responsible, among other recommendations.⁶⁶

These cases were followed by the Commission approval of the merits reports in the cases of *Fernández Ortega* and *Rosendo Cantú*.⁶⁷ The petitioners alleged before the Commission that the State of Mexico had failed to duly investigate and sanction the rape, torture, and discrimination of two indigenous women by agents of the Mexican army in the State of Guerrero, in violation of the American Convention, the Conven-

61. *Id.*

62. *Cotton Field*, ¶¶ 1, 160–267.

63. The Commission found violations of Articles 4, 8.1, and 25 of the American Convention in relation to the obligations contained in Articles 1.1 and 2 of the American Convention to the detriment of the three victims and Article 7 of the Convention of Belém do Pará. The Commission also found a violation of Article 19 of the American Convention to the detriment of Laura Berenice Ramos Monárrez and Esmeralda Herrera Monreal, and Article 5(1) of the American Convention “to the detriment of the next-of-kin of the three victims,” under Articles 1.1 and 2 of the American Convention. *See id.* ¶ 268; Application (Cases 12.496–12.498), *supra* note 12, ¶¶ 48, 301.

64. *Cotton Field*, ¶¶ 160–267; Application (Cases 12.496–12.498), *supra* note 11, ¶¶ 48, 49, app. 1.

65. *Cotton Field*, ¶¶ 257–67.

66. *Cotton Field*; Application (Cases 12.496–12.498), *supra* note 11, ¶ 49.

67. *See generally* Application (Case 12.580), *supra* note 11; Application (Case No. 12.579), *supra* note 11.

tion of Belém do Pará, and the Inter-American Convention to Prevent and Punish Torture, among other international instruments.⁶⁸ After finding a comprehensive set of violations under these three instruments,⁶⁹ the Commission ordered the State to conduct a serious, impartial, and exhaustive investigation before the ordinary criminal courts to identify and sanction those responsible; to adopt measures to ensure that the military justice system was disqualified from hearing human rights violations involving sexual violence; and to offer the victims and their next-of-kin reparations, among other measures.⁷⁰

In the three cases, the Commission gave the State of Mexico several months to undertake steps to comply with the recommendations issued by the Commission.⁷¹ After noting the absence of substantive progress in the implementation of its recommendations, the Commission decided to present these cases to the Inter-American Court of Human Rights for its contentious review.⁷²

Before proceeding with the analysis of the path of these three cases before the Inter-American Court of Human Rights in the following section, the author notes that also during this period the Commission issued its first ruling related to discrimination on the basis of sexual orientation in the system—the case of *Karen Atala v. Chile*—on December 18, 2009.⁷³ The petitioners alleged before the system that the State of Chile

68. See *Fernández Ortega v. Mexico*, Petition 540-04, Inter-Am. Comm'n H.R., Report No. 94/06, OEA/Ser.L./V/II.127, doc. 4 rev. ¶¶ 7–12 (2007); *Rosendo Cantú v. Mexico*, Petition 972-03, Inter-Am. Comm'n H.R., Report No. 93/06, OEA/Ser.L./V/II.127, doc. 4, rev. ¶¶ 6–14 (2007).

69. In regards to Valentina Rosendo Cantú, the Commission found violations of Articles 5.1, 8.1, 11, 19, and 25 of the American Convention, in conjunction with Article 1.1 of the same instrument. The Commission also found violations of Article 7 of the Convention of Belém do Pará and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. With respect to her family members, the Commission concluded that the State was responsible for violating Article 5.1 of the American Convention, in conjunction with the obligation to respect and ensure those rights set forth in Article 1.1 of said instrument. See *Rosendo Cantú*, ¶ 5; Application (Case 12.579), *supra* note 11, ¶ 17. In the case of *Inés Fernández Ortega*, the Commission also found violations of Articles 5.1, 8.1, 11, and 25 of the American Convention, in connection with Article 1.1 of the said instrument. It also held that the State was responsible for violating Articles 7 of the Convention of Belém do Pará, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of the victim. “Regarding her next of kin, the Commission conclude[d] that the State [was] responsible for violations of Article 5.1 of the American Convention[,] in connection with the general obligation to respect and ensure the rights” contained in Article 1.1 of said instrument. *Fernández Ortega*, ¶¶ 5, 216; Application (Case 12.580), *supra* note 11, ¶ 26.

70. Application (Case 12.580), *supra* note 11, ¶ 27; Application (Case 12.579), *supra* note 11, ¶ 18.

71. Application (Cases 12.496–12.498), *supra* note 11, ¶¶ 50–59; Application (Case 12.580), *supra* note 11, ¶¶ 28–33; Application (Case 12.579), *supra* note 11, ¶¶ 19–22.

72. Application (Cases 12.496–12.498) *supra* note 11, ¶ 59; Application (Case 12.580), *supra* note 11, ¶ 35; Application (Case 12.579), *supra* note 11, ¶ 22.

73. Application to the Inter-American Court of Human Rights, Case of Karen Atala and

was internationally responsible for violations allegedly committed in the context of a custody proceeding.⁷⁴ The petitioners claimed that said proceeding ended in a ruling by the Supreme Court of Justice of Chile that revoked Karen Atala's custody of her three daughters, M., V., and R. (ages five, six, and ten, respectively), based exclusively on discriminatory prejudices regarding her sexual orientation.⁷⁵ This is the first ruling of the Commission finding a violation of the rights to equality and non-discrimination protected under Article 24 of the American Convention in the realm of sexual orientation and custody issues.⁷⁶ The merits ruling also includes precedent-making analysis pertaining to the scope of the rights to privacy, protection of the family, the right of girls, and the right to a fair trial and to judicial protection, all in the framework of the general obligation of States to guarantee human rights under Article 1.1 of the American Convention.⁷⁷ This case was also presented to the Inter-American Court of Human Rights on September 17, 2010, for its contentious review.⁷⁸

It is also noteworthy that during this period, the Inter-American Court of Human Rights addressed women's rights issues for the first time in its judgment of *Miguel Castro Castro Prison v. Peru* on November 25, 2006.⁷⁹ The case related "to the execution of 'Operative Transfer 1' within the Miguel Castro Castro Prison" in Peru, "during which the State [had] allegedly . . . caused the death of at least forty-two inmates, injured 175 inmates, and sub[jected] . . . 322 [other] inmates to a cruel, inhuman[e], and degrading treatment" and the aftermath of said transfer.⁸⁰ The Court considered proven that the attack specifically started in

Daughters (Case 12.502) Against the State of Chile, (Inter-Am. Comm'n H.R. Sept. 17, 2010) ¶¶ 23–24, available at www.cidh.org/demandas/12.502ENG.pdf.

74. *Id.* ¶ 2.

75. *Id.* ¶¶ 1, 2.

76. In its merits report, the Commission concluded that the State of Chile violated Karen Atala's right to equal protection without discrimination enshrined in Article 24 of the American Convention, as it relates to the duty to respect and guarantee rights as established in Article 1.1. In addition, the Commission established that the State violated the rights of Karen Atala and her daughters to live free from abusive and arbitrary interferences in their private and family life, rights protected under Articles 11.2 and 17.1 of the American Convention, and the rights of her daughters as children under Articles 19 and 17.4 of the American Convention, all as they relate to the general obligation to respect and guarantee rights as established in Article 1.1 of the American Convention. The Commission also established that the State violated the right to adequate judicial protection and guarantees of due process of Karen Atala as enshrined in Articles 8.1 and 25.1 of the American Convention, in conjunction with the general obligation to respect and guarantee rights under Article 1.1 thereof. See generally *id.* ¶¶ 23–24.

77. *Id.*

78. *Id.* ¶ 1.

79. See generally *Miguel Castro-Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 160 (Nov. 25, 2006).

80. *Id.* ¶ 3. The acts occurred in the context of the Peruvian armed conflict that affected the

the prison's pavilion occupied by the female inmates, including women who were pregnant.⁸¹

The Court included a number of landmark and bold pronouncements in this judgment related to incidents of sexual violence suffered by the inmates, even though the allegations originating the presentation of the case before the Court were general in nature. First, the Court found a violation of Article 5 of the American Convention and interpreted its scope referencing the Convention of Belém do Pará.⁸² The Court described this instrument as part of the "international *corpus juris*" related to the "protection of [a] woman's right to humane treatment, of which the American Convention forms part."⁸³ Second, the Court, for the first time, stressed that gender-based violence is a form of discrimination following precedent from the Committee on the Elimination of Discrimination against Women, and the aggravated nature of human rights violations when they are committed against women.⁸⁴

Third, the Court construed incidents of forced nudity, ill-treatment, and the vaginal inspection of the female inmates, including those pregnant, as acts of sexual violence that could amount to torture, and defined the term broadly.⁸⁵ Following international jurisprudence, the Court held that "sexual violence consists of actions with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever."⁸⁶ The Court also underscored the "devastating physical, emotional, and psychological consequences" of rape when perpetrated by State actors against women that are detained, since they are "subject to the complete control and power of state agents."⁸⁷ The Court also refers to the duty to act with due diligence codified in Article 7(b) of the Convention of Belém do Pará to find violations under Articles 8.1 and 25 of the American Convention for failing to investigate and sanction these violations.⁸⁸

Therefore, in its decision in the case of *Miguel Castro Castro*

country between 1980 and 2000, where numerous human rights violations have been documented by the Commission for Truth and Reconciliation in the same country. *Id.* ¶ 197(3), (6).

81. *Id.* ¶¶ 19, 197(13).

82. *Id.* ¶ 276.

83. *Id.*

84. *Id.* ¶ 303.

85. *Id.* ¶¶ 308–09. The Court held "that the acts of sexual violence to which an inmate was submitted under an alleged finger vaginal 'examination' . . . constituted . . . rape that due to its effects [amounted to] torture." *Id.* ¶ 312.

86. *Id.* ¶ 306 (citing Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 688 (Sept. 2, 1998)).

87. *Id.* ¶¶ 307, 311, 313.

88. *Id.* ¶¶ 378, 379, 394, 408.

Prison, the Court begins adopting its own positions related to gender issues in the framework of its general analysis of human rights obligations in individual cases. It continues this process in the judgments of *Cotton Field*, *Fernández Ortega*, and *Rosendo Cantú*, as will be discussed in the following section.

III. THE CASES OF *COTTON FIELD*, *FERNÁNDEZ ORTEGA*, AND *ROSENDO CANTÚ* BEFORE THE INTER-AMERICAN COURT

In this section, the author describes the main allegations before the Inter-American Court in the cases of *Cotton Field*, *Fernández Ortega* and *Rosendo Cantú*, and the main findings of the Court. In the next section, the author discusses the legacy of these three judgments in regards to four areas: violence, discrimination, due diligence, and access to justice.

A. *González et al. v. Mexico ("Cotton Field")*

On November 4, 2007, the Inter-American Commission presented an application before the Inter-American Court of Human Rights alleging that the Mexican State was responsible for a series of irregularities and delays committed in the investigation of the disappearance and subsequent death of Laura Berenice Ramos Monárrez (seventeen years of age), Claudia Ivette González (twenty years of age), and Esmeralda Herrera Monreal (fifteen years of age), in the locality of Ciudad Juárez.⁸⁹

In essence, the Commission⁹⁰ and the representatives⁹¹ argued before the Court that the three young women, all of them of limited economic resources, were first reported as disappeared by their family

89. Application (Cases 12.496–12.498), *supra* note 11, ¶ 1.

90. The Commission for its part asked the Court to declare the State responsible for several rights embodied in the American Convention to the detriment of the three victims, including the right to life (Article 4), the right to a fair trial (Article 8.1), the right to judicial protection (Article 25), and the rights of the child (Article 19) of Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez, all within the overarching obligation of the State under Article 1.1 to respect and guarantee said human rights, and the duty to adopt legislation and other measures that may be necessary under Article 2. The Commission also framed its allegations in the framework of the right of women to live free from violence established in Article 7 of the Convention of Belém do Pará. In regards to the victims' family members, the Commission alleged violations of the right to humane treatment (Article 5) and violations of the rights to a fair trial and judicial protection (Articles 8.1 and 25) of the American Convention. In addition to the allegations presented by the Commission, the representatives of the victims asked the Court to declare the State responsible for violating the rights of the three victims to humane treatment (Article 5), the right to personal liberty (Article 7), and the right to privacy, dignity, and honor (Article 11), as well as Articles 8 and 9 of the Convention of Belém do Pará. *Id.* ¶ 6.

91. The victims were represented before the Inter-American Court by the *Asociación Nacional de Abogados Democráticos AC*, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), the *Red Ciudadana de No Violencia y por la Dignidad Humana*, and the *Centro para el Desarrollo Integral de la Mujer AC*. See *id.* ¶¶ 306–07.

members in September and October 2001, and their bodies were found days or weeks later in a cotton field—*campo algodonero*—with signs of sexual abuse and other forms of ill-treatment.⁹² They argued that the authorities committed a series of irregularities and delays in promptly investigating the disappearance and murder of the three victims resulting in the impunity of these crimes.⁹³ They alleged that the public officials in charge did not consider the search and investigation of these crimes a priority due to the sex of the victims and “value judgments” related to their conduct.⁹⁴

Two key features of the Commission and the representatives’ allegations were that these three cases exemplified and were part of a pattern in Ciudad Juárez of disappearances and murders of women since 1993, often joined by omissions and irregularities by the State authorities in the investigation and sanction of most of these cases since the victims were women, which had fostered impunity and the repetition of these acts.⁹⁵ The Commission and the petitioners also argued that the family members of the victims were constantly mistreated, harassed, and intimidated by the authorities when they tried to launch and collaborate with the investigations.⁹⁶

In its judgment of November 16, 2009,⁹⁷ the Court held the State responsible for several violations under the American Convention and the Convention of Belém do Pará committed to the detriment of the three victims and their family members.⁹⁸ Foremost was the failure of the State to generally guarantee human rights by not acting with the due

92. *Id.* ¶¶ 68–138; *Cotton Field*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 2–4 (Nov. 16, 2009).

93. Application (Cases 12.496–12.498), *supra* note 11, ¶¶ 139–251; *Cotton Field*, ¶¶ 2–4.

94. *Id.*

95. Application (Cases 12.496–12.498), *supra* note 11, ¶¶ 139–53; *Cotton Field*, ¶¶ 2–4.

96. Application (Cases 12.496–12.498), *supra* note 11, ¶¶ 239–51; *Cotton Field*, ¶ 413–21.

97. *Cotton Field*, ¶ 1.

98. Within this framework, the Court found several violations of the American Convention to the detriment of the three victims, including the obligation to guarantee rights under Article 1.1, the duty to adopt the legal measures necessary to implement the rights in the Convention provided for by Article 2, the right to life protected by Article 4.1, the right to humane treatment encompassed by Articles 5.1 and 5.2, the right to personal liberty under Article 7.1, and Articles 7(b) and 7(c) of the Convention of Belém do Pará. The Court also found violations of the rights of the child of Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez under Article 19 of the American Convention. In regards to the family members of the victims, the Court found violations of their right to access to justice and to judicial protection under Articles 8.1 and 25.1 of the American Convention, in connection with Articles 1.1 and 2 of said instrument; their right to personal integrity and humane treatment under Articles 5.1 and 5.2, in connection with Article 1.1; and Articles 7(b) and (c) of the Convention of Belém do Pará. *Id.* ¶ 602 (4–9). The Court did not find violations arising from the obligation of the State to respect rights under Article 1.1 of the American Convention and the right to privacy, honor, and dignity embodied in Article 11 of the American Convention. *Id.* ¶ 602 (3, 10).

diligence necessary to protect the rights to life, to humane treatment, to personal liberty, and to live free from violence of the three victims, and to adequately and effectively investigate their disappearances and homicides.⁹⁹ The Court also found violations of the right not to discriminate against women on the basis of their sex, the rights of the children of the two victims who were minors, and the rights to humane treatment and access to justice of the family members of the deceased.¹⁰⁰

B. *Inés Fernández Ortega et al. v. Mexico*

On May 7, 2009, the Inter-American Commission presented an application before the Inter-American Court of Human Rights alleging that the State of Mexico was responsible for the rape and torture of Inés Fernández Ortega in the State of Guerrero.¹⁰¹ The victim at issue in this case was an indigenous woman, a member of the Me'phaa (Tlapanec) people, and twenty-seven years old at the time of the events subject to the application.¹⁰²

In essence, the Commission¹⁰³ and the representatives¹⁰⁴ argued before the Court that Inés Fernández Ortega was raped at the hands of members of the Mexican Army at her home on March 22, 2002.¹⁰⁵ With the help of defense counsel and an interpreter she reported the rape

99. *Id.* ¶¶ 413–21, 286, 293.

100. *Id.* ¶ 602 (6–10)

101. Application (Cases 12.580), *supra* note 11, ¶ 1.

102. *Id.* ¶ 44.

103. The Commission argued that the State had violated the following dispositions of the American Convention to the detriment of Inés Fernández Ortega: the right to humane treatment embodied in Article 5; the right to a fair trial under Article 8; the right to privacy established in Article 11; and the right to judicial protection under Article 25, “in conjunction with the general obligation” to respect and ensure human rights established in Article 1.1. It also sustained violations of Article 7 of the Convention of Belém do Pará and Articles 1, 6, and 8 of that instrument. The Commission also alleged that the Mexican State was responsible for violations of the right to humane treatment under Article 5, the right to a fair trial embodied in Article 8, and the right to judicial protection under Article 25, in relation with Article 1.1 of the Convention, with respect to several members of Fernández Ortega’s family: Fortunato Prisciliano Sierra (her husband); Noemí, Ana Luz, Colosio, Nélide, and Neptalí Prisciliano Fernández (her children); María Lidia Ortega (her mother); and Lorenzo and Ocotlán Fernández Ortega (her brothers). *See id.* ¶ 5 (a–d).

104. The Organization of the Tlapanec/Me’phaa Indigenous Peoples, AC, the Tlachinollan Mountain Human Rights Center, and the Center for Justice and International Law were the representatives before the Court in this case. It is important to note that the representatives additionally argued before the Court that the State had also violated other rights under the American Convention: the adoption of legislative or other measures that may be necessary to give effect to the rights contained in said instrument under Article 2; the right to freedom of association under Article 16; and the right to equality before the law under Article 24. *See* Fernández Ortega v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 215, ¶ 4 (Aug. 30, 2010).

105. *Id.* ¶ 55.

before the authorities on March 24, 2002.¹⁰⁶ The Commission and the representatives sustained that even though the victim reported these acts before the authorities, they failed to act with the due diligence necessary to investigate and sanction the military officers responsible.¹⁰⁷ Moreover, they argued that several forms of discrimination had been committed against the victim on account of her sex, race, and socioeconomic status by the different State authorities involved in the investigation of these acts and in the collection of evidence.¹⁰⁸ They overall highlighted the particular challenges that indigenous women face to have adequate and effective access to justice when they are victims of sexual violence.¹⁰⁹

As context to their claims, both the Commission and the representatives also alleged that this case exemplified the abuses committed against the indigenous population by the military presence in the State of Guerrero.¹¹⁰ They underscored in particular the use of rape as a form of torture against the Me'phaa indigenous women and the impunity surrounding such incidents.¹¹¹ This form of impunity, in turn, was compounded by the involvement of the military justice system in the investigation and prosecution of these crimes, a system devoid of the impartiality necessary to investigate human rights violations.¹¹²

The Court found the State responsible for several violations under the American Convention to the detriment of Inés Fernández Ortega, including her rights to personal integrity; dignity and privacy; judicial protection and guarantees; and access to justice without discrimination.¹¹³ The Court also found a violation of her right to live free from

106. *Id.* ¶¶ 55, 58.

107. Application (Case 12.580), *supra* note 11, ¶ 2.

108. *Id.* ¶¶ 178–79.

109. *Id.*

110. *Id.* ¶¶ 4, 40.

111. *Id.* ¶ 4. The Court noted that these abuses occurring against the indigenous population had been well documented by international organizations such as Amnesty International, the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, and the World Organization Against Torture. *Id.* ¶¶ 51–52, 54.

112. *Id.*

113. The Court found several violations of the rights contained in the American Convention to the detriment of Inés Fernández Ortega. These included the right to personal integrity, dignity, and privacy established in Articles 5.1, 5.2, 11.1, and 11.2, in relation to Article 1.1 of the same instrument; Articles 1, 2, and 6 of the Inter-American Convention to Prevent and Punish Torture; and Article 7(a) of the Convention of Belém do Pará. The Court also found violations of the rights to judicial protection and guarantees established under Articles 8.1 and 25.1 of the American Convention, in relation to Articles 1.1 and 2 of said instrument, and Article 7(b) of the Convention of Belém do Pará to the detriment of Inés Fernández Ortega. The Court also held that the State had failed to guarantee access to justice without discrimination to Inés Fernández Ortega under Articles 8.1 and 25.1 of the American Convention, in relation to Article 1.1 of said instrument. The Court finally found violations to the right to personal integrity established in Article 5.1, in

violence under the Convention of Belém do Pará and held that the rape she suffered at the hands of military officials amounted to torture under the Inter-American Convention to Prevent and Punish Torture.¹¹⁴ The Court also found a violation of the right to personal integrity and to be free from abusive and arbitrary interferences in the home of Inés Fernández Ortega, her husband, and her children.¹¹⁵

C. *Valentina Rosendo Cantú and other v. Mexico*

On August 2, 2009, the Commission presented an application before the Inter-American Court of Human Rights alleging that the State of Mexico was responsible for the rape and torture by members of the Mexican army of Valentina Rosendo Cantú, also in the State of Guerrero.¹¹⁶ Valentina Rosendo Cantú was also an indigenous woman, a member of the Me'phaa (Tlapanec) peoples, and seventeen years old at the time of the events.¹¹⁷

The Commission and the representatives alleged that Valentina Rosendo Cantú was raped by members of the Mexican Army on February 16, 2002, when she left home to wash clothes in a stream.¹¹⁸ She filed a complaint with the authorities for the rape on March 8, 2002.¹¹⁹ On February 18, 2002, Valentina Rosendo Cantú went to the public health clinic in Caxitepec for medical attention.¹²⁰ The physician on duty did not attend to her because he was afraid of the Army.¹²¹ On February 26, 2002, she “went to the Central Hospital in Ayutla”—after an eight-hour walk—“where she [did not] receive [any] medical attention either[] because . . . she needed an appointment.”¹²² “The next day, [she returned] after requesting the appointment, [and] a doctor examined her stomach and nothing else, refusing to do any other examinations

relation to Article 1.1 of said instrument, to the detriment of the husband and children of Inés Fernández Ortega, and violations of the right to be free from arbitrary or abusive interferences with his home under Article 11.2 to the detriment of Inés Fernández Ortega, her husband, and her children. See *Fernández Ortega v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 215, ¶ 308 (3–9) (Aug. 30, 2010).

114. *Id.* ¶ 308 (3–7).

115. *Id.* ¶ 308 (4–6). The Court did not find violations of the right to personal integrity established in Article 5.1 on behalf of other family members of Inés Fernández Ortega; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and it did not pronounce over Article 16 of the American Convention. *Id.* ¶ 308 (8–9).

116. Application (Case 12.579), *supra* 11, ¶¶ 1, 33.

117. *Id.* ¶¶ 23, 163.

118. *Id.* ¶ 33.

119. *Id.*

120. *Id.* ¶ 35.

121. *Id.*

122. *Id.* ¶ 37.

because no female doctor was present.”¹²³ As in the case of *Fernández Ortega*, the investigation was before both the ordinary and military jurisdictions for seven years without the identification or sanction of those responsible.¹²⁴

The Commission¹²⁵ and the representatives¹²⁶ argued before the Court that even though the victim reported these acts to the authorities, they failed to act with the due diligence necessary to investigate and sanction the military officers responsible.¹²⁷ As in the case of *Fernández Ortega*, they argued that several human rights violations under the American Convention, the Inter-American Convention to Prevent and Punish Torture, and the Convention of Belém do Pará had been committed by investigating these crimes under the military jurisdiction, and by discriminating against the victim on the basis of her sex, race, and socio-economic status during the investigation and evidence-collection efforts.¹²⁸ The Commission and the representatives also argued that the denial of medical care by a public servant amounted to “an obstruction of justice [in] . . . securing . . . evidence that would have helped identify [the victim’s] attackers.”¹²⁹

As in the case of *Fernández Ortega*, the Court found several viola-

123. *Id.*

124. *Id.* ¶¶ 38, 59.

125. The Commission argued that the State had violated the following dispositions of the American Convention to the detriment to Valentina Rosendo Cantú: the right to judicial protection and guarantees under Articles 8.1 and 25 of the American Convention, the right to humane treatment under Article 5.1, the right to privacy under Article 11, and the rights of the child under Article 19, in conjunction with the obligation of respecting and ensuring human rights enshrined in Article 1.1 of said instrument; Article 7 of the Convention of Belém do Pará; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The Commission also sustained that the Mexican State was responsible for violations of the right to humane treatment under Article 5.1, in conjunction with Article 1.1 of the American Convention, with respect to the daughter of Valentina Rosendo Cantú. *See id.* ¶ 5 (a–e).

126. The Organization of the Tlapanec/Me’phaa Indigenous People, A.C., the Tlachinollan Mountain Human Rights Center, and the Center for Justice and International Law were the representatives of the victims in this case before the Court. The representatives “coincided substantially with the violations alleged by the Inter-American Commission” and additionally argued the violation of Article 5 (the right to personal integrity), Article 11 (protection of honor and dignity), Article 8 (judicial guarantees), and Article 25 (judicial protection) of the American Convention, to the detriment of the family members of Valentina Rosendo Cantú; Article 24 (equality before the law), and of Article 2 (obligation to adopt legislative and other measures that may be necessary to give effect to the rights contained in the American Convention), in relation to Articles 8 and 25 of the American Convention, Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article 7 of the Convention of Belém do Pará, to the detriment of Valentina Rosendo Cantú. *See Rosendo Cantú v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 4 (Aug. 31, 2010).*

127. Application (Case 12.579), *supra* note 11, ¶ 2.

128. *Id.* ¶ 5 (a–e).

129. *Id.* ¶ 111.

tions of the American Convention to the detriment of Valentina Rosendo Cantú, including her rights to personal integrity; to dignity and privacy; to judicial protection and guarantees; to access to justice without discrimination; and to special protection as a child.¹³⁰ The Court also found a violation of her right to live free from violence under the Convention of Belém do Pará and held that the rape she suffered at the hands of military officials amounted to torture under the Inter-American Convention to Prevent and Punish Torture.¹³¹ The Court also found a violation of the right to personal integrity in relation to Valentina Rosendo Cantú's daughter, for the consequences she suffered due to the events.¹³²

IV. LEGACY OF INTER-AMERICAN COURT JUDGMENTS OF *COTTON FIELD*, *FERNÁNDEZ ORTEGA*, AND *ROSENDO CANTÚ*

The author suggests that these three judgments constitute both a culmination and beginning for the inter-American system of human rights in four key areas related to the protection of the rights of women: violence, discrimination, due diligence, and access to justice.

On the one hand, they solidify legal principles advanced for years by the Inter-American Commission and other international human rights-monitoring bodies over the gravity of the problems of discrimination and violence against women and the content of the State duties to act with due diligence toward these acts. On the other hand, they present a series of innovative and landmark principles for the inter-American system in the fields of due diligence, access to justice, and reparations for victims and their family members in cases of violence and discrimination against women.

130. The Court found a number of violations of the American Convention to the detriment of Valentina Rosendo Cantú under the right to personal integrity (Articles 5.1 and 5.2) and the rights to dignity and privacy (Articles 11.1 and 11.2), in relation to Article 1.1 of the same instrument, and Articles 1, 2, and 6 of the Inter-American Convention to Prevent and Punish Torture. The Court also found violations of Articles 7(a) and 7(b) of the Convention of Belém do Pará and the rights of the child under Article 19 of the American Convention on behalf of Valentina Rosendo Cantú. The Court also deemed the State responsible for violation of the rights to judicial protection and guarantees (Articles 8.1 and 25.1) in relation to Articles 1.1 and 2 of the American Convention, and the right to guarantee without discrimination the right to access to justice established in the same dispositions, in conjunction with Article 1.1 of the same. The State was also held responsible for the violation of the right to personal integrity of Valentina Rosendo Cantú's daughter under Article 5.1 of the American Convention, in connection with Article 1.1 of the same instrument. The Court did not pronounce over the alleged violation of the right to personal integrity established in Article 5.1 of the American Convention to the detriment of other family members of the victim and did not find the State responsible for the violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. See *Rosendo Cantú*, ¶ 295 (3–8).

131. *Id.* ¶¶ 89–121, 127–31, 183–85.

132. *Id.* ¶¶ 137–39.

In this section, the author analyzes the main contributions of these judgments to the development of women's rights standards in the inter-American system of human rights in three parts: (1) analysis related to the problem of violence against women; (2) findings related to the link between the problems of violence and discrimination against women; and (3) the State obligations to act with due diligence and to guarantee adequate and effective access to justice.

A. *Violence Against Women*

In regards to the problem of violence against women specifically, the three judgments make important pronouncements related to (1) the competency of the Court to review claims under the Convention of Belém do Pará and its relationship with the more general instruments that govern the inter-American system of human rights; (2) the definition of "violence against women" under the Convention of Belém do Pará; (3) the implications of the problem of rape for the victim, her family, and her surrounding community; (4) the legal characterization of rape as a human rights violation when perpetrated by public officials; and (5) the enhanced nature of the State obligations related to due diligence and access to justice when the victims are at risk of human rights violations on the basis of multiple factors, such as their age, race, and ethnicity, among others.

First, the Court in the *Cotton Field* judgment confirms that it is competent to review claims and find violations under Article 7 of the Convention of Belém do Pará, which was questioned by the State of Mexico during the proceedings.¹³³ By confirming that it has such jurisdiction, the Court opens an important door for future petitions alleging human rights violations with gender-specific causes, particularly in the realm of violence against women. The Court also begins analyzing the relationship between Article 7 of the Convention of Belém do Pará and the general rights contained in the American Convention; namely, the rights to judicial protection and the guarantees enshrined in Articles 8.1 and 25.1.¹³⁴ It is important to note that the Court continued this trend in the cases of *Fernández Ortega* and *Rosendo Cantú* by finding violations of Articles 7(a) and 7(b) of the Convention of Belém do Pará and by shedding light on the link between the obligations contained in that instrument and in the American Convention.¹³⁵

133. See *Cotton Field*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 77 (Nov. 16, 2009). The Court, however, did hold that it does not have jurisdiction to examine alleged violations of Articles 8 and 9 of said instrument, although they can be used to interpret the provisions of Article 7. *Id.* ¶ 79.

134. See *id.* ¶¶ 287–389.

135. See *Fernández Ortega*, ¶¶ 192, 190–98 (Aug. 30, 2010); *Rosendo Cantú*, ¶¶ 174–82. A

The Court in the *Cotton Field* judgment also discusses what constitutes “violence against women” under the Convention of Belém do Pará and the scope of the obligations contained in said instrument to prevent and respond to this acute human rights problem.¹³⁶ The Court reiterates its finding “that not all human right[s] violation[s] committed against a woman [necessarily imply] a violation of the provisions” of said Convention.¹³⁷ In this case, the Court did conclude that the three victims all suffered violence against women and that their murders were gender-based by considering several factors, thereby taking a step further in the clarification of the content of this legal term within the Convention.¹³⁸

The Court builds on the *Cotton Field* analysis relative to violence against women in the cases of *Fernández Ortega* and *Rosendo Cantú* focusing in particular on the problem of rape. The Court—expanding on its pronouncements in the case of *Miguel Castro Castro Prison*—refers to rape as a paradigmatic form of violence with consequences that transcend the person of the victim.¹³⁹ It describes rape as a form of violence that affects all social sectors independent of class, race, ethnic group, or level of income, along the lines of the preamble of the Convention of Belém do Pará.¹⁴⁰ The Court goes as far as holding that rape has multiple effects and interferes in intimate zones related to the private life of a woman, including her values, sexual life, and the ability to adopt free decisions, all in violation of Article 11 of the American Convention.¹⁴¹ Indigenous women are identified as a group at particular risk of rape, especially in zones with a strong military presence, such as Guerrero.¹⁴²

judgment that also reflects this trend of interpretation by the Court is the one issued in the case of “*Las Dos Erres*” *Massacre v. Guatemala*, where it found “the State responsible for violation of” the right to a fair trial and judicial protection established in Articles 8.1 and 25.1 of the American Convention, “in relation to Article 1.1 thereof,” as well as “the obligations established in Articles 1, 6, and 8” of the Inter-American Convention to Prevent and Punish Torture, and Article 7(b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, “to the detriment of the 155 victims” in the case. See “*Las Dos Erres*” *Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211 ¶ 69–154 (Nov. 24, 2009).

136. *Cotton Field*, ¶¶ 226–31.

137. *Id.* ¶ 227.

138. *Id.* ¶¶ 228–31. The Court considered as factors: (1) that the State had recognized before the Court both the gravity of the problem of violence against women and the influence of a “culture of discrimination” in Ciudad Juárez; (2) reports from international bodies and non-governmental organizations indicating that many of these murders were manifestations of gender-based violence; (3) that in this case the victims were young, socioeconomically disadvantaged women, who were workers or students, as many of the victims were in this context; and (4) that the evidentiary record demonstrated that the victims had all suffered forms of ill-treatment and probably sexual abuse before they were murdered. *Id.*

139. *Fernández Ortega*, ¶ 119; *Rosendo Cantú*, ¶ 109.

140. *Fernández Ortega*, ¶ 118; *Rosendo Cantú*, ¶ 108.

141. *Fernández Ortega*, ¶ 129; *Rosendo Cantú*, ¶ 119.

142. See, e.g., *Fernández Ortega*, ¶ 79; *Rosendo Cantú*, ¶ 71. The Court also begins analyzing

Following the precedent of the Commission and of the universal system of human rights, the Court emphatically finds that the rape committed against Inés Fernández Ortega and Valentina Rosendo Cantú by members of the Mexican military amounted to torture.¹⁴³ The Court applies its three-part test for torture¹⁴⁴ to rule that rape can constitute torture even when it consists only of an isolated occurrence or when it occurs outside of public institutions, such as in the home of the victim.¹⁴⁵ In analyzing the element of severe physical or mental suffering, the Court also establishes—following the Commission in its allegations—that the severe suffering of the victim is inherent to a rape, even when there is no evidence of physical injuries or illnesses.¹⁴⁶

One important contribution of the three judgments is that the Court solidifies what the Commission and the international system of human rights have been stating for years about the reinforced obligation of States to respect and ensure the human rights of groups of women at particular risk to their human rights violations, such as girls and indigenous women.¹⁴⁷ The Court in its *Cotton Field* judgment recognizes that the State had the obligation to adopt all the positive measures necessary to guarantee the rights of girls, within a context of known disappearances, because they comprise a group at particular risk to human rights violations.¹⁴⁸ Accordingly, the Court found that the “State violated the

the effects of rape not only on the victim, but also on her family, finding violations of Article 5.1 on behalf of Inés Fernández Ortega’s husband and children, and on behalf of Valentina Rosendo Cantú’s daughter. See *Fernández Ortega*, ¶¶ 143–49; *Rosendo Cantú*, ¶¶ 138–39.

143. *Fernández Ortega*, ¶¶ 100–31; *Rosendo Cantú*, ¶¶ 89–121.

144. The Court in the case of *Bueno-Alves v. Argentina* established a three-part test to configure an act of torture, in line with the Inter-American Convention on the Prevention and Punishment of Torture: (1) the act is intentional; (2) it causes severe physical and mental suffering; and (3) it is committed with a purpose. See *Fernández Ortega*, ¶ 120; *Rosendo Cantú*, ¶ 110 (both citing *Bueno-Alves v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 164, ¶ 79 (May 11, 2007)).

145. *Fernández Ortega*, ¶ 128; *Rosendo Cantú*, ¶ 118 (citing U. N. Comm. Against Torture, Comm’n No. 262/2005: *V.L. v. Switzerland*, ¶ 8.10, U.N. Doc. CAT/C/37/D/262/2005 (Jan. 22, 2007)).

146. *Fernández Ortega*, ¶ 124; *Rosendo Cantú*, ¶ 114.

147. *Access to Justice for Women Victims of Violence in the Americas*, *supra* note 10, ¶¶ 195–97; *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, *supra* note 13, ¶¶ 102–06; IACHR, *Report on the Rights of Women in Haiti to Be Free from Violence and Discrimination*, OEA/Ser.L.V/II, Doc. 64, (Mar. 10, 2009), ¶ 90; Comm. on the Elimination of Discrimination Against Women, General Recommendation 25: *Temporary Special Measures*, § 2, ¶ 12, U.N. Doc./CEDAW/C/2004/1/WP.1/Rev.1 (2004); Human Rights Council Res. 14, Rep. of the Human Rights Council, 14th Sess., ¶ 10, A/HRC/14/L.9/Rev.1 (June 16, 2010).

148. *Cotton Field*, ¶¶ 403–11. Even though the State had adopted legislation and policies to protect children, the Court found, based on the evidentiary record, that these did not translate “into effective measures for initiating a prompt search, activating all resources to mobilize the different institutions and to deploy domestic mechanisms to obtain information to locate the girls rapidly

right embodied in Article 19 of the Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the girls Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez.”¹⁴⁹ Similarly, in the case of *Rosendo Cantú*, where the victim was seventeen years old at the time of the rape, the Court emphasized that the State had an obligation to conduct a serious and effective investigation as soon as it knew that the sexual violence had been committed against a person, putting her at particular risk for human rights violations.¹⁵⁰

B. Violence and Discrimination Against Women

It is important to note that the three judgments reiterate the link between discrimination and violence against women, construing violence as a form of discrimination and following the precedent of the Committee on the Elimination of Discrimination against Women (“CEDAW”).¹⁵¹ They also explore the negative influence of discrimination on the actions of public officials entrusted with the investigation of acts of violence against women.¹⁵²

Applying the precedent of the Inter-American System of Human Rights and the landmark case of *Opuz v. Turkey*¹⁵³ from the European Court of Human Rights, the Court in *Cotton Field* finds a violation of the general obligation not to discriminate encompassed in Article 1(1) of the American Convention.¹⁵⁴ The Court concludes that the comments made by public officials to family members when they reported the disappearance of the three victims implying that they had gone off with their boyfriends or that they led a “disreputable life,” and the use of questions about their sexual preference, constituted *stereotyping*¹⁵⁵ and a

and, once their bodies were found, to conduct the investigations and prosecute and punish those responsible effectively and promptly.” *Id.* ¶ 410.

149. *Id.* ¶ 411.

150. *Rosendo Cantú*, ¶ 103. The Court reiterated its line of reasoning about the duty of states to safeguard the best interests of the child with special measures of guarantee and care, and also listed some of the contents of this reinforced obligation referencing the general observations of the Committee on the Rights of the Child, including (1) to adapt existing procedures and related information to the specific needs of young women; (2) to guarantee the right of children who have been sexually abused to be adequately heard in procedures that relate to them in a secure and non-intimidating environment; and (3) to guarantee that children are not interrogated more than necessary to prevent their revictimization or trauma. *Id.* ¶ 201.

151. *Cotton Field*, ¶¶ 395, 402; *Fernández Ortega*, ¶ 130; *Rosendo Cantú*, ¶ 120.

152. *Cotton Field*, ¶¶ 208, 401; *Fernández Ortega*, ¶ 197; *Rosendo Cantú*, ¶ 181.

153. *Opuz v. Turkey*, App. No. 33401/02 (Eur. Ct. H.R. 2009).

154. *Cotton Field*, ¶¶ 201, 408.

155. The Court found that “gender stereotyping refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women,” which can be reflected in the policies, practices, and language of judicial and police authorities, as it was in this case. *Id.* ¶ 401.

form of discrimination.¹⁵⁶ The Court, moreover, found that both the attitude and the statements of officials revealed that, at the very least, they were indifferent toward the family members of the victims and their reports.¹⁵⁷ The analysis highlights that the use of stereotypes can be both a cause and a consequence of gender-based violence against women.¹⁵⁸

In the cases of *Fernández Ortega* and *Rosendo Cantú*, the Court discussed under the general obligation to respect, under Article 1.1 of the American Convention, factors that render the indigenous population more at risk for human rights violations by the administration of justice and the health system.¹⁵⁹ The Court referred to factors such as speaking a different language, not having access to interpreters, and the lack of economic resources to retain an attorney, among others.¹⁶⁰ This produces an avid mistrust in the justice system and other public instances of protection.¹⁶¹ For indigenous women, the Court considers that these barriers are particularly acute since they may also face the rejection and ostracism of their communities when they denounce crimes.¹⁶²

Therefore, the Court in *Fernández Ortega* and *Rosendo Cantú* reiterates this line of jurisprudence, holding that to duly guarantee access to justice to members of indigenous communities under Article 1.1 of the American Convention, states need to adopt protection measures taking into account their particularities, social and economic characteristics, their special situation of vulnerability, their laws, their values, and their customs.¹⁶³ The Court highlights in particular in the case of *Fernández Ortega* the impossibility of the victim to file a complaint and to receive information in her own language.¹⁶⁴ In the case of *Rosendo Cantú*, the Court notes that the State did not provide the victim with an interpreter when she requested medical attention and when she presented her initial complaint, and that she did not receive information in her own language related to the processing of her complaint.¹⁶⁵ The Court also emphasizes the duty to abstain from direct and indirect discrimination.¹⁶⁶

156. *Id.* ¶ 208.

157. *Id.* ¶ 400.

158. *Id.* ¶ 401. The Court, moreover, noted the conclusions of various reports discussing how the crimes in Ciudad Juárez are related to gender violence, which “occurs in a context of systematic discrimination against women,” and that sexual violence cases presented higher levels of impunity, which fueled their perpetuation and repetition. *Id.* ¶¶ 133, 161.

159. *Fernández Ortega*, ¶ 78; *Rosendo Cantú*, ¶ 185.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Fernández Ortega*, ¶ 200; *Rosendo Cantú*, ¶ 184.

164. *Fernández Ortega*, ¶ 201.

165. *Rosendo Cantú*, ¶ 185.

166. *Fernández Ortega*, ¶ 200.

C. *Due Diligence and Access to Justice*

The *Cotton Field* judgment greatly contributes to the clarification of the scope and content of the concrete responsibilities of states in individual cases of violence and discrimination against women, especially when these acts are presumably perpetrated by private individuals. It provides an invaluable contribution to the progressive efforts by different international legal bodies,¹⁶⁷ and the inter-American system of human rights, to define the scope and content of the due diligence obligation in cases of violence against women, as well as the link between due diligence and access to justice.

Within the framework of the general obligation to guarantee human rights under Article 1.1 of the American Convention,¹⁶⁸ the Court in *Cotton Field* delves comprehensively into the content of the obligation of states to act with the due diligence necessary to prevent, investigate, sanction, and offer reparations in cases of violence against women and discrimination, particularly those that take place amidst a context of high numbers of acts of violence against women typically left unresolved and in impunity by states.¹⁶⁹ The Court performs this analysis, referring to the provisions of the American Convention, the Convention of Belém do Pará, the Commission case of *Maria da Penha Maia Fernandes v. Bra-*

167. See, e.g., *Opuz v. Turkey*, App. No. 33401/02 (Eur. Ct. H.R. 2009); U.N. Econ. & Soc., Comm. on Human Rights, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, 62nd Sess., U.N. Doc.E/CN.4/2006/61 (Jan. 20, 2006); U.N. Comm. on the Elimination of Discrimination Against Women, *General Recommendation 19, Violence Against Women*, ¶ 84, U.N. Doc. HRI/GEN/1/Rev.1 (1994); Convention on the Elimination of All Forms of Discrimination Against Women, *Views Under Article 7(3) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. Doc. CEDAW/C/39/D/6/2005 (Oct. 1, 2007); Convention on the Elimination of All Forms of Discrimination Against Women, *Views of the Committee on the Elimination of Discrimination Against Women Under Article 7(3) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. Doc. CEDAW/C/39/D/5/2005 (Aug. 6, 2007); Convention on the Elimination of All Forms of Discrimination Against Women, *Views of the Committee on the Elimination of Discrimination Against Women under Article 7(3) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, annex III, Comm. No. 2/2003 (2003).

168. The Court has previously established that this obligation refers to the duty of the states to organize the entire government apparatus and, in general, all the structures through which public authority is exercised, so that they are able to ensure the free and full exercise of human rights. See, e.g., *Velásquez-Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 166 (July 29, 1988); *Kawas-Fernández v. Honduras*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 137 (Apr. 3, 2009); *Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 62 (Sept. 22, 2009).

169. See generally *Cotton Field*.

zil,¹⁷⁰ its own cases,¹⁷¹ and leading international precedent and reports on the subject from international and human rights monitoring bodies and mechanisms.¹⁷²

The analysis of the Court in *Cotton Field* is particularly noteworthy in the realms of prevention, investigation, and reparations from the perspective of gender-based violence and discrimination. In regard to prevention, the Court underscores that even though this is an obligation of means and not results, the duty is still comprehensive, encompassing the adoption of legal, public policy, and institutional measures designed to prevent these acts and to ultimately protect women from risk factors that increase their exposure to violence.¹⁷³ Even though the Court reiterates its precedent about the limited responsibility of the State for human rights violations committed by private individuals, and the requirement of knowledge of a situation of real and immediate danger in order to incur liability,¹⁷⁴ the Court specifically refers to an obligation of “strict due diligence” that arises in regard to reports of missing women in a known context of disappearances and murders, with respect to search operations during the first hours and days.¹⁷⁵ As noted earlier, the Court underscores that this obligation is particularly important in the case of girls reported as missing.¹⁷⁶

In regards to the State’s obligation to investigate, the Court in *Cotton Field* for the first time establishes that performing a prompt, serious, impartial, and exhaustive investigation of human rights violations has a “wider scope” when dealing with the case of a woman who is killed, ill-treated, or whose personal liberty is affected within the framework of a general context of violence against women.¹⁷⁷ Consequently, the Court

170. See *Da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. Comm’n H.R., Report No. 54/01, OEA/Ser./L/V/II.111, doc. 20 rev. (2001).

171. See, e.g., *Cotton Field*, ¶ 397.

172. Among these, the Court refers to reports and decisions from the Inter-American Commission on Human Rights, the European Court of Human Rights, the National Commission on Human Rights of Mexico, United Nations Special Rapporteurs, the CEDAW Committee, and Amnesty International, among other national and international nongovernmental human rights organizations and mechanisms. See, e.g., *id.* ¶¶ 113–64, 390–402.

173. *Id.* ¶¶ 242–58.

174. See *id.* ¶ 280 (citing *Pueblo Bello Massacre v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 123 (Jan. 31, 2006) (relying on *Kiliç v. Turkey*, App. No. 22492/93, ¶ 62-63 (Eur. Comm’n H.R. 2000) and *Osman v. United Kingdom*, 1998-VIII Eur. Ct. H.R., ¶¶ 115–16)).

175. The Court states that the obligation of “strict due diligence” when a woman is reported missing in a context of serious acts of violence against women requires that police authorities, prosecutors and judicial officials take immediate and prompt actions by ordering the necessary measures to determine the whereabouts of the victims and to perform an effective investigation “until there is no longer any uncertainty about her fate.” See *id.* ¶ 283.

176. *Id.* ¶ 409.

177. *Id.* ¶ 293.

confirms the existence of far-reaching irregularities in the investigation of the three cases, which have hardly been rectified, and verifies the failure of the State to investigate and sanction the public officials responsible for these irregularities, all within a context of judicial ineffectiveness that sends a social message that violence against women is tolerated and promotes its repetition.¹⁷⁸

In the same line of reasoning, the *Cotton Field* judgment marks the first time the Court addresses what reparations should be from a gender perspective for victims of acts of discrimination and violence against women in the fields of satisfaction, rehabilitation, guarantees of non-repetition, and compensation.¹⁷⁹ Among its most significant aspects, the Court innovatively adds a component to the traditional integral reparation scheme—"rectification"—which should be present in cases of systemic and structural discrimination against women, since "restitution" and a pure reestablishment to the previous situation will not be sufficient for lasting change.¹⁸⁰ Moreover, in the sphere of investigation, the Court highlights the negative and positive obligations of the State in cases of violence against women, including the obligation to remove all factual and juridical obstacles to the due investigation of the facts and the conduct of the proceedings and also to ensure that investigations have a gender perspective.¹⁸¹ In regard to women who have disappeared, one of the most noteworthy measures ordered by the Court is the creation, or updating, of a national database to facilitate the identification of women reported as missing.¹⁸²

As a corollary to the State's obligation to act with due diligence, the Court in *Cotton Field* also delves in detail into the obligation of states to guarantee adequate access to justice to victims and their family members in order to obtain a remedy for cases of violence against women and discrimination.¹⁸³ In the ruling, the Court finds that the suffering of the family members due to the circumstances of the deaths of their daughters and the obstacles they faced in the pursuit of justice amounted not only to a violation of the right to personal integrity under Article 5.1 of the American Convention, but rose also to the level of

178. *Id.* ¶ 388.

179. *Id.* ¶¶ 446–601.

180. *Id.* ¶ 450.

181. The Court defines an investigation from a gender perspective as one including specific lines of inquiry related to sexual violence, one conducted in accordance with protocols and manuals that conform to human rights standards, where the victims' family members can access information and case files regularly, and one that is conducted by officials that are highly trained in addressing discrimination and gender-based violence, among other considerations. *Id.* ¶ 455(b).

182. *Id.* ¶ 512.

183. *Id.* ¶¶ 412–40.

degrading treatment under Article 5.2.¹⁸⁴ Even though the Court has repeatedly established that the family members of the victims of human rights violations may also be victims under Article 5.1 of the American Convention, due to the consequences of the violations perpetrated against their loved ones, the finding of the Court under Article 5.2 reflects the gravity the Court perceived in the mistreatment by the authorities of the family members throughout the investigation process.¹⁸⁵ The Court went as far as to find a pattern of state conduct toward the family members and representatives of the victims of violence in Ciudad Juárez, including “depreciatory, disrespectful, and even aggressive treatment” when they sought information on the progress of the investigations,¹⁸⁶ which resulted in an avid mistrust and fear of the authorities, and repeated acts of harassments.

The Court in *Rosendo Cantú* and *Fernández Ortega* builds on the precedent of the case of *Cotton Field* by shedding light on the content of the obligation to act with due diligence and to guarantee adequate and effective access to justice in cases of rape.

Some of the most important analysis in these judgments is related to the comprehensive proof that must be assessed in the case of a rape.¹⁸⁷ The Court highlights the value of the declaration of the victim and of psychological evidence as important proof to weigh in a case of rape—two types of proof often neglected in cases of rape.¹⁸⁸ The Court construes the declaration of a victim as crucial in a case of rape due to the nature of the acts and the absence of witnesses, even in the presence of inconsistencies.¹⁸⁹ Following international precedent, the Court underscores that evidence of physical resistance is not required to prove a rape, especially when the acts are committed in an environment of

184. *Id.* ¶ 440.

185. *Id.* ¶¶ 412–40.

186. *Id.* ¶ 435.

187. In the analysis of the credibility of the declarations rendered by the victims, the Court considered that they were indigenous women, lived in a rural mountainous zone with military presence, had to walk several hours to file a complaint regarding sexual violence with several state authorities who did not speak their language, which could have potential repercussions in their communities. In the case of Valentina Rosendo Cantú, the Court also reasoned that the victim was a child when she denounced these acts before the authorities. Therefore, the Court considers proven—in an analysis mostly based on the declarations of both victims—that the two victims were raped by military officials. See *Fernández Ortega*, ¶¶ 108, 170; *Rosendo Cantú*, ¶¶ 93, 108.

188. *Fernández Ortega*, ¶¶ 100, 113; *Rosendo Cantú*, ¶¶ 89, 99. For more discussion of this issue, see Access to Justice for Women Victims of Violence in the Americas, Inter-Am. Comm’n H.R., OEA/Ser. L.V/II. doc. 68, ¶ 136 (2007).

189. The Court considered that the victims in *Rosendo Cantú* and *Fernández Ortega* had denounced the acts of rape several times, at the national level and before the inter-American system, and that it is not uncommon that the declarations of these types of acts will contain discrepancies due to the traumatic nature of the events, especially when interpreters are used. See *Fernández Ortega*, ¶¶ 100, 104–05; *Rosendo Cantú*, ¶¶ 89–90.

coercion.¹⁹⁰

In the case of *Rosendo Cantú* in particular, it is very significant that the Court still found the occurrence of the rape by military officials even though the victim had not indicated during her two first medical consultations that she had been raped.¹⁹¹ The Court considered that this factor had to be “contextualized in the circumstances of the present case and of the victim.”¹⁹² Therefore, the Court reasoned that rape is usually the type of crime that the victim seldom reports, especially victims from indigenous communities, due to the cultural and social particularities of these communities and fear. The Court also reasoned that she was a child at the time of the events and had received threats from the military officers who raped her; the victim might not have felt that the safety and trust conditions were there for her to report the rape.¹⁹³

The Court in the cases of *Fernández Ortega* and *Rosendo Cantú* also held that the investigation of acts of rape should be pursued with determination and efficacy, considering the duty of society to reject violence against women and the obligations of states to eradicate it and to build victims’ trust in the state institutions that are entrusted with their protection.¹⁹⁴ The Court underscores the positive obligation of states to investigate human rights violations under the American Convention and how this is an obligation of means and not results.¹⁹⁵ In this analysis, the Court highlights the complementary nature of the obligations contained under Articles 8(1) and 25 of the American Convention and the specific obligations established in Article 7(b) of the Convention of Belém do Pará, especially the duty to act with due diligence to prevent, sanction, and eradicate violence against women.¹⁹⁶ The Court also undertakes a thorough analysis of the roadblocks that both Inés Fernández Ortega and Valentina Rosendo Cantú encountered in their attempt to access justice.¹⁹⁷

190. *Fernández Ortega*, ¶ 115 n.104 (citing *M.C. v. Bulgaria*, App. No. 39272/98 (Eur. Ct. H.R. 2003)); *Prosecutor v. Kunarac, Kovac & Vukovic*, Case Nos. IT-96-23-T & IT-96-23/1-T. Judgment, ¶ 452, 464 (Int’l Trib. for the Prosecution of Persons Responsible for Serious Violations of Int’l Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 Feb. 22, 2001)).

191. *Rosendo Cantú*, ¶ 95.

192. *Id.*

193. *Id.*

194. *Fernández Ortega*, ¶ 193; *Rosendo Cantú*, ¶ 177.

195. *Fernández Ortega*, ¶ 191; *Rosendo Cantú*, ¶ 175.

196. *Fernández Ortega*, ¶ 193; *Rosendo Cantú*, ¶ 177.

197. In the case of *Inés Fernández Ortega*, the Court noted that (1) the victim’s complaint is initially not received by a public official at the prosecutor’s office; (2) she has no access to a state interpreter; (3) her complaint is taken in a public place without respect for the care and privacy minimum guarantees that a victim of sexual violence needs; (4) the investigation of the scene of the crime is not performed until 12 days later; and (5) she does not receive adequate psychological

At different places in the opinion in *Fernández Ortega*, the Court also discusses how the laboratory proof was not duly protected, which contributed to the impunity of the rape.¹⁹⁸ The Court notes with dismay the unexplained disposal of the laboratory tests taken from Inés Fernández Ortega, which revealed the presence of semen; negligence which impeded the realization of key tests, resulting in the lack of clarification of the events.¹⁹⁹

The Court also takes advantage of the opportunity in the judgments of *Fernández Ortega* and *Rosendo Cantú* to highlight how, in cases of rape, the investigation should prevent the revictimization and reliving of the profound traumatic experience for the victim.²⁰⁰ The Court observes how most of the authorities in charge of the investigation centered their efforts on inciting Inés Fernández Ortega and Valentina Rosendo Cantú to declare repeatedly, instead of trying to collect other types of proof.²⁰¹ The Court also notes the lack of will, sensibility, and capacity of the various public officials that initially intervened in the complaints filed by Inés Fernández Ortega and Valentina Rosendo Cantú, as well as the absence of a protocol of action by officials in the health sector for these kinds of cases.²⁰²

In the realm of access to justice, the Court also reiterates in the *Fernández Ortega* and *Rosendo Cantú* judgments that the military jurisdiction should have a restrictive and exceptional scope, and is not a competent forum to judge and sanction perpetrators of human rights violations, such as sexual violence.²⁰³ In its reasoning, the Court highlights that the victims should have had at their disposal an adequate and effective recourse for challenging the military jurisdiction over the judgment of sexual violence crimes, in accordance with Article 25.1 of the American Convention.²⁰⁴

and medical attention. *Fernández Ortega*, ¶¶ 16–18, 190, 195. In the case of *Valentina Rosendo Cantú*, the Court similarly noted that (1) the state became aware of the events before the formal complaint was filed by the victim on March 8, 2002, but did not immediately begin the investigation and did not offer the victim the needed medical attention; (2) a public official from the prosecutor's office made difficult the interposition of the complaint; (3) she did not have the support of a state interpreter; (4) her complaint was filed in a public space; (5) there is no evidence indicating that the public officials collected all the necessary elements of proof; (6) she did not have the required medical and psychological attention during the processing of the case; and (7) the investigations were archived for three years and ten months. *Rosendo Cantú*, ¶¶ 16–18, 23, 179.

198. *Fernández Ortega*, ¶¶ 112, 195 (vi).

199. *Id.*

200. *Id.* ¶ 196; *Rosendo Cantú*, ¶ 180.

201. *Id.*

202. *Fernández Ortega*, ¶ 197; *Rosendo Cantú*, ¶ 181.

203. *Fernández Ortega*, ¶ 177; *Rosendo Cantú*, ¶ 161.

204. *Fernández Ortega*, ¶¶ 182–83; *Rosendo Cantú*, ¶¶ 166–67.

In the realm of reparations, the Court in *Rosendo Cantú* and *Fernández Ortega* also made some important pronouncements. The Court held emphatically that reparations should take into account that the victims were indigenous women and highlighted that measures with community reach might be necessary in their case.²⁰⁵ The Court also held that the State should adopt measures, from an indigenous and gender perspective, to ensure that indigenous women can participate in the processing of their cases.²⁰⁶ The Court also reiterates the need to implement capacity-building programs to enhance the investigation of sexual violence cases, from an ethnic and gender perspective, and to continue the standardization process of protocols pertaining to the investigation of sexual violence cases.²⁰⁷

V. OPPORTUNITIES AND CHALLENGES IN STANDARD-SETTING FOR THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS

The author suggests in this article that a key part of the legacy of the Court judgments in the cases of *Cotton Field*, *Fernández Ortega*, and *Rosendo Cantú* is that they provide both a set of opportunities and challenges to the inter-American system of human rights in the development of legal standards related to the human rights of women. In this section, the author analyzes four opportunities and four challenges presented by these judgments in the standard setting.

A. Opportunities

The author considers that the three judgments discussed in this article provide the inter-American system four key opportunities for the future development of human rights standards related to the rights of women; namely, (1) to continue defining the content of cornerstone State obligations, such as due diligence and access to justice; (2) to clarify the intersection between the issues of violence, discrimination, due diligence, and access to justice, and what this intersection means for State compliance with their human rights obligations at the national level; (3) to shed light on the content of Article 7 of the Convention of Belém do Pará, the complementary nature of its provisions, and its symbiotic relationship with the more general obligations contained in the American Convention; and (4) to define the regional and international terminology used to describe the problems of discrimination and violence against women in a way that impacts the adoption of legislation

205. *Fernández Ortega*, ¶ 224; *Rosendo Cantú*, ¶ 206.

206. *Rosendo Cantú*, ¶ 213.

207. *Fernández Ortega*, ¶¶ 256, 259-260; *Rosendo Cantú*, ¶¶ 242, 249.

and other public measures to address these problems at the national level.

As noted earlier, one key contribution of the three judgments is in shedding light on the content of the State's obligation to act with due diligence when acts of violence and discrimination are perpetrated by state and non-state actors. The due diligence standard has been widely referenced in international law and in the field of violence against women.²⁰⁸ In this analysis, the international community has been gradually shedding light on what the contents are for the four components of the State's due diligence obligation to respond to acts of violence against women—namely, prevention, investigation, sanction, and reparations.²⁰⁹ Various international legal bodies are striving to answer the question of what it really means for a State to organize its entire structure to respond to violence against women and its root cause, discrimination.²¹⁰ As the cases discussed in this article illustrate, this standard has also been repeatedly referenced by the inter-American system of human rights as a way of understanding what State obligations mean in application when it comes to responding to the problem of violence against women at the national level. Now the Court has opened a very important space to continue defining the scope and reach of the due diligence standard at both the regional and international levels.

In the realm of prevention, it is important that both the Court and the Commission take advantage of the analytical space that has been opened to continue defining the reach and specifics of the due diligence

208. For a more detailed discussion of the history of the due diligence standard in international law, see generally Jan Hessbruegge, *The Historical Development of the Doctrines of Attribution and Due Diligence in International Law*, 36 N.Y.U. J. INT'L L. & POL. 265 (2004); Robert P. Barnidge, Jr., *The Due Diligence Principle Under International Law*, 8 INT'L CMTY. L. REV. 81 (2006); Johanna Bourke-Martignoni, *The History and Development of the Due Diligence Standard in International Law and Its Role in the Protection of Women Against Violence*, in DUE DILIGENCE AND ITS APPLICATION TO PROTECT WOMEN FROM VIOLENCE 47 (Carin Benninger-Budel ed., 2008); Yakin Ertürk, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, E/CN.4/2006/61 (Jan. 20, 2006), available at <http://www.unhcr.org/refworld/pdfid/45377afb0.pdf>.

209. See, e.g., United Nations General Assembly Resolution, Human Rights Council, *Accelerating Efforts to Eliminate All Forms of Violence Against Women: Ensuring Due Diligence in Prevention*, A/HRC/14/L.9/Rev.1 (June 16, 2010), available at <http://domino.un.org/unispal.nsf/0/33f2a0a73ab185db8525773e00525d05?OpenDocument>; United Nations, *Declaration on the Elimination of Violence Against Women*, General Assembly Resolution 48/104 (1993); United Nations, Committee on the Elimination of Discrimination Against Women, *General Recommendation 19, Violence Against Women*, U.N. Doc. HRJ/GEN/11/Rev.1 (1994), ¶ 11; United Nations, *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), ¶¶ 112–26.

210. See, e.g., *Opuz v. Turkey*, App. No. 33401/02, ¶ 246 (Eur. Ct. H.R. 2009); Committee on the Elimination of Discrimination Against Women, Views on Comm. No. 6/2005, *Fatma Yildirim v. Austria*, ¶ 12.1.1 (2004); Committee on the Elimination of Discrimination Against Women, Views on Comm. No. 2/2003, *A.T. v. Hungary*, ¶ 9.2 (2003).

obligation, identifying legal, public policy, and institutional measures that states could implement effectively in practice. For example, more legal analysis is needed in regard to the question of “knowledge” and when a State knows of a situation presenting a real and immediate risk that triggers the duty to prevent, especially when violations are committed by non-state actors. It is also necessary to delve more deeply into what it means for a State to conduct an investigation from a gender perspective and what the components should be for investigation protocols related to violence against women. In the sphere of judgment and sanction, future rulings can also perhaps include more in-depth analysis and examples of how discrimination, prejudices, and stereotypes affect the actions of public officials in every sector of the government, including justice officials and the police; the Court will have an opportunity to do this in the resolution of the upcoming case of *Karen Atala and Daughters*.²¹¹

Hopefully, future judgments will also expand on the content of a right to remedy when acts of violence and discrimination occur, building on the precedent set in the Commission case of *Raquel Martín de Mejía* discussed earlier.²¹² The Court also now has the opportunity to offer specific examples of reparations that can advance the goal of rectifying a context of structural discrimination, as well as examples of collective reparations from a gender and ethnic perspective.

At another level, the Court and the Commission have also begun to explore the varied intersections between the issues of discrimination, violence, due diligence, and access to justice. Both organs now have the opportunity to continue analyzing in detail the link between the duty to act with due diligence and the obligation of states to guarantee access to adequate and effective judicial remedies for victims and their family members when they suffer acts of violence.²¹³ They also have the opportunity to explore the connection between discrimination, violence against women, and due diligence, since the State’s duty to address violence against women also involves measures to prevent and respond to the discrimination that fuels this problem.²¹⁴ Both the CEDAW and

211. See generally *Case of Karen Atala*, *supra* note 76.

212. *Raquel Martín de Mejía v. Peru*, Case 10.970, See Inter-Am. Comm’n H.R., Rep. No. 5/96, OEA/Ser.L./V/II.91, doc. 7 (1996).

213. There has been some analysis regarding this connection. See Inter-Am. Comm’n H.R., *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc. 68, ¶¶ 123–216 (2007); *da Penha Maia Fernandes*, ¶¶ 36–44; United Nations General Assembly Resolution, *Intensification of Efforts to Eliminate All Forms of Violence Against Women*, A/RES/63/155, ¶¶ 11, 14–16.

214. For some analysis regarding these linkages at the universal system of human rights and the inter-American system, see Committee on the Elimination of Discrimination Against Women, *supra* note 208, ¶¶ 1, 11, 23; *María Eugenia Morales de Sierra v. Guatemala*, Case 11.625, Inter-

Belém do Pará Conventions provide that states must adopt the required measures to modify social and cultural patterns of conduct of men and women and to eliminate prejudices, stereotypes, and other practices based on the idea of the inferiority or superiority of the sexes.²¹⁵ States need legal insight on what concrete measures can be the most effective to prevent and eradicate the social and cultural patterns that sustain discrimination and its extreme forms.

In this sense, the Court's recognition of its competence to review individual cases under Article 7 of the Convention of Belém do Pará is a landmark for the inter-American system. It will undoubtedly increase the avenues for victims to present and litigate cases of violence and discrimination against women before the system. The Court now has the opportunity to shed light on the comprehensive and interrelated nature of the set of obligations comprised in Article 7 of said Convention, building on its analysis related to Articles 7(a–c) of said instrument. Another important line of analysis to explore is the relationship between the immediate obligations of the Convention of Belém do Pará contained in Article 7 and those contained in Articles 8 and 9. In the author's view, in order to understand the Convention of Belém do Pará fully, all of its articles have to be interpreted in conjunction due to the crucial nature of the immediate due diligence measures contained in Article 7, the measures geared toward the prevention and non-repetition of these acts established in Article 8, and the groups identified as particularly exposed to violence under Article 9, among other key dispositions of the Convention.

The author also believes that the Court has opened a very important line of analysis in the three mentioned judgments by emphasizing the complementary nature of the Convention of Belém do Pará with the American Convention.²¹⁶ It is noteworthy that the Court began this analysis with fundamental rights contained in the American Convention, such as the right to life embodied in Article 4.1 and the right to judicial protection and guarantees protected under Articles 8.1 and 25.1—paramount rights that are crucial for women's access to justice and for the due diligence obligation of states. Hopefully, the organs of the system will take advantage of this space to elaborate more on the symbiotic

Am. Comm'n H.R., Report No. 4/01, OEA/Ser.L/V/II.111, doc. 20 rev. ¶ 52 (2001); United Nations, *Declaration on the Elimination of Violence Against Women*, A/RES/48/104 art. 3, 4 (Feb. 23, 1994).

215. See Convention on the Elimination of All Forms of Discrimination Against Women, art. 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13; Convention of Belém do Pará, art. 6.

216. The text of the Convention of Belém do Pará itself establishes this link in Article 4 by advancing that "every woman has the right to the recognition, enjoyment, exercise, and protection of all human rights and freedoms embodied in regional and international human rights instruments . . ."

relationship between the provisions contained in the Convention of Belém do Pará and other fundamental guarantees contained in the American Convention relevant to the protection of the rights of women, such as the general obligation to respect and guarantee the rights in said instrument without discrimination under Article 1.1, the duty to adopt domestic legal provisions to render the rights contained in the Convention a reality under Article 2, and the right to equal protection of the law and before the law established in Article 24, among others.²¹⁷

It would also be useful for the organs of the system to delve more into the link between the Convention of Belém do Pará and other specialized instruments such as the Inter-American Convention to Prevent and Punish Torture and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), among others. The organs of the system will surely in the future also have opportunity to continue defining the contours of the definition of “violence against women” under the Convention of Belém do Pará in the resolution of future cases.

Finally, another relevant opportunity for the organs of the system that these judgments provide is in the definition of legal terminology related to violence against women and discrimination—a process important at various levels. On the one hand, it can set a trend for the presentation of facts and allegations in future cases before the inter-American system of human rights. On the other, it can constitute an important reference for states in the reform and adoption of legislation and public policies to respond to violence and discrimination against women.

The Court, in its *Cotton Field* judgment, interestingly started adopting its own positions on the regional and international terminology used to describe the problems of discrimination and violence against women and the State’s response. The Court in its reasoning refers to important terminology to describe structural and institutional discrimination, such as “culture of discrimination,” “systematic discrimination,” and “stereotypes.”²¹⁸ Additionally, even though both the Commission and the petitioners had advanced the theory of a “pattern” of acts of violence against women in the locality of Ciudad Juárez, the Court chooses to use the word “context,” a broader and largely undefined term that perhaps could serve to fit more cases in the future that do not display the characteristics and unifying tendencies of the phenomenon of violence in Ciudad Juárez.

217. It would be interesting to see more in-depth analysis from the inter-American system establishing the relationship between the provisions of the Convention of Belém do Pará regarding the human rights to personal integrity (Article 5.1), to dignity and to privacy (Articles 11.1 and 11.2), to protection of the family (Article 17.1), and economic, social and cultural rights (Article 26), among others.

218. See, e.g., *Cotton Field*, ¶¶ 132, 133, 164, 401.

rez.²¹⁹ In this analysis, at times the Court follows the international tendencies in terminology and in other instances it chooses its own modality. The author hopes that this process continues and evolves according to the circumstances of the individual cases presented in the future before the system and in light of international human rights law developments.

B. Challenges

Along with the opportunities discussed above, these judgments also exemplify the challenges a regional human rights protection system can confront in setting standards that states can effectively and adequately implement in practice to promote the observance of the human rights of women in their countries. The judgments also reveal the difficulties for a regional human rights protection system to respond to current social conditions and the highly evolving needs in the realm of women's rights.

Four future challenges the author observes for the inter-American system of human rights in standard setting pertaining to the rights of women are (1) the application of these three judgments to individual cases where a context of discrimination and violence is not well documented; (2) the concrete definition of the link between the principles of nondiscrimination and equality before the law contained in Articles 1.1 and 24 of the American Convention, the expansion of the legal content of these two articles, and the setting of concrete standards in the realm of intersectionality, as well as the multiple forms of discrimination a woman can face on the basis of several factors; (3) the interpretation of the findings of these cases to the resolution of individual petitions brought under the American Declaration; and (4) the application of these standards to issues largely unexplored by the regional system but where acute needs exist, such as the economic, social, and cultural rights of women.

One of the most important challenges the inter-American system faces at the moment is to determine how to apply the contents of these judgments to cases that do not occur in a context of violence and discrimination against women as well documented as the context of Ciudad Juárez. As noted throughout this article, a substantial part of the analysis of the Court in the *Cotton Field* judgment points to the reinforced duty of the State to adopt prompt and comprehensive measures to prevent and investigate acts such as those that occurred to the victims because of the well publicized context of disappearances, murders, and state negligence

219. *Id.* ¶¶ 406, 143–44.

affecting Ciudad Juárez.²²⁰ In the cases of *Fernández Ortega* and *Rosendo Cantú*, the Court also referred to the military presence in Guerrero, other documented cases of sexual violence perpetrated against indigenous women in this zone, and reports from various international and national entities regarding incidents of sexual violence in Guerrero.²²¹

While recognizing that violence against women is rarely an isolated phenomenon, the author wonders how the organs of the system will rule in cases where there is barely any international or national documentation of a context of violence and discrimination against women. It will also be interesting to see how the precedent of these cases is applied to violence against women perpetrated in different settings—such as the home and public spaces—and in situations of armed conflict and its aftermath; settings where the particularities of how violence is conducted against women have to be taken into account in determining the scope of State responsibility. The Court’s determination of knowledge of imminent risk in *Cotton Field* on the part of the authorities—for purposes of the violation of the rights to life and personal integrity—is largely premised on the existence of a documented context of violence and discrimination in Ciudad Juárez.²²² It is noteworthy, however, that the Court in *Cotton Field* made a distinction between the obligation to prevent before and the obligation after a complaint related to a disappearance is filed before the authorities for purposes of State responsibility.²²³

Another key challenge for the system is related to the concept of “intersectionality”²²⁴ and the multiple forms of discrimination that can

220. The Court in its legal findings relied to a great extent on numerous pronouncements from international and national organizations verifying the facts, figures, and irregularities in the State response to the problem of violence in this locality. *Cotton Field*, ¶¶ 121, 249–86, 287–370.

221. *Fernández Ortega*, ¶ 79; *Rosendo Cantú*, ¶ 71.

222. *Cotton Field*, ¶¶ 283–84.

223. The Court considered that even though the State was aware of the risk to women in Ciudad Juárez, it had not been established that it knew of a real and imminent danger for the victims in this case before the report of their disappearances. *See id.* ¶ 282.

224. The CEDAW Committee has recently defined the concept of “intersectionality” as:

Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in Article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.

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, ¶ 18 CEDAW, 47th Sess., U.N. Doc C/2010/47/GC.2 (Oct. 19, 2010).

affect women on the basis of their sex, race, ethnicity, social class, age, sexual orientation, and gender identity, among other causes. The Commission has begun exploring this issue in the resolution of individual cases and thematic reports.²²⁵ The Court also delves in *Fernández Ortega* and *Rosendo Cantú* into the need for a gender and indigenous perspective in the adoption of measures designed to protect the right of indigenous women to adequate access to justice and the grant of reparations. The analysis of the Court on this issue, however, is limited to the language barriers the victims faced in their pursuit of justice.²²⁶ Two of the aforementioned judgments—*Cotton Field* and *Rosendo Cantú*—expand on what these measures would look like in practice for cases involving girls, referring to an obligation to act with “strict due diligence” and the special protection obligation of the State.²²⁷ The author considers that more cases need to be presented before the inter-American system exemplifying multiple forms of discrimination and how the State’s duty to respect and guarantee under Article 1.1 of the American Convention should be implemented at the national level in terms of legislation, public policies, programs, and services, among other areas. New cases can offer the opportunity to the organs of the system to develop important concepts related to the social exclusion faced by these groups and to report on the specific barriers they face in their pursuit of justice.

A very important challenge related to the issue of *intersectionality* is the definition of the scope of the obligations of nondiscrimination and equality before the law within the framework of the inter-American system of human rights. This standard-setting priority is still largely in a development phase within the inter-American system. These principles are of utmost importance, as they are not only contained in Articles 1.1 and 24 of the American Convention, but they constitute the backbone of the inter-American and universal systems of human rights.²²⁸ They are

225. For a discussion of this issue by the Inter-American Commission, see Inter-Am. Comm’n H.R., *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, doc. 68 ¶¶ 195–97 (Jan. 20, 2007); Inter-Am. Comm’n H.R., *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. 124, doc.67 ¶¶ 102–06 (Oct. 18, 2006); Inter-Am. Comm’n H.R., *Report on the Rights of Women in Haiti to Be Free from Violence and Discrimination*, OEA/Ser.L/V/II, doc. 64 ¶ 90 (Mar. 10, 2009).

226. *Fernández Ortega*, ¶¶ 199–201; *Rosendo Cantú*, ¶¶ 183–85.

227. *Cotton Field*, ¶¶ 403–11; *Rosendo Cantú*, ¶¶ 200–02.

228. See generally *Girls Yean & Bosico v. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 130 (Sept. 8, 2005); *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A.) No. 18 (Sept. 17, 2003); *María Eugenia Morales de Sierra v. Guatemala*, Case 11.625, Inter-Am. Comm’n H.R., Report No. 4/01, OEA/Ser.L/V/II.111, doc. 20 (2001); United Nations, Human Rights Committee, General Comment 18, *Non-discrimination* (1989); United Nations, Human Rights Committee, General Comment 20, *Non-Discrimination in Economic, Social and Cultural Rights (art.2, para. 2, of the International Covenant on Economic,*

also at the core of most priority women's rights issues in the realm of their civil, political, economic, social, and cultural rights.

The author considers that there are several needs right now in the inter-American system related to the principles of nondiscrimination and equality in order to give states clear guidelines of their obligations to protect the rights of women at the national level. First, there is a need to reconcile the positions of the Commission and the Court regarding the applicability and link between the obligations of states under Articles 1.1 and 24 of the American Convention.²²⁹ Second, the author considers that there is a need to continue discussing what the components are for the test of strict scrutiny in cases of discrimination on the basis of sex and the contours of the phrase "other social condition" within Article 1.1 of the American Convention. Legal developments in this sense would open the door for the system's resolution of cases involving other forms of discrimination that affect women beyond their sex, such as sexual

Social and Cultural Rights), Comm. on Econ., Soc. and Cultural Rights, 42nd Sess., U.N. Doc. E/C.12/GC/20 (July 2, 2009).

229. The Court has underscored the distinction between the obligations contained in Articles 1.1 and 24 of the American Convention, holding in the case of *Apitz Barbera v. Venezuela*:

The difference between the two articles lies in that the general obligation contained in Article 1.1 refers to the State's duty to respect and guarantee "nondiscrimination" in the enjoyment of the rights enshrined in the American Convention, while Article 24 protects the right to "equal treatment before the law." In other words, if the State discriminates upon the enforcement of conventional rights containing no separate nondiscrimination clause a violation of Article 1.1 and the substantial right involved would arise. If, on the contrary, discrimination refers to unequal protection by domestic law, a violation of Article 24 would occur.

Apitz-Barbera v. Venezuela, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 182 ¶ 209 (August 5, 2008). This position was reiterated by the Court in the judgments of *Fernández Ortega and Rosendo Cantú*. See *Fernández Ortega*, ¶ 199; *Rosendo Cantú*, ¶ 183. In contrast, the Commission has established that:

The development of the right to equal treatment and nondiscrimination points to the existence of several conceptions of it. For example, one conception is related to the prohibition of arbitrarily different treatment—with different treatment understood as meaning distinction, exclusion, restriction, or preference—and another is related to the obligation of ensuring conditions of true equality for groups that have historically been excluded and are at greater risk of discrimination. Although both views may be present in certain cases, each warrants a different response from the State and a different treatment under the American Convention. To this must be added the fact that under the different conceptions of the right of equality, a State's actions and failures to act may be related to rights enshrined in the American Convention or they may be related to any undertaking of the State that does not affect the enjoyment of Convention-protected rights. Therefore, although certain criteria can be used as a basis, the applicable Convention provisions must be determined in each specific case by means of an analysis that takes into account the individual or group of people affected; the reasons behind the alleged discrimination; the rights or interests involved; the actions or omissions that gave rise to it; as well as other considerations.

Case of Karen Atala, *supra* note 73, ¶¶ 80–81.

orientation, and in relation to other prohibited factors that the international and regional human rights communities might not have yet recognized.²³⁰

Third, there is a need to further analyze the link between Articles 1.1 and 24 of the American Convention with the obligation to adopt domestic dispositions contained in Article 2 of the Convention and other crucial instruments for the protection of women's rights such as the Convention of Belém do Pará. Fourth, it is important for the organs to give content to key terms such as *structural discrimination*, *systematic discrimination*, *indirect discrimination*, and *disproportionate impact*, not only for women, but for other groups of the population at particular risk for human rights violations and what these concepts mean for a state in regard to its obligation to respect and guarantee human rights under Article 1.1 of the American Convention. The recently submitted case of *Karen Atala and Daughters* presents a unique opportunity for the Court to set new ground in these spheres.²³¹

Another important challenge for the system is how to apply the findings of these three judgments to cases of violations under the American Declaration of Human Rights for states that have not ratified the American Convention and have not accepted the competency of the Court. Even though the precedent of the system has recognized the American Declaration as a source of legal obligation for OAS Member States,²³² the content and scope of its provisions is still unclear in the realm of women's rights. In this analysis, it is important to keep in mind the precedent of the system, highlighting that the provisions of its governing instruments, including the American Declaration, should be interpreted and applied in light of the developments in the field of international human rights law since those instruments were first composed.²³³ In the author's view, this includes the precedent related to the

230. It is important to note that the Commission has already established that very weighty reasons need to be advanced to justify a distinction between men and women in a state's law and public policies solely based on sex. Accordingly, the Commission has held that statutory distinctions based on status criteria—for example, race and sex—give rise to heightened scrutiny. *See id.* ¶ 36. For an international analysis of the evolution process related to prohibited factors of discrimination beyond those explicitly codified in international human rights instruments, see United Nations, Committee on Economic, Social and Cultural Rights, General Comment 20, *Non-Discrimination in Economic, Social and Cultural Rights* (2009).

231. *See generally* Application (Case 12.502), *supra* note 72.

232. *See* Interpretation of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, Inter-Am. Ct. H.R. (Ser. A) No. 10, ¶¶ 35–45 (July 14, 1989).

233. *See id.* ¶ 37; The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Advisory Opinion OC-16/99, Inter-Am. Ct. H.R. (Ser. A) No. 16 ¶ 114 (Oct. 1, 1999); *Maya Indigenous Cmty. v. Belize*, Case 12.053, Inter-Am. Comm'n H.R., Report No. 40/04, OEA/Ser.L./V/II.122 doc. 5 rev. 1 ¶ 86 (2005).

American Convention of Human Rights, of which these three sentences constitute a part. Therefore, the findings of the aforementioned judgments should inform the interpretation of the dispositions contained in the American Declaration of Human Rights. The recently admitted case of *Jessica Gonzales* gives the Commission an opportunity in this regard.²³⁴

Another important challenge for the Court will be how to apply the findings of these three court judgments to largely untapped areas of women's rights law, such as their economic, social, and cultural rights. The system has recognized a comprehensive catalogue of these rights in the American Declaration, Article 26 of the American Convention, the Protocol of San Salvador, and Article 4 of the Convention of Belém do Pará, among other instruments, and they enjoy a significant level of recognition at the international level.²³⁵ Some of the most important rights in this sphere, which are undoubtedly relevant for the protection of women's rights, are the right to employment, education, health, and social security, etc.²³⁶ The Commission and the Court will have to find points of intersection in the future between the classical precedent of the system, which has reached a pinnacle in the aforementioned three judgments and fast emerging areas of women's rights law, such as their economic, social, and cultural rights.

It is important to note that these cross points between the classical and the new are already occurring in the judgments of *Cotton Field*, *Fernández Ortega*, and *Rosendo Cantú*. The victims in these three judgments are women affected by poverty, which has rendered them more vulnerable to acts of discrimination and violence by state agents and private individuals. They encountered significant challenges when they turned to the state structure for support and to obtain redress for the violations suffered. The barriers they faced in their path to justice were numerous and reveal what structural discrimination can look like in the health and justice sectors. Their stories offer a face to and exemplify the social exclusion that many women suffer throughout the Americas.

The author considers that these three court judgments provide important legal precedent to develop in cases related to the economic,

234. See generally *Jessica Gonzales v. United States*, Petition 1490-05, Report No. 52/07, OEA/Ser.L/V/II.130, doc. 22, rev. 1 (2007).

235. See generally Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc A/RES/217(III) (Dec. 10, 1948); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI) A, U.N. Doc. A/RES/2200(XXI) (Dec. 16, 1966).

236. See generally General Comment 16, *The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the International Covenant on Economic, Social and Cultural Rights)*, Comm. on Econ., Soc. and Cultural Rights, 34th Sess., U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005).

social, and cultural rights of women. For example, as discussed earlier, the Court in *Cotton Field* analyzes carefully the comprehensive reach of the duties of prevention and protection of the State when a situation of real or immediate risk to women is known to the State, and there is a reasonable probability of this danger.²³⁷ This duty can be undoubtedly applicable in future analysis related to the geographical, economic, cultural, institutional, and structural barriers that women often confront to duly exercise their rights related to health—including women's sexual and reproductive rights²³⁸—education, employment, housing, and social security, among other key economic, social, and cultural rights. The judgments also delve into important principles applicable to the economic, social, and cultural rights of women that have been discussed throughout this article, such as the link between violence and discrimination, gender stereotypes that negatively influence the actions of prevention and protection from the different State branches, the obligation to guarantee access to justice when human rights violations occur, and the obligation to take into account the particular risk to human rights violations that is confronted by certain groups of women at multiple levels on the basis of age, race, ethnicity, and socioeconomic disadvantage, among others. The Commission has accepted a group of cases that could potentially give the system the opportunity to pronounce over these intersections.²³⁹

VI. CONCLUSIONS

The inter-American human rights system is at a new era in the protection of the human rights of women. When analyzing the old and the new, at the end of the day there is a body of legal standards to build on

237. See *Cotton Field*, ¶¶ 242–58.

238. The author notes that the Court has already begun addressing issues pertaining to the economic, social, and cultural rights of women. For example, in its recent ruling in the case of *Xákmok Kásek v. Paraguay*, related to the State's failure to guarantee the right to ancestral property of the Xákmok Kásek indigenous community in Paraguay, the Court highlighted that extreme poverty and the lack of adequate care for pregnant women or women who have recently given birth results in high mortality rates. The Court reasoned that this requires states to adopt healthcare policies to prevent maternal mortality since women need special measures of protection. In light of the aforementioned, the Court found that the State violated the right to life established in Article 4(1) of the American Convention, in relation to Article 1(1) of the Convention, for its failure to adopt positive measures to prevent and avoid a risk to the right to life. *Xákmok Kásek Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214 ¶¶ 233–34 (Aug. 24, 2010).

239. See, e.g., *Ana Victoria Sanchez Villalobos v. Costa Rica*, Case 12.361, Inter-Am. Comm'n H.R., Report No. 25/04, OEA/Ser.L./V/II.122, doc. 5 rev. 1 (2005); *I.V. v. Bolivia*, Petition 270-07, Inter-Am. Comm'n H.R., Report No. 40/08, OEA/Ser.L./V/II.134, doc. 5 rev. 1 (2009); *Paola del Rosario Guzmán Albarracín v. Ecuador*, Petition 1055–06, Inter-Am. Comm'n H.R., Report No. 76/08, OEA/Ser.L./V/II.134, doc. 5 rev. 1 (2009); *Elena Tellez Blanco*, Petition 712–03, Inter-Am. Comm'n H.R., Report No. 29/07, OEA/Ser.L/V/II.130 doc. 22 rev. 1 (2007).

and to develop in the future pertaining to the problems of discrimination, violence, due diligence, and access to justice. There is a world of opportunities for the system at this particular moment in standard setting. The system, however, is also at an important crossroads where it can choose to move forward or backward in the development of legal standards.

In this context, one important bottleneck for the system to address is not only how to build and expand on its current human rights standards, but how to implement the existing standards and how to eliminate the gap between the theory and the practice. It remains to be seen how the three court judgments in the cases of *Cotton Field*, *Inés Fernández Ortega*, and *Valentina Rosendo Cantú* are implemented in practice by the State of Mexico. The system will undoubtedly employ a significant amount of efforts to translate its recommendations and rulings into a reality for the victims involved, in order to guarantee that these violations are not repeated. At some point, the system will have to examine thoroughly the effectiveness of its recommendations when it comes to their practical application in the Member States of the OAS.

In the author's view, the inter-American system will have the opportunity to delve into many unanswered questions related to the civil, political, economic, social, and cultural rights of women as the Commission entertains more petitions on these issues from different countries throughout the Americas. It is key for the organs of the inter-American system to take advantage of these opportunities to continue pushing the boundary of women's rights and to persist in issuing real and concrete standards that can guide state policies geared toward the protection of the rights of women. The review by the organs of the system of individual petitions also needs to be complemented by the work of the other mechanisms the inter-American system has at its disposal to further the observance of the human rights of women at the national level. The processing of individual petitions before the inter-American system is only one component of the effective protection of the rights of women at the national level. It is also important to note that the inter-American system does not operate in a vacuum when it comes to the protection of the rights of women and the furtherance of synergies between international and regional developments, a process already begun by the Commission in its decisions and solidified by the Court in its *Cotton Field* judgment.

It is also paramount that the inter-American system continue to respond to current social needs and that the interpretation of its instruments evolves in synergy with current social conditions and the needs of women from different ethnicities, races, ages, and socioeconomic conditions. In this analysis, the legal standards of the system should consist-

ently advance the indivisibility and interdependence of the civil, political, economic, social, and cultural rights of women to achieve substantive gender equality and the full protection of their human rights.

The author closes being optimistic as to the potential of the system in the future for standard setting within the sphere of women's rights, despite the challenges ahead.