

# Indigenous Women



OEA/Ser.L/V/II.

Doc. 44/17

17 April 2017

Original: Spanish

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

# Indigenous Women and Their Human Rights in the Americas

2017

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### **OAS Cataloging-in-Publication Data**

Inter-American Commission on Human Rights.

Indigenous women and their human rights in the Americas.

p. ; cm. (OAS. Official records; OEA/Ser.L/V/II)

ISBN 978-0-8270-6659-5

1. Indigenous women--Civil rights--America. 2. Women's rights--America. 3. Human rights--America.

I. Title. II. Series.

OEA/Ser.L/V/II. Doc.44/17



Report produced thanks to the financial support of the State of Denmark and the organization IWGIA.

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CHAPTER 1  
EXECUTIVE SUMMARY  
AND INTRODUCTION



## EXECUTIVE SUMMARY AND INTRODUCTION

1. Through its various human rights protection and promotion mechanisms, the Inter-American Commission on Human Rights (hereinafter the “IACHR” or the “Commission”) has consistently received information regarding numerous human rights violations faced by and specific to indigenous women in the Americas. During hearings and working visits in the past years, indigenous women from all over the Americas and organizations working to advance their human rights have reported to the Commission on various forms of discrimination that affect indigenous women with a severe impact on their personal integrity, cultural, and spiritual life. The Commission has also received numerous reports of acts of physical, psychological and sexual violence perpetrated against indigenous women, and information on formidable geographic, economic, and institutional barriers they face to adequately access basic services.<sup>1</sup> The Commission has

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<sup>1</sup> See, for example, IACHR, *Hearing on Situation of the Right to Life of Indigenous Women and Girls in Canada*, 147 POS, March 12, 2013; IACHR, *Hearing on Denunciations of human rights violations against indigenous peoples in Costa Rica*, 153 POS, October 31, 2014; IACHR, *Hearing on the Right of indigenous peoples to legal recognition and to property in Peru*, 153 POS, October 31, 2014; IACHR, *Hearing on Access to justice and the legacy of the internal armed conflict in Guatemala*, 153 POS; IACHR, *Hearing on Human rights and extractive industries in Latin America*, 154 POS, March 19, 2015; IACHR, *Hearing on the Situation of human rights of indigenous peoples in Ecuador*, 153 POS; IACHR, *Hearing on extractive industries and human rights of the Mapuche People in Chile*, 154 POS, March 17, 2015; IACHR, *Hearing on the Impact of Canadian mining company activities on human rights in Latin America*, 153 POS, October 28, 2014; IACHR, *Hearing on Denunciation of destruction of Mexico’s biocultural heritage from the construction of mega development projects in Mexico*, 153 POS, October 30, 2014; IACHR, *Building the transoceanic canal and its impact on human rights in Nicaragua*, 154 POS, March 16, 2015; IACHR, *Hearing on the Situation of human rights of indigenous women in Nicaragua*, 153 POS, October 28, 2014; IACHR, Press Release No. 9/13, *IACHR concludes its working visit to Suriname*, February 12, 2013; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II, October 18, 2006; IACHR, 2014 Annual Report, Chapter IV, Colombia; IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013; IACHR, Press Release No. 66/13, *Office of the Rapporteur on the Rights of Indigenous Peoples conducted a working visit to Guatemala*, September 18, 2013; Information received at a meeting with indigenous leaders, communities and organizations, on August 21, 2013 in Guatemala City; IACHR, Meeting of Experts on the Human Rights of Indigenous Women, November 8, 2014.

also dealt with a range of human rights violations against indigenous women through its individual petition and cases system.<sup>2</sup>

2. The information received by the IACHR has also shed light on gaps at the international level in the protection of the rights of indigenous women, and the need for more responsive approaches and methods to address their individual cases and concerns.<sup>3</sup> In this regard, the Commission has received concrete requests from indigenous women in the region to thoroughly examine the specific issues affecting them and issue recommendations to the States on this subject.
3. Based on these considerations, the IACHR has decided to prepare a comprehensive report on indigenous women's human rights in the Americas. The IACHR hopes this report will constitute an important step forward in dealing with the specific priority situation of indigenous women with the goal of promoting that States and the international community undertake further research and analysis of these topics, from a gender-based and ethno-racial perspective, and with a holistic approach, taking into consideration all historical, social, economic, and cultural variables which have a bearing on the human rights violations inflicted on indigenous women in the hemisphere.
4. As part of this initiative, a questionnaire was circulated among OAS Member States and non-state actors in December 2014, which permitted the collection of valuable information on the main challenges and advances in the respect and guarantee of the rights of indigenous women in various countries. The IACHR is grateful to the States and civil society organizations which answered the questionnaire and submitted their responses to the Commission. Several meetings with indigenous women and experts on the subject matter were held in Guatemala, Peru, and Washington, DC between 2013 and 2014. This initiative was also complemented with IACHR visits to several countries of the hemisphere, during which specific information was gathered on the situation of indigenous women, including to Colombia (2012), Suriname (2013), Guatemala (2013), Canada (2013), and Honduras (2014). Additionally, the IACHR has conducted a number of hearings between 2013-2016 focused on the situation of indigenous women at the

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<sup>2</sup> IACHR, *Admissibility Report No. 94/06*, Petition 40/04 - Inés Fernández Ortega et al. (Mexico), October 21, 2006; IACHR, *Application to the Inter-American Court of Human Rights in the Case of Inés Fernández Ortega (Case 12.580) against the United Mexican States*, May 7, 2009 ; *Admissibility Report No.93/06*, Petition 972/03 - Valentina Rosendo Cantú et al. (Mexico), October 21, 2006; IACHR, *Application to the Inter-American Court of Human Rights in the Case of Valentina Rosendo Cantú et al. (Case 12.579) against the United States of Mexico*, August 2, 2009.

<sup>3</sup> For example, IACHR, *Annex to Press Release 36/12* issued at the close of the 144 POS. March 30, 2012.

regional level and in specific countries. The Commission thanks Denmark for the support it offered in making this initiative possible, in particular with regard to its Mesoamerican component, and the concrete situation of indigenous women in Guatemala, Honduras, and Nicaragua.

5. During the implementation of this project, the Commission has been able to document the ways in which indigenous women have historically faced prejudice based on the multiple facets of their identities. A confluence of factors, such as racism, sexism, poverty and the structural and institutional inequalities stemming from them, as well as human rights violations related to their territories and the natural resources contained therein, heighten indigenous women's vulnerability to violations of their rights.<sup>4</sup> All of these sources of discrimination against indigenous women combine, creating superposed layers of mutually reinforcing human rights violations.
6. As will be discussed throughout this report, the lives of the vast majority of indigenous women in the hemisphere are still marked by major impediments to the fulfilment of their civil, political, economic, social, and cultural rights. Among others, they are faced with severely restricted opportunities to enter the labor market; unique geographic and economic challenges in order to gain access to health and education services; limited access to social programs and services; high rates of illiteracy; scarce participation in the political process; and social marginalization.
7. This political, social, and economic marginalization of indigenous women contributes to a continuous situation of structural discrimination and makes them particularly susceptible to a variety of acts of violence prohibited by the Inter-American Convention on the Prevention, Eradication and Punishment of Violence against Women (hereinafter, "Convention of Belém do Pará") and other Inter-American instruments. This marginalization and vulnerability of indigenous women is enhanced when States fail to produce comprehensive and disaggregated statistics, and do not properly document the differentiated forms of violence that affect indigenous women.<sup>5</sup>

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<sup>4</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 198.

<sup>5</sup> UN Women Brazil, *Relatora Especial da ONU sobre os Direitos dos Povos Indígenas recomenda maior documentação dos problemas enfrentados pelas mulheres indígenas do Brasil*, March 18, 2016; Cristina Coc, Keynote Address *Dignified Rebellion*, Speaking at the Symposium "Indigenous Geographies and Caribbean Feminisms: Common Struggles against Global Capitalism", March 31, 2017; Melanie Newton, *Colonialism, History, and the Contemporary*, Speaking at the Symposium "Indigenous Geographies and Caribbean Feminisms: Common Struggles against Global Capitalism," St. Augustine University, Trinidad and Tobago, March 31, 2017; Roberta Clarke, *Opening Remarks, Indigenous Women in the Caribbean: Voice, Participation and Influence for Sustainable Development*, Conference held on 9-10 October, 2008, Guyana.

Indigenous women are more likely to suffer acts of physical, psychological, and sexual violence within specific contexts. Violence against indigenous women is a fixture during armed conflicts, during the execution of major development, investment, and extractive projects, the militarization of indigenous lands, and in the context of their work as human rights defenders. Most of these acts are met by no response or a deficient response by State authorities, enabling the path for impunity. Indigenous women also face specific obstacles in attempting to obtain safe, adequate, effective, and culturally appropriate access to justice when their human rights are violated.<sup>6</sup> Most justice systems throughout the hemisphere still lack a gender and ethno-racial perspective in their processing of individual cases, reflected in the scarcity of interpreters, translators, and legal personnel trained and sensitive to the culture and worldview of indigenous peoples.

8. This report examines these challenges and seeks to promote more research and analysis concerning the specific human rights violations faced by indigenous women and the human rights standards and principles that should guide the response of States to their concerns. The report incorporates the perspective of indigenous women in the analysis of the human rights violations they experience, the human rights standards applicable to them, and the recommendations the Commission formulates for the Member States of the Organization of American States (hereinafter “the OAS”) to assist them in addressing the serious challenges they face.
9. It is important to clarify in this report that indigenous women do not constitute a homogeneous group. Indigenous women are present throughout the hemisphere: in North, Central, South America, and in the Caribbean. They live in different countries with varying colonial histories and contemporaneous realities, have faced various degrees of dispossession of their lands and resources, and reside in urban areas or on their ancestral lands and territories. They also have diverse cultures and traditions, speak different native and “colonial” languages, and have differing needs and concerns.<sup>7</sup> The Commission understands the term “indigenous women” to

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<sup>6</sup> IACHR, *Access to Justice for Women Victims of violence in the Americas*, January 20, 2007, para. 199.

<sup>7</sup> Indigenous women from the Caribbean also have highlighted that the language difference between the Spanish-speaking majority of indigenous peoples in the continent and the English- or Dutch-speaking communities has been a factor of exclusion for them, as it had created barriers impeding indigenous women of the Caribbean from being recognized and fitting into the Latin-American indigenous movement. See: Interview with Aleisha Holder, member and legal adviser of the Santa Rosa First Peoples Community of Trinidad and Tobago, July 7, 2017; Cristina Coc, Keynote Address *Dignified Rebellion*, Speaking at the Symposium “Indigenous Geographies and Caribbean Feminisms: Common Struggles against Global Capitalism,” St. Augustine University, Trinidad and Tobago, March 31, 2017; Melanie Newton, *Colonialism, History, and the Contemporary*, Speaking at the Symposium “Indigenous Geographies and Caribbean Feminisms:

include women of all ages, from young girls to older women. In previous reports, the Commission has noted that, given the immense diversity of indigenous peoples in the world and the risk that a strict definition of “indigenous peoples” turns out to be restrictive, the term “indigenous peoples” does not have a precise definition in international law.<sup>8</sup> It certainly follows that neither does the term “indigenous women.” Women’s self-identification as a member of an indigenous community is therefore the principal criteria for belonging within this category.<sup>9</sup>

10. Despite these differences, indigenous women in the Americas also have a common denominator: having historically faced and continuing to suffer multiple and overlapping forms of discrimination, based on factors such as their gender, ethnicity, age, disability, and/or situation of poverty, both from outside and within their own communities, or resulting from the historical and structural remnants of colonialism. All of these different layers of discrimination have increased their exposure to enduring human rights violations in every aspect of their daily lives, from their civil and political rights, to their economic, social and cultural rights, to their right to live free from violence. This report seeks to provide a detailed picture of the general human rights situation of indigenous women in the hemisphere, to identify current challenges, as well as to provide States with guidelines for the design and implementation of measures to ensure indigenous women’s human rights.
11. Although this report will discuss the various forms of violence and discrimination which indigenous women face, the Commission’s focus is on their status as holders of rights and empowered actors as opposed to victims. It is abundantly clear that indigenous women make unique contributions and play fundamental roles within their families, their communities, their countries, as well as at the international level. Indigenous women are the guarantors of their culture. They have actively and successfully participated in the processes that lead to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Permanent Forum on Indigenous Issues, the mandate of the Special Rapporteur on the Rights of Indigenous Peoples, and the adoption of the American Declaration on the Rights of Indigenous Peoples, among other

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Common Struggles against Global Capitalism,” St. Augustine University, Trinidad and Tobago, March 31, 2017.

<sup>8</sup> IACHR, *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*, OEA/Ser.L/V/II., Doc. 47/15, 31 December 2015, para.27.

<sup>9</sup> IACHR, *Rights of Indigenous and Tribal Peoples to Their Ancestral Lands and Natural Resources. Rules and Jurisprudence of the Inter-American Human Rights System*. OAS/Ser.L/V/II.Doc.56/09, 30 December 2009.

paramount achievements.<sup>10</sup> Although they are the subject of discrimination and violations of their rights, indigenous women who have addressed the Commission have refused to be characterized as victims, and have demanded that their strength, as well as their active participation, be acknowledged.<sup>11</sup>

12. The instant report consists of six chapters. The first chapter provides a brief account of the activities conducted by the IACHR pertaining to indigenous women's rights. In the second chapter, the Commission establishes guiding legal principles and international standards that States must consider when developing laws, programs, and policies aimed at protecting the human rights of indigenous women, as well as priority themes and issues which need to be addressed by the States. In the third chapter, the IACHR examines the different dimensions of violence against indigenous women, emphasizing the particular ways in which they are affected, both individually and as a community, and the dimensions of the holistic approach that must guide States' efforts to provide a response to this serious human rights situation. The fourth chapter addresses access to justice for indigenous women, highlighting the major obstacles they face. In the fifth chapter, the Commission examines generally some of the main challenges indigenous women still face in the protection of their basic economic, social, and cultural rights, also describing obstacles standing in the way of the full exercise of these rights. Lastly, in the final chapter, the Commission draws conclusions and makes recommendations based on the analysis presented in the report.

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<sup>10</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para.6.

<sup>11</sup> Inputs received during a meeting with indigenous women from South America with ex-Commissioner Tracy Robinson, in Lima, Peru, November 21-22, 2013.

CHAPTER 2  
THE INTER-AMERICAN SYSTEM  
OF HUMAN RIGHTS AND  
THE SITUATION OF  
INDIGENOUS WOMEN



## THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS AND THE SITUATION OF INDIGENOUS WOMEN

13. Through its different mechanisms, the IACHR has consistently received reports reflecting the gravity of the situation of human rights of indigenous women throughout the Americas. In response, the IACHR has addressed the challenges they face in the context of hearings, thematic and country reports, press releases, working visits, and individual petitions, among other mechanisms. As an introduction to this report, the IACHR will briefly describe below some of the main findings of its work on indigenous women, as a basis for the following analysis.

### A. IACHR Hearings

14. The IACHR has convened several country, regional, and individual case hearings pertaining to the situation of human rights of indigenous women. The general human rights situation of indigenous women in Nicaragua was addressed in the context of a hearing in 2014,<sup>12</sup> while other hearings have focused on specific issues, such as the multiple levels of discrimination they face,<sup>13</sup> barriers to accessing education,<sup>14</sup> violence inflicted upon indigenous women,<sup>15</sup> and the situation of disappearances and murders in British Columbia, Canada.<sup>16</sup> Additionally, case hearings have been held by the IACHR about sexual violence against indigenous women perpetrated by armed forces, and in the specific matters of *Inés Fernández Ortega* and *Valentina Rosendo Cantú*<sup>17</sup>, which culminated in landmark judgments of the

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<sup>12</sup> IACHR, *Hearing on the situation of human rights of indigenous women*, 153 POS, October 28, 2014.

<sup>13</sup> IACHR, *Hearing on discrimination against indigenous women in the Americas*, 144 POS, March 28, 2012.

<sup>14</sup> IACHR, *Hearing on access to education of indigenous women, peasants, afrodescendants and rural sectors*, 143 POS, October 25, 2011.

<sup>15</sup> IACHR, *Hearing on violence against indigenous women in the United States*, 143 POS, October 25, 2011.

<sup>16</sup> IACHR, *Hearing on Denunciation of missing and murdered indigenous women and children in British Columbia, Canada*, 144 POS, March 28, 2012; IACHR, *Thematic hearing on the situation of the right to life of indigenous women and children in Canada*, 147 POS, March 12, 2013.

<sup>17</sup> IACHR, *Hearing on Case 12.579 – Valentina Rosendo Cantú, Mexico*, 130 POS, October 12, 2007; IACHR, *Hearing on Case 12.580 – Inés Fernández Ortega, México*, 130 POS, October 12, 2007.

Inter-American Court of Human Rights (hereinafter the “Court” or the “Inter-American Court”) and are discussed later in the report. It is also important to highlight the hearings held on the situation of indigenous women at the regional level, which weighed heavily on the IACHR’s decision to write this report.<sup>18</sup>

15. In the above-mentioned hearings, a diversity of States, indigenous women, civil society organizations, and academics informed the Commission of the acute situation of discrimination faced by indigenous women in the hemisphere in spheres such as health services, property, education, employment, and political participation. The IACHR was also informed of different forms of violence against indigenous women. A major issue highlighted was the need for an intersecting and culturally appropriate approach to the processing of cases of human rights violations against indigenous women, and the response of all state sectors to issues which affect them.

## ***B. The IACHR and individual cases concerning indigenous women***

16. In several merits reports, the Commission has addressed petitions denouncing violations of a range of indigenous women’s human rights. A noteworthy case on this issue was that of *Ana, Beatriz and Celia González Pérez*<sup>19</sup> of Mexico, in which members of the military forces detained three Tzeltal sisters for interrogation for two hours in the hopes of obtaining a confession of their affiliation to the Zapatista Army of National Liberation.<sup>20</sup> The sisters – one of which was still a girl – were separated from their mother, as well as beaten and raped repeatedly. In its merits decision, the IACHR reiterated its stance that rape is a form of torture and concluded to a violation of the sisters’ right to humane treatment and to dignity and privacy. The decision also alluded to the particular obstacles faced by indigenous women in their access to judicial protection and underscored the additional pain and humiliation they endured as they did not speak the language of their assailants or the other authorities involved, and as a result of their repudiation from their own community as a consequence of their rape.

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<sup>18</sup> IACHR, *Hearing on Discrimination against indigenous women in the Americas*, 144 POS and IACHR, *Hearing on General situation of the rights of indigenous women in the Americas (Argentina, Colombia, Canada and Mexico)*, 126 POS.

<sup>19</sup> IACHR, Merits Report, No. 53/01, *Ana, Beatriz, and Cecilia González Pérez (Mexico)*, April 4, 2001.

<sup>20</sup> IACHR, Merits Report, No. 53/01, *Ana, Beatriz, and Cecilia González Pérez (Mexico)*, April 4, 2001.

17. Another noteworthy case is that of Mary and Carrie Dann, which addressed the right to equality, a fair trial and to property of the ancestral land of the Dann sisters and of the Western Shoshone tribe.<sup>21</sup> The two sisters argued that the State had interfered with their use and occupation of their ancestral lands by appropriating the lands as federal property. They claimed this was done through an unfair procedure before the Indian Claims Commission, by threatening to remove and then physically removing the Dann's livestock from their lands, and by permitting or acquiescing in gold prospecting activities within the Western Shoshone traditional territory. Although the Commission found that the property claim was more appropriately left for the determination of the State, it also considered the Danns were not afforded resort to the courts to protect their property rights in conditions of equality, and in a manner that takes into account the collective and individual nature of their property claim. The Commission based its decision on the American Declaration on the Rights and Duties of Man.
18. The Commission has processed and decided a number of relevant cases which, as indicated below, were then presented before and decided by the Inter-American Court of Human Rights.

### ***C. Cases decided by the Inter-American Court***

19. In the cases of *Inés Fernández Ortega*<sup>22</sup> and *Valentina Rosendo Cantú*,<sup>23</sup> regarding rape and torture of Me'phaa indigenous women in the State of Guerrero, Mexico by members of the armed forces, the Inter-American Court of Human Rights ruled extensively on the factors which place indigenous women at greater risk of human rights violations in the justice and the health care systems. The Inter-American Court mentioned particular obstacles faced by indigenous women to gain access to justice, such as speaking a different language, not having access to interpreters, and the inability to afford an attorney, among others. The Court found that these obstacles, which breed mistrust in the justice system and other public bodies of protection, are particularly serious given that indigenous women also face rejection and ostracism from their own communities when they report crimes of sexual violence. In both cases, the Court highlighted its concern over the lack of interpreters in court proceedings, and the processing of

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<sup>21</sup> IACHR, Mertsits Report, No.75/02, Mary and Carrie Dann (United States), December 27, 2002.

<sup>22</sup> IA Court. *Case of Fernández Ortega et al. v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment August 30, 2010. Series C No. 215. 44.

<sup>23</sup> IA Court. *Case of Rosendo Cantú et al v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment August 31, 2010. Series C No. 216.

these cases in military jurisdiction, which is contrary to existing international human rights standards. The Court overall held the State responsible for failing to exercise due diligence in investigating and prosecuting those responsible. In its analysis and in determining reparations, the Court took into consideration the fact that the victims were indigenous women, in a situation of special vulnerability, when the abuses took place.<sup>24</sup>

20. It is also important to call attention to the case of *Tiu Tojín v. Guatemala*,<sup>25</sup> in which the Inter-American Court examined the forced disappearance of Mayan indigenous woman Maria Tiu Tojín, and her daughter Josefa perpetrated by members of the Guatemalan Army and of the paramilitary group the Self-Defense Patrols during the internal armed conflict which affected Guatemala for over thirty years. In this case, the Inter-American Court insisted that in order to ensure access to justice for indigenous peoples, it is absolutely essential for States to take into account their particular economic and social needs, their situation of special vulnerability, as well as their customary law, values, practices and customs.<sup>26</sup> In determining reparations for the case of the *Massacre of Plan de Sánchez*,<sup>27</sup> also linked to the internal armed conflict in Guatemala, the Inter-American Court took into account the special suffering that the indigenous women, who were the targets of sexual violence at the hands of State's agents, continued to endure. It held that this practice of the State had been designed to destroy the dignity of women at the cultural, social, and individual levels.<sup>28</sup> In its judgment in the case of *Massacre of Río Negro*,<sup>29</sup> the Inter-American Court also took into consideration the specific effects that the practices of rape, the killings of pregnant women, and the induction of abortions had on

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<sup>24</sup> IA Court. *Case of Fernández Ortega v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment August 30, 2010, Series C No. 215, para. 223; IA Court. *Case of Rosendo Cantú et al v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment August 31, 2010. Series C No. 216, para. 206.

<sup>25</sup> IA Court. *Case of Tiu Tojín v. Guatemala*, Merits, Reparations and Costs, Judgment November 26, 2008, Series C No. 1990.

<sup>26</sup> IA Court. *Case of Tiu Tojín v. Guatemala*, Merits, Reparations and Costs, Judgment November 26, 2008, Series C No. 1990, para. 96.

<sup>27</sup> IA Court. *Case of the Massacre of Plan de Sánchez v. Guatemala*, Reparations, Judgment November 19, 2004, Series C No. 116.

<sup>28</sup> IA Court. *Case of the Massacre of Plan de Sánchez v. Guatemala*, Reparations, Judgment November 19, 2004, Series C No. 116, para. 49.19.

<sup>29</sup> IA Court. *Case of Massacres of Río Negro v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment September 4, 2012, para. 59.

indigenous women in the context of the massacres perpetrated during the internal armed conflict in Guatemala.<sup>30</sup>

21. Finally, in the case of the *Massacre of las Dos Erres*, the Inter-American Court established that “during the armed conflict in Guatemala the women were specifically selected as victims of sexual violence”<sup>31</sup> and reiterated that rape “was a practice of the State, executed in the context of the massacres, aimed at destroying the dignity of the woman at the cultural, social, family and individual levels.”<sup>32</sup> In addition, the Court held that “the lack of investigation of grave facts against humane treatment such as torture and sexual violence in armed conflicts and/or systematic patterns, constitutes a breach of the State’s obligations in relation to grave human rights violations.”<sup>33</sup> The Court also held that this contravenes norms of *jus cogens* and generates obligations for States such as investigating and punishing those practices, in conformity with the American Convention, the Inter-American Convention to Prevent and Punish Torture (ICPPT), and the Convention of Belém do Pará.

#### **D. IACHR Thematic and Country Reports**

22. The IACHR’s thematic and country reports have also documented a diversity of violations of the human rights of indigenous women in the Americas. Most of these reports are the result of working and on-site visits to different States in the region, and incorporate the findings of numerous meetings with indigenous women, State authorities, victims, and civil society organizations.
23. In 2014, the IACHR released its report *Missing and Murdered Indigenous Women in British Columbia, Canada*, underscoring its concern over the alarming rate of disappearances and murders of indigenous women in Canada, and their link to the wider pattern of discrimination against indigenous peoples in the country, based, in particular, on the experiences of colonization, the forcible removal of children to attend residential schools, and the continuous application of inadequate and unjust laws and policies

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<sup>30</sup> IA Court. *Case of Massacres of Río Negro v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment September 4, 2012, para. 59.

<sup>31</sup> IA Court. *Case of the Massacre of “Las Dos Erres” v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment November 24, 2009. Series C No. 211, para. 139.

<sup>32</sup> IA Court. *Case of the Massacre of “Las Dos Erres” v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment November 24, 2009. Series C No. 211, para. 139.

<sup>33</sup> IA Court. *Case of the Massacre of “Las Dos Erres” v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment November 24, 2009. Series C No. 211, para. 140.

such as the Indian Act.<sup>34</sup> The Commission underscored that these numbers of murders and disappearances were of particular concern in light of the fact that indigenous women represent a small percentage of the total population of Canada. It also highlighted the fact that according to information received, the police offered a dismissive response to reports of missing aboriginal women, and failed to prevent, promptly investigate and sanction violence against indigenous women and girls. The IACHR established emphatically that a comprehensive and holistic approach to the problem of violence against indigenous women was necessary, and should address past and present inequality of an institutional and structural nature, notably the racial and gender discrimination that originate and exacerbate the violence. The IACHR also recommended that the State provides a nationwide and coordinated response to this problem, in consonance with existing international human rights law standards.

24. The Commission has focused attention on the special situation of risk and discrimination faced by indigenous women, the issue of sexual violence, as well as their obstacles to access to justice. In its report *Access to Justice for Women Victims of Violence in the Americas* (2007), the IACHR found structural racism, social exclusion, and geographic inaccessibility to be major obstacles to their access to the justice system.<sup>35</sup> These topics were also discussed in the report *Access to Justice for Women Victims of Sexual Violence in Mesoamerica* (2011)<sup>36</sup>, which placed particular emphasis on the situations of El Salvador, Guatemala, Honduras, and Nicaragua. In this report, the IACHR reiterated that States must consider the specific needs of indigenous women in their response to the problem of violence, respecting their cultural identity, ethnicity, language, and the need to incorporate cultural expert testimonies in cases of violence.<sup>37</sup> The IACHR also addressed the intersection of various forms of discrimination against indigenous women in its report *Legal standards related to gender equality and women's rights in the inter-American human rights system* (2011, Update 2011-2014)<sup>38</sup>.

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<sup>34</sup> IACHR, *Missing and murdered indigenous women in British Columbia, Canada* OEA/Ser.L/V/II. Doc. 30/14, December 21, 2014.

<sup>35</sup> IACHR, *Access to justice for women victims of violence in the Americas*, OEA/Ser.L/V/II Doc. 68, January 20, 2007, paras. 198-207.

<sup>36</sup> IACHR, *Access to justice for women victims of violence in the Americas*, OEA/Ser.L/V/II Doc. 68, January 20, 2007, paras. 294, 301, 305.

<sup>37</sup> IACHR, *Access to justice for women victims of sexual violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 302.

<sup>38</sup> IACHR, *Legal standards related to gender equality and women's rights in the inter-American human rights system: development and application*, Updates from 2011-2014, OEA/Ser.L/V/II. Doc. 11, January 26, 2015.

25. The IACHR has also emphasized in diverse instances the particular difficulties indigenous women face in exercising their economic, social, and cultural rights. In its report *Access to Justice for Women Victims of Sexual Violence: Education and Health* (2012), the Commission noted that health services tended to be offered without taking into account the expectations, traditions and beliefs of indigenous women.<sup>39</sup> It stressed that indigenous girls and women were particularly at risk of human rights violations, given the historical dual discrimination they face by virtue of being women and indigenous.<sup>40</sup> Additionally, in the report *Access to Information on Reproductive Health from a Human Rights Perspective* (2011), the IACHR noted that indigenous women are the most affected in their access to information on sexual and reproductive health.<sup>41</sup> Similarly, the report *Access to Maternal Health Services from a Human Rights Perspective* (2010) highlighted the disproportionately high number of indigenous women who cannot access their rights in the area of maternal health during pregnancy and the post-partum period.<sup>42</sup> In its report *The Work, Education and Resources of Women: the Road to Equality in Guaranteeing Economic, Social and Cultural Rights* (2011), the IACHR also noted that indigenous women and girls face barriers in school accessibility and attendance, as well as in gaining control over their economic and financial resources.<sup>43</sup> In the report *Women's Political Participation in the Americas* (2011), the Commission pointed out indigenous women's under-representation in State decision-making bodies, identifying a variety of barriers to their political participation, such as lack of economic resources and geographic distance.<sup>44</sup>
26. In its country reports, the IACHR has also addressed the situation of indigenous women. In its numerous reports on Guatemala, the IACHR has reiterated its concern over the situation of violence and discrimination faced by indigenous women, the racism and exclusion which affect them, and the barriers to access basic health services and judicial protection when they

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<sup>39</sup> IACHR, *Access to justice for Women Victims of Sexual Violence; Education and Health*, OEA/Ser.L/V/II. Doc.65, December 28, 2011, para. 9.

<sup>40</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II. Doc.65, December 28, 2011, para. 59.

<sup>41</sup> IACHR, *Access to Reproductive Health Information from a Human Rights Perspective*, OEA Ser.L/V/II. Doc.61, November 22, 2011, para. 7

<sup>42</sup> IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, June 7, 2010, para. 11.

<sup>43</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143, November 3, 2011, para. 210, 244.

<sup>44</sup> IACHR, *The Road to Substantive Democracy: Women's Political Participation in the Americas*, OEA/Ser.L/V/II. Doc.79, April 18, 2011, paras. 90, 96.

suffer human rights violations.<sup>45</sup> In its reports on Bolivia, the Commission highlighted problems that particularly affect indigenous women, including high illiteracy rates in the majority of indigenous municipalities, shortcomings in the investigation of cases concerning violence against women, and high levels of poverty, social exclusion, and maternal mortality.<sup>46</sup>

27. In the *Third Report on the Situation of Human Rights in Paraguay* (2001), the IACHR noted that poverty especially affected indigenous women and women inhabiting rural areas.<sup>47</sup> It recommended to Paraguay to make adequate services, reproductive health information and assistance programs available to women, particularly indigenous women and those affected by poverty.<sup>48</sup> In the *Second Report on the Situation of Human Rights in Peru* (2000), the IACHR also noted persistent discrimination in education, labor, marriage, and politics, which were worse among indigenous women.<sup>49</sup>
28. In the *Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion* (2016),<sup>50</sup> the Commission insisted on the issue of indigenous women's economic social and cultural rights, and the high rates of illiteracy and poor quality of employment that affect them, as well as their reduced access to basic health and education services.<sup>51</sup> The Commission underscored the forms of violence and discrimination faced by indigenous women in Guatemala, and highlighted their exacerbation when indigenous

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<sup>45</sup> See generally, IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II. Doc. 43/15, December 31, 2015; IACHR, *Fifth Report on the Situation of Human Rights Defenders in Guatemala*, OEA/Ser.L/V/II.111. Doc. 21 rev., April 6, 2001, para. 10; IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118. Doc. 5 rev. 1, December 29, 2003, para. 310.

<sup>46</sup> IACHR, *Follow-up report – Access to Justice and Social Inclusion: The Road toward Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II.135. Doc. 40, August 7, 2009, para. 204; IACHR, *Access to Justice and Social Inclusion: The Road toward Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II. Doc. 34, June 28, 2007, para. 226; IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.111 Doc. 21 rev, April 6, 2006.

<sup>47</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser./L/VII.110. Doc. 52, March 9, 2001, para. 26.

<sup>48</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*, OEA/Ser./L/VII.110. Doc. 52, March 9, 2001, para. 26.

<sup>49</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106. Doc. 59 rev., June 2, 2000, para. 11.

<sup>50</sup> IACHR, *Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II., Doc.43/15, 31 December 2015.

<sup>51</sup> IACHR, *Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II., Doc.43/15, 31 December 2015, para.80, 94.

women were deprived of liberty.<sup>52</sup> The IACHR also addressed the issue of sexual violence against indigenous women during the armed conflict, highlighting in particular the case of the military detachment of Sepur Zarco.<sup>53</sup> In this regard, it reiterated the statement of the United Nations Deputy High Commissioner for Human Rights, Flavia Pansieri, calling on the State to guarantee the rights to the truth, justice, and reparation to victims of serious human rights violations during the internal armed conflict, and measures to preclude a repetition of those violations.<sup>54</sup> The Commission also referred to the need to strengthen indigenous women's participation in community decision-making.<sup>55</sup>

29. Lastly, several IACHR reports on Colombia deal specifically with the situation of indigenous women in the context of the armed conflict. In its *Report on violence and discrimination against women in the armed conflict in Colombia* (2006), the IACHR highlighted the especially critical situation experienced by indigenous women in Colombia, due to the serious effects of the armed conflict, along with the history of discrimination and exclusion affecting them, including the problem of displacement.<sup>56</sup> The report *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*<sup>57</sup> again addressed the multiple forms of discrimination and violence affecting indigenous women in Colombia due to the armed conflict, and noted with particular concern that sexual violence was being used as a tactic of war, having an especially severe impact on indigenous women.

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<sup>52</sup> IACHR, *Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II., Doc.43/15, 31 December 2015, para.77-95, 355.

<sup>53</sup> IACHR, *Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II., Doc.43/15, 31 December 2015, para.426.

<sup>54</sup> OHCHR, *Concluding Statement, Visit by the United Nations Deputy High Commissioner for Human Rights, Flavia Pansieri*, 22 May 2014.

<sup>55</sup> OHCHR, *Concluding Statement, Visit by the United Nations Deputy High Commissioner for Human Rights, Flavia Pansieri*, 22 May 2014.

<sup>56</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 122-148.

<sup>57</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II. Doc. 49/13, December 31, 2013, paras. 812-821.



CHAPTER 3  
GUIDING PRINCIPLES AND  
LEGAL BASIS OF THE REPORT



## GUIDING PRINCIPLES AND LEGAL BASIS OF THE REPORT

30. This section of the report provides a general overview of some principal legal standards associated with the rights of indigenous women, and reviews the scope and reach of the nature of the State obligations regarding those rights.
31. As explained in this section, the Commission considers that State policies and practices focused on indigenous women must incorporate the rights of women and indigenous peoples advanced in universal and regional treaties, declarations, and other applicable instruments; incorporate a holistic approach considering the sex, gender, and history of racism and discrimination faced by indigenous women and their worldview; and should be guided by the principles described below. It is paramount that States take into consideration the conception that indigenous women have of their human rights, the individual and collective nature of the rights that are applicable to them, and the unique relationship indigenous women have with their territories and natural resources. These guiding principles reflect multiple consultations the Commission has carried out with indigenous women in preparing this report as well as its past work in light of the standards developed within the system.<sup>58</sup>

### ***A. The need for a holistic approach***

32. The information received by the IACHR exposes the combination of factors that have impacted and still condition the exercise of indigenous women's human rights in the hemisphere. Firstly, these women are members of indigenous communities that remain scarred by the effects of colonization, by lack of ownership and respect for their territories, and by forms of social and institutional racism. Secondly, they have a unique worldview and cultural identity, and a sense of collective membership in their peoples, which calls for an intersectional approach. Thirdly, they are members of a gender which has been historically discriminated against, subjected to social

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<sup>58</sup> IACHR, Press Release No. 66/13, *Office of the Rapporteur on the Rights of Indigenous Peoples conducted a working visit to Guatemala*, September 18, 2013; Information received at a meeting with indigenous leaders, communities and organizations, on August 21, 2013 in Guatemala City; IACHR, Meeting of Experts on the Human Rights of Indigenous Women, November 8, 2014.

stereotypes, and excluded from participation in the social and political life of their communities, municipalities, and countries. Fourthly, they frequently live in poverty; they face inequality and discrimination in ensuring their economic and financial autonomy; those who wish to practice traditional forms of subsistence often face great obstacles in access to traditional lands and resources; and are often denied access to judicial remedies. They also face serious barriers to access health services, education opportunities, and forms of decent and quality employment. Fifthly, they tend to view themselves socially as active agents of change, who are empowered to influence their futures, cultures, and heritages.

33. It is the IACHR's position that understanding the realities faced by indigenous women is essential to be able to develop effective State laws, policies, programs, and practices that fully respect and ensure the rights of indigenous women. The IACHR has already underscored the need for States to adopt holistic measures to guarantee the respect of indigenous women's human rights considering the historic discrimination they have experienced as a result of intersecting factors such as poverty, race, or ethnicity which intensify structural and institutional inequality in society.<sup>59</sup> In her reports, the United Nations Special Rapporteur on Violence against Women framed the holistic approach in the following terms:

The holistic approach requires rights to be treated as universal, interdependent and indivisible; situating violence on a continuum that spans interpersonal and structural violence; accounting for both individual and structural violence; accounting for both individual and structural discrimination, including structural and institutional inequalities; and analyzing social and/or economic hierarchies among women, and between women and men, i.e. both intra- and inter-gender.<sup>60</sup>

Adopting a holistic model with regards to gender-based violence requires a complex understanding of the ways in which inter- and intra-gender differences exist and the ways in which institutional and structural inequalities exacerbate violence through multiple intersecting forms of discrimination.<sup>61</sup>

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<sup>59</sup> See, as reference, IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II., December 21, 2006 paras. 143-145.

<sup>60</sup> United Nations, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, Rashida Manjoo, May 2, 2011, A/HRC/17/26, para. 20.

<sup>61</sup> United Nations, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, Rashida Manjoo, May 2, 2011, A/HRC/17/26, para. 70.

34. For her part, the United Nations Special Rapporteur on the Rights of Indigenous Peoples has written: “to protect the rights of indigenous women, both a paradigm shift and the development of a multidimensional approach is needed.”<sup>62</sup> Likewise, she has noted that it is essential to approach the human rights violations against indigenous women by focusing on the nexus between individual and collective rights, as well as on how intersecting forms of discrimination contribute to perpetuating violations of their rights.<sup>63</sup> It is also vital to express that many forms of violence and abuse against indigenous women and girls have a strong intergenerational element.<sup>64</sup>
35. A holistic and comprehensive approach to human rights violations affecting indigenous women entails addressing the institutional and structural inequalities faced by them.<sup>65</sup> It also requires an interpretation of the scope of their human rights in light of these inequalities and their everyday reality. It requires taking into account their gender, their particular relationship with their ancestral lands, as well as the laws and policies which still impact them negatively, intensify their situation of inequality and curtail their full exercise of their civil, political, economic, social and cultural rights. It also requires assessing the connection between this situation of discrimination and the serious problem of violence against women in all of its manifestations.
36. The IACHR therefore presents in the next section a set of principles which should guide State efforts to implement holistic measures to prevent and address all human rights violations affecting indigenous women. These principles derive directly from the object and purpose of the relevant applicable human rights instruments adopted by OAS Member States.

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<sup>62</sup> United Nations, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, Rashida Manjoo, May 2, 2011, A/HRC/17/26, para. 75.

<sup>63</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, Victoria Tauli Corpuz, August 6, 2015, A/HRC/30/41, para. 8.

<sup>64</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, Victoria Tauli Corpuz, August 6, 2015, A/HRC/30/41, para. 12.

<sup>65</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. December 21, 2006 paras. 145-149.

## **B. Guiding Principles**

### **First Principle: Empowered Actors**

37. Indigenous women must be understood as holders of rights and not simply as victims or targets of violations of their human rights. Despite their enduring history of being subjected to violence and discrimination, indigenous women have played and continue to play a consequential role in the history of the struggle for the self-determination of their peoples, their collective and individual rights, and their rights as women. This principle was embedded in the views expressed by all the indigenous women who requested and prompted the Commission to prepare this report, as well as by all the participants at the different meetings, which were conducted to provide input for the report.

### **Second Principle: Intersectionality**

38. Indigenous women have a multidimensional identity that calls for this intersectional approach in evaluating the forms of discrimination they face. The Commission has reaffirmed that “intersectionality is a basic concept for understanding the scope of the general obligations of State parties, [...] 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, sexual orientation and gender identity.”<sup>66</sup> This overlapping of various layers of discrimination – or intersectionality – leads to a form of deepened discrimination which manifests itself in substantively different experiences from one indigenous woman to another.<sup>67</sup>
39. The multidimensional identity of indigenous women places them at the intersection of discrimination based on their particular cultural identity, sex, and gender. On the one hand, indigenous women have a specific cultural identity reflected in their special relationship with their territory, inasmuch as it is where their lives take place and where they acquire their sense of individual and collective membership. Additionally, their territory is the foundation for materially replicating their way of life and subsistence over

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<sup>66</sup> IACHR, *The situation of people of African Descent in the Americas*, OEA/Ser.L/V/II. Doc.62, December 5, 2011, para.60. See also: United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), *General Recommendation 28* on the Obligations of States Parties under Section 2 of the CEDAW, October 19, 2010, para. 18.

<sup>67</sup> COAJ, ONIC, AJDH, SER Mixe, FAQ, *Indigenous Women of the Americas, Methodological and conceptual guidelines to confront situations of multiple discrimination*, 2014, p. 12.

time, as well as the expression of their cultural and spiritual life.<sup>68</sup> For these reasons, the IACHR and the Inter-American Court have established that the cultural identity of indigenous peoples must be taken into consideration in all policies of the State, for the purpose of ensuring “effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values and customs.”<sup>69</sup> It is worth noting that age can also be an important factor of discrimination which affects indigenous women in very specific ways. As the Commission has mentioned before, given the central role of indigenous elders in the reproduction of indigenous culture, and their roles as moral authorities, spiritual guides and healers, they will be among those who suffer most from cultural and territorial losses.<sup>70</sup> Indigenous girls and adolescents also are particularly exposed to discrimination and violence due to their age, as is demonstrated by their particular vulnerability to sexual violence and sexual trafficking.<sup>71</sup>

40. On the other hand, it is crucial to understand that the sex and gender of indigenous women places them at an even higher risk of exposure to forms of discrimination and inferior treatment, as is the case for women in general.<sup>72</sup> This multidimensional nature of the identity of indigenous women requires an understanding of the intersection of the historical and structural forms of discrimination which have been and are inflicted on indigenous women on the basis of the combination of their ethnicity, race, gender, and situation of poverty. To these most common factors of discrimination can

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<sup>68</sup> IA Court. *Case of Awas Tingni v. Nicaragua*, 2001. Para. 149: “(...) Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.”

<sup>69</sup> IA Court. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment June 17, 2005, Series C No. 125, paras. 51 and 63.

<sup>70</sup> IACHR, *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*, OEA/Ser.L/V/II., Doc. 47/15, December 31, 2015, para.329-330.

<sup>71</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para.15. See also: IACHR, *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*, OEA/Ser.L/V/II., Doc. 47/15, December 31, 2015, para. 320.

<sup>72</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. December 21, 2006 paras. 137-142; United Nations, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Rashida Manjoo*, May 2, 2011, A/HRC/17/26, para. 16; *Belem do Para Convention*, supra, Article 9.

also be added others, such as their age, disability, or pregnancy,<sup>73</sup> their status as a displaced person, their deprivation of liberty, or their living in zones affected by armed conflicts,<sup>74</sup> as well as their sexual orientation or gender identity.<sup>75</sup>

41. The IACHR reiterates accordingly that State efforts aimed at protecting the rights of indigenous women must take into consideration both their needs as women and as members of indigenous peoples, and how these two parts of their identity have historically combined to specifically make them susceptible to multiple violations of their civil, political, economic, social, and cultural rights. In addition to the foregoing considerations, the IACHR deems it essential for States to gather statistical information that documents these specific needs with an intercultural and gender-based perspective.

### **Third Principle: Self-determination**

42. Violations of indigenous peoples' rights to self-determination and to control over their lands and resources have heightened impacts on indigenous women. One major form of violence inflicted upon indigenous women specifically stems from the effects of colonialism and enduring racism found in society and current policies. These policies foster the imposition of extractive activities and mega development projects without their prior, free and informed consent, in violation of their right to self-determination, personal integrity, and way of life and development.<sup>76</sup> Consequently, the IACHR finds a close link between respect for indigenous peoples' right to self-determination, to integrity of their territories and natural resources, the right to live free from all forms of racism, and the guarantee of the right of indigenous women to live a life free from all forms of discrimination and violence.

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<sup>73</sup> IACHR, *Precautionary measure No. 51/15 – Pregnant and Nursing Women of the Wayúu Indigenous Community, Colombia*, Extension, January 26, 2017 (Resolution in Spanish only).

<sup>74</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, "Belem do Para Convention", Article 9.

<sup>75</sup> IACHR, *Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas*. OEA/Ser.L/V/II. Doc.36/15 Rev.2, para.264; IACHR, Press Release No.037/17, *IACHR Condemns Alarming Numbers of LGBT Killings in the Region So Far this Year*, March 23, 2017.

<sup>76</sup> IACHR, *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*, OEA/Ser.L/V/II., Doc. 47/15, 31 December 2015, para.318-321; Martínez Peláez, Severio. *La patria del criollo. Ensayo de interpretación de la realidad colonial guatemalteca*. Fondo de Cultura Económica. México DF: 1998. p. 571; International Indigenous Women's Forum, *Marin Iwanka Raya: Indigenous Women Stand Against Violence*, Report for the UN Secretary General's Study on Violence against Women, 2007, p. 28.

43. Moreover, it is important to note that the United Nations Rapporteur on the Rights of Indigenous Peoples has stressed that “States must find a way to strike a delicate balance between protection of indigenous women and respect for the self-determination and autonomy of indigenous peoples,”<sup>77</sup> inasmuch as:

The response of indigenous communities to attacks against self-determination has, at times, additionally subjugated the rights of women. In the battle for indigenous communities to assert their right to self-determination, women’s rights have often been considered divisive and external to the indigenous struggle and connected to “external values” or “Western values” that privilege individual over communal rights. Such a false dichotomy between collective and women’s rights has, paradoxically, further entrenched the vulnerability of indigenous women to abuse and violence. Indigenous women are therefore stripped of their right to self-determination by both violations against their collective rights, as members of indigenous communities, and violations against their individual rights as sub-collectives within those communities.<sup>78</sup>

#### **Fourth Principle: Active participation**

44. Indigenous women must be given the opportunity to participate in all the processes that affect their rights. The IACHR considers it a priority for women who define themselves as members of indigenous peoples to participate and express their views in relevant processes, which have repercussions on their rights, including the drafting of this report. Like the peoples they belong to, indigenous women are entitled to participate in the formulation, implementation and evaluation of any and all policies and programs that may affect them. This principle has been recognized in Article XXIII (sections 1 and 2) and XXXII of the American Declaration on the Rights of Indigenous Peoples; Articles 5 and 23 of the United Nations Declaration on the Rights of Indigenous Peoples; and Article 7 of ILO Convention 169, among other instruments. The IACHR finds that the right to participation is of a substantive and instrumental nature for the exercise of all the rights of

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<sup>77</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 75.

<sup>78</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 13.

women, including indigenous women.<sup>79</sup> Indeed, the acknowledgement of the empowerment of indigenous women to advocate for their rights, which was highlighted above as a guiding principle for State action, is realized in practice through their integration and active participation in the processes that affect their rights.

### **Fifth Principle: Incorporation of their perspective**

45. Indigenous women’s worldview must be taken into account in all policies that affect them. The IACHR deems it essential for indigenous women’s particular conception of their rights and of “good living,” as well as the specific forms of violence and discrimination that affect them, to be taken into account. In this respect, the United Nations’ Economic Commission for Latin America and the Caribbean (hereinafter “ECLAC”) has established that “when the health of indigenous women is involved, the collective dimension cannot be obviated; in this regard, it must be considered a comprehensive and holistic matter, which is incumbent upon all members of the community and includes physical, social, mental, environmental and spiritual dimensions.”<sup>80</sup> Therefore, the definition of the substance of the rights that are applicable to indigenous women not only encompasses what is set forth in international instruments, but also how indigenous women understand these instruments in light of their experiences.

### **Sixth Principle: Indivisibility**

46. The principle of indivisibility of human rights is essential to the complete and effective protection of indigenous women’s rights. In the legal precedents established by the IACHR, it has underscored the universal, indivisible, interdependent, and interrelated nature of all human rights; a principle particularly relevant to indigenous women.<sup>81</sup> This entails, on the one hand, a close connection between the protection of indigenous women’s civil and political rights and economic, social and cultural rights. On the other hand, it means States have a duty to pay special attention to social sectors and individuals –such as indigenous women– who have endured forms of

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<sup>79</sup> IACHR, *The Road toward a Substantive Democracy: Political Participation of Women in the Americas*, OEA/Ser.L/V/II, April 18, 2011, paragraphs 92, 97-98.

<sup>80</sup> ECLAC, *Mujeres indígenas en América Latina: Dinámicas demográficas y sociales en el marco de los derechos humanos* [*Indigenous Women in Latin America: Demographic and Social Dynamics in the Human Rights Framework*], October 2013, p. 57; UN Department of Economic and Social Issues, *Status of the World’s Indigenous Peoples* ST/ESA/328, 2009, pg 6; IACHR; IACHR, *Report Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, OEA/Ser.L/V/II. Doc. 56/09, December 30, 2009, para. 24.

<sup>81</sup> United Nations, *Vienna Declaration and Programme of Action*, World Human Rights Conference, June 14-25, 1993, A/CONF.157/23, July 12, 1993, para. 5.

historical exclusion or are victims of persistent prejudice, and immediately adopt the necessary measures to prevent, reduce and eliminate conditions and attitudes that generate or perpetuate discrimination in practice. These principles are reflected in the instruments governing the workings of the Inter-American human rights system, as well as those of the universal human rights system, which also apply to signatory states in the Americas.

### **Seventh Principle: Collective dimension**

47. Indigenous women’s rights must be understood in their individual and collective dimensions, which are both inextricably related. In their efforts to protect the rights of indigenous women, States must take into consideration the individual and collective nature of their rights. In this respect, in a meeting of experts on indigenous women’s rights, it was underscored that:

We believe that when women’s capacity to demand their rights is strengthened, their peoples are also strengthened. For this reason, any approach to indigenous women’s health, or any other right, means taking into account at all times elements of their peoples’ worldview, culture, traditions, forms of organization, and collective rights. In this way, the struggle for indigenous women’s rights becomes a collective struggle and not a threat of exclusion or disruption to their community and identity as a people.<sup>82</sup>

48. The United Nations Special Rapporteur on the Rights of Indigenous Peoples has also stated in this regard that:

Such multiple victimization and the denial of the agency of indigenous women has had a pronounced impact on the prevalence of violence and abuses through the entrenchment of power structures that create and perpetuate systematic vulnerability. The further loss of women’s agency caused by those violations then negatively impacts collective efforts to fight group rights, thereby contributing to negative cyclical patterns.<sup>83</sup>

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<sup>82</sup> Continental Liaison of Indigenous Women, *Indigenous Women of the Americas: Methodological and conceptual guidelines to confront situations of multiple discrimination* (2014), p. 16 [in English version].

<sup>83</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 14.

49. The IACHR has also been informed in multiple contexts throughout the Americas about the particular role indigenous women play in their communities with regard to the continuation of their culture and the survival of their people. Consequently, the Commission has held that violence against indigenous women is perceived not only as an attack on those women individually, but often involves harm to the collective identity of the communities to which they belong.<sup>84</sup> It is therefore understood to constitute spiritual violence. Accordingly, the IACHR reaffirms that indigenous women and their communities experience the impact of violence in very particular ways.<sup>85</sup>
50. Lastly, the IACHR considers it to be important in this report to stress the evolutionary and progressive nature of all human rights.<sup>86</sup> Accordingly, it examines in the next section sources of international and regional law that are relevant to indigenous women, taking into consideration that standards are in a continual process of development and must be interpreted at all times in pursuit of the most protective approach to indigenous women's rights.

### ***C. Relevant standards of international law***

51. Both the Inter-American and the universal systems have developed parallel lines of standards for women's rights and indigenous peoples' rights. The effectiveness of efforts to protect the rights of indigenous women is contingent upon connecting these lines of standards and developing future guidelines that take into consideration this duality in the identity of indigenous women. The Commission also observes that international legal standards in this field are still in development and that more spaces need to be created in order to ensure that indigenous women are able to effectively participate in this process of development of standards at the national, regional, and international levels.

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<sup>84</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, para. 99.

<sup>85</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, para. 99. II.15

<sup>86</sup> *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99, October 1, 1999. Series A No. 16, para. 114 and *Case of the Mapiripán Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134, para. 106. In the European Court see ECHR, *Case of Tyrer v. United Kingdom*, (No. 5856/72), Ruling of April 25, 1978, para. 31.

## 1. Equality and Non-Discrimination

52. States' obligations in the area of equality and non-discrimination constitute the cornerstone for the protection of indigenous women's rights. Indigenous women face numerous forms of discrimination and marginalization based especially on their sex, gender, ethnic origin, age and socio-economic circumstances<sup>87</sup> and, therefore, it is essential to bear in mind the intersection of all of these factors. The many forms of discrimination to which they are subjected raise significant barriers for them to access basic health and education services, food, decent and quality employment, and to fully participate in public and political life in their countries<sup>88</sup> therefore hampering their ability to fully exercise their human rights.<sup>89</sup> In the case of the Caribbean, in addition to the aforementioned sources of discrimination, indigenous women emphasized the discrimination that they have experienced as a consequence of their invisibility from the narrative of Caribbean modern history, which has focused on the tragedies of slavery and indentureship, and portrays the indigenous communities as having been eliminated long ago.<sup>90</sup> Indigenous women reported to the IACHR that the exclusion of indigenous communities from data collection in the Caribbean has also served to invisibilize their existence within these countries and their specific rights and needs as women and members of these communities; affected their sense of belonging and identity; and increased their marginalization and vulnerability.<sup>91</sup> As such, equality can only be

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<sup>87</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 5.

<sup>88</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OAS/Ser.L/V/II.143, Doc. 59, November 3, 2011, para. 8; UN Women Brazil, *Mulheres indígenas organizam plenária na programação oficial do Acampamento Terra Livre*, April 24, 2017; UN Women Brazil, *A voz das mulheres indígenas no Acampamento Terra Livre*, April 27, 2017; UN Women Brazil, *No Dia Laranja, ONU alerta para violência contra mulheres indígenas*, April 25, 2017.

<sup>89</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OAS/Ser.L/V/II.143, Doc. 59, November 3, 2011, para. 8.

<sup>90</sup> Melanie Newton, *Interview*, at the Symposium "Indigenous Geographies and Caribbean Feminisms: Common Struggles against Global Capitalism," St. Augustine University, Trinidad and Tobago, March 31, 2017; Roberta Clarke, *Opening Remarks, Indigenous Women in the Caribbean: Voice, Participation and Influence for Sustainable Development*, Conference held on 9-10 October, 2008, Guyana.

<sup>91</sup> Interview with Aleisha Holder, member and legal adviser of the Santa Rosa First Peoples Community of Trinidad and Tobago, July 7, 2017; Melanie Newton, *Interview*, at the Symposium "Indigenous Geographies and Caribbean Feminisms: Common Struggles against Global Capitalism," St. Augustine University, Trinidad and Tobago, March 31, 2017.

achieved when all the causes as well as the consequences of this historical discrimination are properly addressed.

53. The Inter-American Commission and Court have recognized that the various and intersectional forms of discrimination faced by indigenous women heighten their vulnerability to violence, promote the repetition of discrimination, and contribute to impunity for human rights violations committed against them.<sup>92</sup> Consequently, the Inter-American system has put forward a set of principles that are relevant to the study of the right of indigenous women to equality and non-discrimination, using both the instruments and legal precedents of the Inter-American and universal systems as a framework.<sup>93</sup>
54. The Inter-American Court has asserted that there is an “inseparable connection” between the obligation to respect and guarantee human rights, as established in Article 1.1 of the American Convention, and the principles of equality and non-discrimination.<sup>94</sup> Both the Court and the Commission have repeatedly noted that States are obligated to adopt all necessary measures to confront both direct and indirect discrimination,<sup>95</sup> which include: i) eliminating discriminatory laws from their legal systems; ii)

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<sup>92</sup> See: IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 195; IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, para. 95; IA Court. *Case of Fernández Ortega et al v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment August 30, 2010 Series C No. 215; IA Court. *Case of Rosendo Cantú et al v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment August 31, 2010, Series C No. 216; IACHR, Report 04/04, Case 11.625, *María Eugenia Morales de Sierra (Guatemala)*, Merits, January 19, 2001, para. 52; IA Court. *Case of González et al (“Cotton Fields”) v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment November 16, 2009. Series C No.205, para. 133-134, 228-229; IA Court. *Case of Veliz Franco et al v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment May 19, 2014. Series C No. 277, para. 213.

<sup>93</sup> American Convention on Human Rights; American Declaration on the Rights and Duties of Man; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Belém do Pará Convention”); International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against All Forms of Racial Discrimination; International Labor Organization Convention 169; United Nations Declaration on the Rights of Indigenous Peoples; Additionally, in June 2013, two Inter-American conventions were adopted on the subject of non-discrimination, which have not yet entered into force: the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance and the Inter-American Convention against All Forms of Discrimination and Intolerance.

<sup>94</sup> IA Court. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18, para. 85

<sup>95</sup> IACHR, Report 80/11, Case 12.626, *Jessica Lenahan (González) et al (United States)*, July 21, 2011, para. 109; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, IACHR, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007), para. 90; IACHR, *Universalization of the Inter-American System of Human Rights*, IACHR, OAS/Ser.L./V/II.152, Doc.21 (August 14, 214), para. 7.

refraining from introducing laws that are discriminatory in their texts or their effects; iii) combating discriminatory practices, patterns, and beliefs; and v) establishing rules and adopting the necessary measures to recognize and ensure effective equality of all persons before the law, which may include special measures of affirmative action.<sup>96</sup> States must provide reasons to justify differential treatment based on factors such as gender or race.<sup>97</sup> Situations in which States treat people differently based on factors such as gender or race are subjected to the strictest standard of review in light of the fundamental nature of the prohibition of discrimination.<sup>98</sup>

55. The American Declaration on the Rights of Indigenous Peoples<sup>99</sup> also sets out core principles of equality and nondiscrimination. Article VII of the Declaration reaffirms the right of all indigenous women to the recognition, protection, and enjoyment of all human rights and fundamental freedoms provided for in international law, free from all forms of discrimination and violence. It also recognizes that violence against indigenous peoples and persons, particularly women, hinders or nullifies the enjoyment of all human rights and fundamental freedoms, and calls on States to prevent and eradicate all forms of violence and discrimination against indigenous women and girls.
56. The United Nations Committee on the Elimination of Discrimination against Women (hereinafter, the “CEDAW Committee”) has embraced an intersectional approach to understanding State obligations to prevent and

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<sup>96</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing the Economic, Social and Cultural Rights of Women*, OAS/Ser.L/V/II.143, Doc.59 (November 3, 2011), para. 332 et ss.; IACHR, *Universalization of the Inter-American System of Human Rights*, IACHR, OAS/Ser.L/V/II.152, Doc.21 (August 14, 2014), para. 7; IACHR, *Access to justice for women victims of violence in the Americas*, OAS/Ser.L/V/II, Doc.66 (January 20, 2007), para. 294 et ss.; IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, Doc.30/14 (December 21, 2014), para. 304 et ss.; IA Court. *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment June 23, 2005, Series C No. 127, para. 185; IA Court. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18, para. 104; IA Court. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment August 24, 2010 Series C No. 214, para. 271; United Nations, Human Rights Committee, *General Comment 28: Non Discrimination*, November 10, 1989, para. 6; IA Court. *Case of Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, Judgment February 24, 2012, Series C No. 239, para. 80.

<sup>97</sup> IACHR, Report 04/04, Case 11.625, *María Eugenia Morales de Sierra* (Guatemala), Merits, January 19, 2001, para. 36; IA Court. *Case of Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, Judgment February 24, 2012, Series C No. 239, para. 131; IACHR, Report 51/01, Case 9.903, *Ferrer-Mazorra et al* (United States), April 16, 2001, para. 238.

<sup>98</sup> IACHR, Report Nº 4/01, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001.

<sup>99</sup> OAS, *American Declaration on the Rights of Indigenous Peoples*, OEA/Ser.K/XI/GT/DADIN/doc. 334/08 rev.12.

respond to discrimination against women, recognizing that not all women experience discrimination in the same way.<sup>100</sup> The United Nations Rapporteur on the Rights of Indigenous Peoples has emphasized that indigenous women face a “broad, multifaceted and complex spectrum of mutually reinforcing human rights abuses”<sup>101</sup> which are influenced by “multiple and intersecting forms of vulnerability, including patriarchal power structures; multiple forms of discrimination and marginalization, based on gender, class, ethnic origin and socioeconomic circumstances; and historical and current violations of the right to self-determination and control of resources.”<sup>102</sup>

57. Based on the foregoing, the IACHR finds that the problem of discrimination against indigenous women must be addressed with an intersectional and holistic approach, inasmuch as the implications of gender-based discrimination and violence are concrete and specific, especially affecting indigenous women. They also collectively affect their communities, given the women’s role in sustaining and transmitting indigenous cultures, the circumstances in which they live, and the context of their families, communities, and culture.

## 2. Self-Determination, Cultural Identity, Property, Consultation and Consent

58. In addressing the human rights of indigenous peoples and, consequently, of indigenous women, it is essential to recall that they are holders of, and are entitled to, the collective right to self-determination.<sup>103</sup> Self-determination means that indigenous peoples have the right to freely determine their

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<sup>100</sup> United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation N° 28: Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, December 16, 2010, U.N. Doc. CEDAW/C/GC/28, para. 18.

<sup>101</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 5.

<sup>102</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 5.

<sup>103</sup> International Labor Organization, Convention 169; *United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013; *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172. See also: IACHR, *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*, OEA/Ser.L/V/II., Doc. 47/15, 31 December 2015, paras. 237-239; IACHR. *Rights of Indigenous and Tribal Peoples over their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, paras. 165-166. IACHR. *Report Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas*. OEA/Ser.L/V/II.Doc. 47/13. December 30, 2013, paras. 21-23.

economic, social, and cultural development in such a way that enables them to ensure their existence and well-being as differentiated peoples,<sup>104</sup> and it has been regarded in the international sphere as a prior condition for compliance with other rights.<sup>105</sup> In this regard, self-determination is closely tied to the exercise of other specific rights of indigenous peoples such as the right to integrity, cultural identity and collective property of their ancestral territories in order to maintain that identity.<sup>106</sup> Article III of the American Declaration on the Rights of Indigenous Peoples has also reaffirmed that indigenous peoples have the right to self-determination, which entails their right to freely determine their political status, and pursue their economic, social and cultural development.

59. The United Nations Special Rapporteur on the Rights of Indigenous Peoples has asserted that when examining the rights of indigenous women and girls, “it is vital to consider the unique historical experiences of indigenous communities,” and their “strong inter-generational element”<sup>107</sup> which include historically and currently endemic violations of the right to self-determination, gross and sustained assaults on their cultural integrity, and practices that strip indigenous peoples of autonomy over land and natural

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<sup>104</sup> IACHR, *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*, OEA/Ser.L/V/II., Doc. 47/15, 31 December 2015, paras. 237-239. See also: *United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013; ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries, 1989; United Nations, Permanent Forum on Indigenous and Tribal Peoples, *Consolidated Report on Extractive Industries and their Impact on Indigenous Peoples*, E/C.19/2013/16. February 20, 2013, para. 19; Regional Conference on Population and Development in Latin America and the Caribbean, *Consensus of Montevideo on Population and Development. Montevideo: 2013*, Preamble, para. 1.

<sup>105</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 11.

<sup>106</sup> IACHR, *Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities*, OEA/Ser.L/V/II., Doc. 47/15, 31 December 2015, paras. 237-239; IACHR, *Rights of Indigenous and Tribal Peoples over their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, paras. 160-161; IA Court; *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment June 17, 2005, Series C No. 125, para. 157(c); IA Court. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment August 24, 2010, Series C No. 214, paras. 171-182; IA Court. *Case of the Kichwa de Sarayaku Indigenous People v. Ecuador*. Merits and Reparations. Judgment June 27, 2012, Series C No. 245, para. 217; IA Court. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment June 17, 2005. Series C No. 125, para. 146.

<sup>107</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 12.

resources.<sup>108</sup> All of these violations of the right to self-determination “have been highly detrimental to the advancement of the rights of indigenous women and girls in a number of ways.”<sup>109</sup> For instance, as was mentioned previously, for indigenous communities claiming their right to self-determination, women’s rights have often been considered related to “external values” that privilege individual over communal rights, which has, paradoxically, further increased indigenous women’s vulnerability to abuse and violence.<sup>110</sup> Both the right to self-determination and women’s rights to equality and non-discrimination must be accorded full respect by States.<sup>111</sup>

60. Indigenous peoples have a close tie to their land, territory, and natural resources, inasmuch as these sustain their cultural identity, knowledge, and spirituality. In light of this, both the Commission and the Court have concluded that the failure of the State to guarantee indigenous communities’ right to their ancestral territory can impede the exercise of a range of other rights, as their effective access to their lands is directly related to the preservation of their means of survival and way of life.<sup>112</sup> Indigenous peoples’ right to property has been construed as both an individual and a collective right.<sup>113</sup> In this regard, the Commission highlights that Articles VI and XV of the American Declaration on the Rights of Indigenous Peoples have reaffirmed the collective nature of indigenous peoples’ rights, including their right to their lands, territories and resources, and how these are indispensable for their existence, well-being, and integral development as peoples. Although this collective conception of property differs from the more classic understanding of the right to property, the Commission and the Court have been clear that collective property is entitled to full protection under Article 21 of the American Convention.<sup>114</sup> The preservation of their

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<sup>108</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 12.

<sup>109</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 12.

<sup>110</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 13.

<sup>111</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 75.

<sup>112</sup> IA Court. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Judgment June 17, 2005, Series C No. 125, para. 157b); IACHR, Report 75/02, Case 11.140, *Mary and Carrie Dann* (United States), December 27, 2002, para. 130.

<sup>113</sup> IACHR, Report 40/04, Case 12.053, *Mayan Indigenous Communities* (Belize), October 12, 2004, para. 151. See *inter alia*, IACHR, Report 75/02, Case 11.140, *Mary and Carrie Dann* (United States), December 27, 2002, para. 130.

<sup>114</sup> IA Court. *Case of the Kuna de Madugandi and Embera de Bayano indigenous peoples*, Judgment October 14, 2014, Series C No. 284, para. 111; IA Court. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No.

lands is a fundamental element to effectively guarantee their human rights and, therefore, the legal framework regarding distribution and use of communal lands must be in accordance with their customary law, values, and customs.<sup>115</sup>

61. Both the Commission and the Court have established that recuperation, recognition, delimitation, demarcation, and registration of lands are all essential rights for cultural survival and preservation of community integrity.<sup>116</sup> The recognition of their land rights must be made in full, and have legal certainty as to its stability.<sup>117</sup> Consequently, there is a correlative obligation of the State to prevent encroachment or colonization of indigenous or tribal territories by outsiders,<sup>118</sup> as well as to return ancestral lands and territories when those lands have been taken or their use restricted absent prior consent.<sup>119</sup> The Court found that indigenous peoples' right to their ancestral territories was permanent in the use and enjoyment of their lands, including territories which they have inhabited for generations, and those to which they have been relocated.<sup>120</sup>
62. The loss of lands has a disproportionate impact on indigenous women, because usually "they lose their traditional livelihoods, such as food

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146, para. 120; IA Court. *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and reparations. Judgment of June 27, 2012. Series C No. 245, para. 145.

<sup>115</sup> IACHR. *Rights of Indigenous and Tribal Peoples over their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II. Doc. 56/09, December 30, 2009, paras. 63, 65-66.

<sup>116</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59/00, June 2, 2000, para. 16; IA Court. *Case of the Yakyé Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment June 17, 2005, Series C No. 125, para. 146; IA Court. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment August 31, 2001. Series C No. 79, para. 153; IA Court. *Case of the Kuna de Madugandí and Embera de Bayano indigenous peoples*, Judgment October 14, 2014, Series C No. 284, paras. 111-124, 146.

<sup>117</sup> IA Court. *Case of the Saramaka People v. Suriname*. Preliminary Objection, Merits, Reparations and Costs. Judgment November 28, 2007, Series C No. 172, para. 113; IA Court. *Case of the Kuna de Madugandí and Embera de Bayano indigenous peoples*, Judgment October 14, 2014, Series C No. 284, para. 135.

<sup>118</sup> IACHR. *Rights of Indigenous and Tribal Peoples over their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II. Doc. 56/09, December 30, 2009, para. 114.

<sup>119</sup> IACHR, Report No. 40/04, Case 12.053, Mayan Indigenous Communities of the Toledo District (Belize), October 12, 2004, para. 115; IA Court. *Case of the Kuna de Madugandí and Embera de Bayano indigenous peoples*, Judgment October 14, 2014, Series C No. 284, paras. 111-124, 146.

<sup>120</sup> IA Court. *Case of the Kuna de Madugandí and Embera de Bayano indigenous peoples*, Judgment October 14, 2014, Series C No. 284, paras. 111-124, 120-121.

gathering, agricultural production, herding among others”,<sup>121</sup> in addition to losing their key roles within their communities. The IACHR has previously stressed the fact that indigenous women are generally recognized as “the key to the continuation of their culture, the guarantors of their peoples’ survival.”<sup>122</sup> The loss of land thus entails harm to women in their key roles within the community, as well as having a serious impact on the collective identity. As the United Nations Special Rapporteur on the Rights of Indigenous Peoples has indicated, violations of land rights “often disproportionately impact women in their roles of caregivers and guardians of the local environment.”<sup>123</sup> In turn, this loss of land, of means of livelihood, and of cultural roles can create “vulnerability to abuse and violence, such as sexual violence, exploitation and [human] trafficking.”<sup>124</sup>

63. External threats to indigenous land rights – such as large-scale economic projects, environmental degradation, mass tourism, or armed conflicts – are not the only cause of abuses of indigenous women’s rights in relation to land, in view of the fact that “the roles that women hold within indigenous communities and the way that some indigenous property frameworks reflect patriarchal power structures [causes] significant barriers to holding and inheriting land [for indigenous women].”<sup>125</sup> The IACHR reminds States that they are required to adopt immediate, deliberate, and concrete measures to eliminate barriers that prevent women’s access to economic resources and their ability to exert control over these resources.<sup>126</sup>
64. One right that is closely linked to the rights to property, cultural identity, and participation is the right to free, prior and informed consultation and consent, in any decisions relating to measures that affect their territories, or that have an impact on their rights or interests, especially in the case of large-scale projects.<sup>127</sup> In order to achieve effective participation of

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<sup>121</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 16.

<sup>122</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, Doc.30/14 (December 21, 2014), paras. 99, 147.

<sup>123</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 16.

<sup>124</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 16.

<sup>125</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 17.

<sup>126</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OAS/Ser.L/V/II.143, Doc. 59, November 3, 2011, para. 255.

<sup>127</sup> United Nations, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Liberties of Indigenous People*, James Anaya, Doc. UN A/HRC/12/34, July 15, 2009, paras. 62-63; IACHR, *Democracy and Human Rights in Venezuela*, Doc. OEA/Ser.L/V/II, Doc. 54, December 30, 2009, para. 1058; IA Court. *Case of Yatama v. Nicaragua*. Judgment June 23, 2005.

indigenous peoples,<sup>128</sup> prior,<sup>129</sup> informed,<sup>130</sup> culturally appropriate,<sup>131</sup> and good faith consultations must be carried out, with an aim to reach an agreement.<sup>132</sup> Conducting consultation processes is the exclusive responsibility of States, and not of private entities.<sup>133</sup> Additionally, the Commission underscores that a consultation is defined “not as a single act, but as a process of dialogue and negotiation that involves both parties’ good faith and the aim of reaching mutual agreement.”<sup>134</sup>

65. The effective participation of indigenous women in consultation processes is fundamental. The Commission has indicated that it is essential to take into account the needs of indigenous women in the design of laws and public

Series C No. 127, para. 225; IA Court. *Case of the Kichwa de Sarayaku Indigenous People v. Ecuador*. Merits and Reparations. Judgment June 27, 2012. Series C No. 245, paras. 147, 177. See also International Labour Organization, *Convention 169, art.7, United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, art. 5 and 23.

<sup>128</sup> IA Court. *Case of the Saramaka People v. Suriname*. Preliminary Objection, Merits, Reparations and Costs. Judgment November 28, 2007, Series C No. 172, paras. 127, 128; IA Court. *Case of the Kichwa de Sarayaku Indigenous People v. Ecuador*. Merits and Reparations. Judgment June 27, 2012, Series C No. 245. paras. 159-167.

<sup>129</sup> IA Court. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 28, 2007, Series C No. 172, paras. 133, 147; United Nations, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Liberties of Indigenous People*, James Anaya, Doc. UN A/HRC/12/34, July 15, 2009, para. 65; IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paras. 302-304.

<sup>130</sup> IACHR, Report No. 40/04, Case 12.053, *Mayan Indigenous Communities of the District of Toledo (Belize)*, October 12, 2004, para. 142; IA Court. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 28, 2007, Series C No. 172, para. 133; IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paras. 308-314.

<sup>131</sup> IA Court. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 28, 2007, Series C No. 172, paras. 131, 133, 154; IA Court. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment August 12, 2008, Series C No. 185, para. 18; IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paras. 305-307.

<sup>132</sup> IA Court. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 28, 2007, Series C No. 172, para. 133.

<sup>133</sup> IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, para. 291.

<sup>134</sup> IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, para. 292.

policies<sup>135</sup>, and has made indigenous women’s participation and full expression in the relevant processes that affect their rights a guiding principle in this report.<sup>136</sup> For this reason, the Commission has recommended that States “take such institutional measures as may be necessary to facilitate greater political participation of indigenous women, such as increasing the capacity for coordination, and for these women and the organizations representing them to promote their own specific interests, as well as to establish and strengthen opportunities for dialogue between community leaders and government.”<sup>137</sup>

### 3. Violence, Due Diligence and Access to Justice

66. Violence is one of the most alarming problems faced by indigenous women in the hemisphere. The IACHR has developed extensive precedents on the scope of States’ obligations to prevent and address violence against women, using as a framework the Convention of Belém do Pará and the other instruments of the system, which are directly applicable to the situation and realities of indigenous women. The Commission has addressed the specific issue of violence against indigenous women in various thematic reports and country reports with a thematic focus, as explained in the introduction. In its decisions, the Commission has underscored the obligation of States to act with due diligence when any act of violence against women occurs, and to guarantee adequate and effective access to justice.<sup>138</sup> Another topical issue has been the link between violence and discrimination against women, and the need for States not only to adopt measures to address violence, but also to address discrimination as its cause and as a social factor sustaining it.<sup>139</sup> The Commission and the Court have followed much the same approach,

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<sup>135</sup> IACHR, *The Road to Substantive Democracy: Women’s Political Participation in the Americas*, OEA/Ser.L/V/II, April 18, 2011, para. 97.

<sup>136</sup> See Section III of this Report.

<sup>137</sup> IACHR, *The Road to Substantive Democracy: Women’s Political Participation in the Americas*, OEA/Ser.L/V/II, April 18, 2011, para. 97.

<sup>138</sup> IACHR, Merits Report, No. 53/01, Ana, Beatriz, and Cecilia González Pérez (Mexico), April 4, 2001; IA Court. *Case of Fernández Ortega v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment August 30, 2010, Series C No. 215, para. 223; A Court of HR. *Case of Rosendo Cantú et al v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment August 31, 2010. Series C No. 216, para. 206.

<sup>139</sup> IACHR, Merits Report, No. 53/01, Ana, Beatriz, and Cecilia González Pérez (Mexico), April 4, 2001; IA Court. *Case of Fernández Ortega v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment August 30, 2010, Series C No. 215, para. 223; A Court of HR. *Case of Rosendo Cantú et al v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment August 31, 2010. Series C No. 216, para. 206.

reiterating the importance of due diligence in cases of acts of violence or disappearances of women, and indigenous women specifically.<sup>140</sup>

67. It is also noteworthy that the United Nations Special Rapporteur on the Rights of Indigenous Peoples has held that “indigenous systems of governance and power structures are often highly gendered and may exclude women and their perspective from administration of justice and control over the development of social standards and decisions, which impacts women’s vulnerability to abuses of their human rights.”<sup>141</sup> In this regard, the IACHR reiterates that States have the obligation to ensure the right of indigenous women to live free from violence, an obligation that covers all spheres of an indigenous women’s life, including violence inside or outside of the community and at home, and involves duties of prevention and response with respect to State agents.
68. Article 2 of the Convention of Belém do Pará includes a definition of violence against women, which encompasses physical, psychological, and sexual violence. As will be discussed in greater detail in a subsequent section, in addition to reports of physical, psychological and sexual violence, the IACHR has also received consistent reports of spiritual and obstetric violence, which the Commission also considers to be prohibited under the Convention of Belém do Pará and other Inter-American instruments. The Inter-American Commission and the Court have clarified that the duty to act with due diligence establishes that, even when conduct may not initially be directly imputable to a State, an act of violence against women may lead to State responsibility when the State has failed to adopt all appropriate measures to amend or repeal existing laws and regulations, or to modify legal or customary practices which sustain the persistence and tolerance of violence against women.<sup>142</sup>
69. Articles 8 and 25 of the American Convention on Human Rights, Article XVIII of the American Declaration on the Rights and Duties of Man, and Article 7 of the Convention of Belém do Pará, all establish that women have the right to access a simple and prompt judicial remedy to ensure due process when they report human rights violations. These instruments also set forth the

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<sup>140</sup> IA Court. *Case of Fernández Ortega v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment August 30, 2010, Series C No. 215, para. 223; A Court of HR. *Case of Rosendo Cantú et al v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment August 31, 2010. Series C No. 216, para. 206; IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II., December 21, 2014.

<sup>141</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 71.

<sup>142</sup> IACHR, Report N° 80/11, Cases 12.626, *Jessica Lenahan (Gonzales) et al v. United States*, July 21, 2011; IACHR, Report N° 4/01, *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001.

obligation of States to act with the required due diligence to prevent, investigate, prosecute, punish, and grant reparations when such acts occur. The Inter-American Court of Human Rights has ruled to this effect in multiple judgments, holding that every person who is a victim of human rights violations has the right to an investigation capable of clarifying the facts and responsibilities.<sup>143</sup> In this respect, in the case judgments of the *Massacre of Río Negro* and the *Massacre of las Dos Erres*, the Inter-American Court held that the right to access to justice must ensure, within a reasonable time, the right of the victims and/or their family members to a full and effective investigation designed to clarify what happened and hold those responsible to account.<sup>144</sup>

70. The standard of due diligence applies to the entire state structure, including the legislative framework, public policies, the work of law-enforcement agencies, such as the police and the judicial system, to prevent and respond adequately to human rights violations such as violence against women.<sup>145</sup> This includes the obligation to ensure access to adequate and effective judicial remedies for the victims and their families.<sup>146</sup> It is important to note that the principle of due diligence has been used by the IACHR and the Inter-American Court to issue rulings and find States accountable in cases where the human rights violations were committed by private individuals in circumstances in which the State had a duty of protection, a duty of response, or both.<sup>147</sup>
71. The IACHR has recognized four principles related to the application of the due diligence standard which must govern States' actions when acts of violence are committed against indigenous women:

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<sup>143</sup> IA Court. *Case of Barrios Altos v. Peru*, Judgment March 14, 2001, Series C No. 75, para. 48; IA Court. *Case of the Miguel Castro Castro Prison v. Peru*, Judgment November 25, 2006, Series C No. 160, para. 382; IA Court. *Case of the Massacre of de Pueblo Bello v. Colombia*, Judgment January 31, 2006, Series C No. 140, para. 171.

<sup>144</sup> IA Court. *Case of the Massacres of Río Negro v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment September 4, 2012 Series C No. 250, para. 191; IA Court. *Case of the Massacres of Río Negro v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment November 24, 2009, Series C No. 211, para. 105.

<sup>145</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 41.

<sup>146</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 43.

<sup>147</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 41; IACHR, Report No. 28/07, Cases 12.496-12.498, Claudia Ivette Gonzalez et al (Mexico), March 9, 2007, paras. 160-255; IA Court. *Case of González et al ("Cotton Fields") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment November 16, 2009. Series C No. 205.

1. The State may incur international responsibility for failing to act with due diligence to prevent, investigate, punish and offer reparation for acts of violence against women, and this is a duty which, in certain circumstances, will apply to actions committed by private actors;<sup>148</sup>
2. States must recognize the link between discrimination, violence against women, and the obligation of due diligence. This means that States have the duty not only to adopt measures to address and respond to violence against women, but also to prevent discrimination, which perpetuates this problem.<sup>149</sup> States must adopt “the required measures to modify the social and cultural patterns of conduct of men and women and to eliminate the prejudices, customary practices and other practices based on the idea of the inferiority or superiority of either of the sexes, and on stereotyped roles for men and women;”<sup>150</sup>
3. There is a 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 are subjected to acts of violence;<sup>151</sup>
4. Certain groups of women have been identified as being at particular risk for acts of violence, as a result of the intersecting forms of discrimination they are subjected to, such as girls and women belonging to certain ethnic, racial, and other groups. This factor must be

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<sup>148</sup> See in general: IACHR, Report N° 80/11, Cases 12.626, *Jessica Lenahan (Gonzales) et al v. United States*, July 21, 2011, para. 126; IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González et al (Mexico)*, March 9, 2007; European Court of Human Rights, *Case of Opuz v. Turkey*, Petition No. 33401/02, June 9, 2009; CEDAW Committee, Opinion on Communication 6/2005, *Fatma Yildirim v. Austria* (July 21, 2004).

<sup>149</sup> See, as example, IACHR, Report N° 80/11, Cases 12.626, *Jessica Lenahan (Gonzales) et al v. United States*, July 21, 2011, para. 126; United Nations, *Declaration on the Elimination of Violence against Women*, General Assembly Resolution 48/104, December 20, 1993, A/RES/48/104, February 23, 1994, Articles 3 and 4; United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 19, Violence against Women*, UN Doc. HRI/GEN/1//Rev.1 (1994), paras. 1, 11, and 23; IACHR, Report N° 4/01, *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 44.

<sup>150</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 42; IACHR, Report N° 80/11, Cases 12.626, *Jessica Lenahan (Gonzales) et al v. United States*, July 21, 2011, para. 126.

<sup>151</sup> See, as example, United Nations General Assembly Resolution, *intensification of efforts to eliminate all forms of violence against women*, A/RES/63/155, January 30, 2009, paras. 11, 14, 15 and 16; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, IACHR, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007); paras. 123-216; IACHR, Report N° 80/11, Cases 12.626, *Jessica Lenahan (Gonzales) et al v. United States*, July 21, 2011, para. 127; IACHR, Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes* (Brazil), IACHR Annual Report 2001, paras. 36-44.

considered by States in the adoption of measures to prevent all forms of violence.<sup>152</sup>

72. Additionally, in the judgments of the cases of *Tiu Tojín v. Guatemala*, *Fernández Ortega v. Mexico*, *Rosendo Cantú v. Mexico*, the Inter-American Court emphasized that in order for States to ensure access to justice for members of indigenous communities and to adequately respect and guarantee their rights in this context, it is essential to take into account their specific economic and social characteristics, as well as their special situation of vulnerability, their values, and customs.<sup>153</sup> In the judgment of the case of *Rosendo Cantú*, the Inter-American Court held that in order to guarantee access to justice, the State is obligated to ensure support for indigenous women from a gender-based perspective and in consideration of circumstances that increase their exposure to human rights violations.<sup>154</sup> For its part, the IACHR has stressed that effective access of indigenous peoples to their right to judicial protection and due process is especially important, given the context of historical and structural discrimination they have experienced.<sup>155</sup> The IACHR has also underscored that indigenous peoples' adequate access to justice must be guaranteed in accordance with their culture and traditions, and in consonance with the principles of non-discrimination and equality.
73. As explained in more detail in section V of this report, in addition to ensuring access to justice through traditional state institutions, indigenous women are also entitled to access to justice in accordance with indigenous institutions and customs.<sup>156</sup> This is a crucial ingredient to respect their rights

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<sup>152</sup> See: IACHR, Report Nº 80/11, Cases 12.626, *Jessica Lenahan (Gonzales) et al v. United States*, July 21, 2011, para. 127; 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, para. 10; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II.124/Doc.6, October 18, 2006, para. 140; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, IACHR, OEA/Ser.L/V/II, Doc. 68 (January 20, 2007); para. 272; United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation 25*, on temporary special measures, UN Doc./CEDAW/C/2004/I/WP. 1/Rev.1 (2004), section II, para. 12.

<sup>153</sup> IA Court. *Case of Fernández Ortega v. Mexico*, Preliminary Objection, Reparations and Costs, Judgment August 30, 2010, Series C No. 215; IA Court. *Case of Tiu Tojín v. Guatemala*, Merits, Reparations and Costs, Judgment November 26, 2008, Series C No. 190, para. 96.

<sup>154</sup> IA Court. *Case of Rosendo Cantú v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment August 31, 2010, Series C No. 216, paras. 184 and 213.

<sup>155</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc. 30/14, December 21, 2014, para. 118.

<sup>156</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 200; ILO Convention No. 169, Article 9; *United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, Article 34; IACHR. *Third Report on the Situation of Human Rights in Guatemala*. OEA/Ser.L/V/II.66. Doc. 16, October 3, 1985, para. 13; IA Court. *Case*

to self-determination and cultural identity. In this regard, the IACHR has indicated that States must adopt the necessary measures to guarantee that access to community justice can take place regardless of the coverage and/or procedural workload of State judicial institutions, and stems from respect for the autonomy of indigenous peoples.<sup>157</sup> Consequently, States must establish “guidelines for coordinating official justice with community justice.”<sup>158</sup> While the obligations relating to due diligence, access to justice, and non-discrimination are applicable to both state and indigenous judicial authorities, States must “develop mechanisms that allow indigenous women and girls to pursue other means of recourse against violence if they are unable to obtain support and access to justice within indigenous communities.”<sup>159</sup>

74. It is important to also mention the situation of violence to which indigenous women human rights defenders are often subjected and the special duty of States to protect their lives and personal integrity. In its merits decision on the case of *Ana Teresa Yarce et al (Comuna 13) v. Colombia*, the IACHR reaffirmed that States are obligated to adopt measures to respect and guarantee the right to personal integrity of human rights defenders, including preventing forms of violence such as threats, acts of harassment and murders, and to diligently investigate and punish those responsible for these acts.<sup>160</sup> This duty to prevent and protect has special content for women working in defense of human rights, because of the historical discrimination they face based on gender and on the causes for which they advocate.<sup>161</sup> States have a heightened duty to protect indigenous women human rights defenders, inasmuch as they are victims of multiple forms of discrimination and violence based on their race, ethnicity, and by virtue of being women, and the unsafe circumstances in which they conduct their human rights advocacy work.<sup>162</sup>

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*of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment June 17, 2005. Series C No. 125, para. 63.

<sup>157</sup> IACHR, *Access to Justice and Social Inclusion: The Road toward Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II, June 28, 2007, recommendation 10.

<sup>158</sup> IACHR, *Access to Justice and Social Inclusion: The Road toward Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II, June 28, 2007, recommendation 11.

<sup>159</sup> United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 79(b).

<sup>160</sup> IACHR, Merits Report, Case 12.595, *Ana Teresa Yarce et al (Colombia)*, October 2013.

<sup>161</sup> IACHR, Merits Report, Case 12.595, *Ana Teresa Yarce et al (Colombia)*, October 2013.

<sup>162</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006; para. 231.

75. As for reparations, the Commission and the Court have begun to incorporate and discuss in their decisions the content of reparations with a transformative approach, which requires States to address inequality and structural discrimination affecting all women, including indigenous women. According to the United Nations Special Rapporteur on Violence against Women, “interventions that seek only to ameliorate the abuse and which do not factor in women’s realities are not challenging the fundamental gender inequalities and discrimination that contribute to the abuse in the first place.”<sup>163</sup> In the legal precedents on transformative reparations, the Commission and the Court have stressed the obligation of States to eliminate discrimination in laws and institutions. In various decisions, the Inter-American Commission and Court have explicitly recognized the need to restructure social stereotypes of gender and implement education and training programs from a gender-based perspective, as well as legislative and institutional reforms, which incorporate this approach.<sup>164</sup>

## D. Conclusions

76. In conclusion, the Commission underscores that the effectiveness of any measures adopted with the goal of protecting the rights of indigenous women largely depends on the inclusion of a holistic approach embracing their participation, taking into account their worldview and conceptions, the individual and collective dimension of their rights, and their unique relationship with their territories and the natural resources contained

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<sup>163</sup> United Nations, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, Rashida Manjoo, A/HRC/17/26, May 2, 2011, para. 31.

<sup>164</sup> See, in general, IA Court. *Case of González et al (“Cotton Fields”) v. Mexico*, Preliminary Objection, Merits, Reparations and Costs. Judgment November 16, 2009. Series C No.205, paras. 450, 502, 540; IACHR, Report 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al* (United States), Merits, July 21, 2011, para. 201; IACHR, Report 51/13, Case 12.551, *Paloma Angélica Escobar Ledezma* (Mexico), Merits, July 12, 2013, paras. 153-154; IACHR, Report XX/13, Case 12.777, *Claudina Velásquez Paiz* (Guatemala), Merits, November 2013, recommendations 5, 7 and 8; IACHR, Report 67/11, Case 11.157, *Gladys Carol Espinoza González* (Peru), Admissibility and Merits, March 31, 2011, para. 236, recommendation 8; IACHR, Report XX/13, Case 12.595, *Ana Teresa Yarce* (Colombia), Merits, October 2013, para. 370; IA Court. *Case of Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, Judgment February 24, 2012, Series C No. 239, paras. 267, 269, 284; IA Court. *Case of Artavia Murillo et al (In vitro fertilization) v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment November 28, 2012, Series C No. 257, paras. 336, 341; IA Court. *Case of Veliz Franco et al v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment May 19, 2014. Series C No. 277, paras. 264, 270; IA Court. *Case of Fernández Ortega et al v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment August 30, 2010 Series C No. 215, para. 308, recommendations 14, 19, 20; IA Court. *Case of Rosendo Cantú et al v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment August 31, 2010, Series C No. 216, para. 295, recommendations 12, 17 and 18.

therein. It is essential that States take into consideration the history of institutional and structural discrimination and racism that indigenous women have faced, as well as the intersection of factors that support this history. It is also vital for States to guarantee that indigenous women have effective access to justice when they suffer human rights violations, and a response from the police and judiciary that is culturally and linguistically appropriate. Only in this way will the violations of the fundamental human rights of indigenous women be properly and fully addressed by State actors.

77. The Convention of Belém do Pará requires States to adopt special and prompt measures to prevent and respond to the gender-based violence that affects indigenous women in a systematic and rampant fashion. The following section describes the nature of the institutional and structural violence that indigenous women face and the different settings and contexts where it takes place.



CHAPTER 4  
VIOLENCE AGAINST  
INDIGENOUS WOMEN:  
STRUCTURAL, INDIVIDUAL,  
AND COLLECTIVE DIMENSIONS



## **VIOLENCE AGAINST INDIGENOUS WOMEN: STRUCTURAL, INDIVIDUAL, AND COLLECTIVE DIMENSIONS**

78. Through the implementation of its protection and promotion mechanisms, the IACHR has consistently received information on the acute forms of violence that indigenous women face in the Americas. This chapter of the report will examine the different dimensions of the violence that indigenous women face and the particular way in which they bear the impact of these incidents individually and collectively.

### ***A. Structural Discrimination and Violence***

79. The definition of "violence against women" contained at Articles 1 and 2 of the Convention of Belém do Pará serves as a basic reference in the present report.<sup>165</sup> Article 1 of the Convention defines violence against women "as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere". It then goes on, in Article 2, to explain the different forms of violence covered, including violence:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

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<sup>165</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, "Belém do Pará Convention", articles 1 and 2.

80. The IACHR has interpreted article 2 of the Convention of Belém do Pará to include obstetrics and spiritual violence as forms of violence against women, given their widespread nature in the hemisphere. Obstetrics violence encompasses all situations of disrespectful, abusive, neglectful treatment or denial thereof that take place during the pregnancy, childbirth or postpartum period, in private or public health facilities.<sup>166</sup> This form of violence can manifest itself at any point during the provision of maternal health services to women. It can manifest itself through actions such as the refusal to provide complete information on a medical situation or treatment, the disregard of pain, verbal humiliation, forced and coerced medical interventions, physical violence, invasive practices, or the unnecessary use of medication, for example. Examples of obstetrics violence which indigenous women have faced include being forced to give birth in a supine position rather than a vertical position; coerced sterilizations procedures; or shackling of indigenous women deprived of liberty during labor, among others.<sup>167</sup> Spiritual violence takes place when acts of violence and discrimination against indigenous women not only harm those women individually, but also negatively impact the collective identity of the communities to which they belong.<sup>168</sup> In this regard, the IACHR has understood the barriers to securing indigenous status classification in Canada as rising to the level of cultural and spiritual violence against indigenous women.<sup>169</sup>

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<sup>166</sup> World Health Organization, *The prevention and elimination of disrespect and abuse during facility-based childbirth*, 2015; UNHCR, Report on Preventable Maternal Mortality and Morbidity and Human Rights, A/HRC/14/39, April 16, 2010; UNSR on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/61/338, September 13, 2006; CEDAW, *General Comment No.14 on the right to the highest attainable standard of health*, E/C.12/2000/4, 2000, paras. 8, 44(a).

<sup>167</sup> Joint Statement by UN human rights experts\*, the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights and the Special Rapporteurs on the Rights of Women and Human Rights Defenders of the African Commission on Human and Peoples' Rights, *More needs to be done to protect women's sexual and reproductive health and rights – UN and regional experts On the occasion of the adoption of the 2030 Agenda for Sustainable Development*, September 24, 2015; Supreme Court of Chile, December 1, 2016, *Lorenza Cayuhán Llebul s/amparo*, Rol 92.795-2010.

<sup>168</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II., December 21, 2014; Consejo de Organizaciones Aborígenas de Jujuy (Argentina), Organización Nacional Indígena de Colombia (ONIC), Coalición de Mujeres Unidas rumbo al Desarrollo (Mexico), Indigenous Women of Quebec (FAQ) (Canada), Clinica Internacional de Defensa de los Derechos humanos de la Universidad de Quebec (Canada), Derechos y Democracia (Canada), Abogadas y Abogados para la Justicia y los Derechos Humanos (Mexico); *Report on Discrimination against Indigenous Women in the Americas*, Public Hearing Before the Commission, March 2012.

<sup>169</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II., December 21, 2014, para. 69.

81. As indicated earlier, the Commission monitors the situation of indigenous women based on the premise that there exists a close connection between acts of violence which are committed against them and the historical discrimination that they still face, based on the intersection of their gender, race, ethnicity and frequent situation of poverty.<sup>170</sup> As discussed earlier, indigenous women have historically been the subject of racism, exclusion, and marginalization, factors which influence the structural and institutional discrimination they still face from all sectors of government and society. The Commission has received information from indigenous peoples throughout the Americas indicating that “the problem is not merely that indigenous women do not enjoy their right to equality before the law, but that laws are written and interpreted in ways that discriminate against and endanger them,” impeding their right to *de jure* and *de facto* equality.<sup>171</sup> This institutional discrimination often deprives indigenous women of social and economic services because they lack the necessary state identification documents;<sup>172</sup> obstructs access to health services on the basis of their indigenous language, traditional dress or use of and belief in the effects of traditional medicine;<sup>173</sup> and limits access to justice because of linguistic, geographic, cultural, economic and social barriers.<sup>174</sup>

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<sup>170</sup> See, IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II., December 21, 2014; IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights*, OEA/Ser.L/V/II., December 30, 2013; IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II., December 9, 2011, paras. 301-306; IACHR, *Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II., December 30, 2009; and IACHR, *Legal Standards Related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application*, OEA/Ser.L/V/II., November 3, 2011.

<sup>171</sup> International Indigenous Women’s Forum, *Marin Iwanka Raya: Indigenous Women Stand Against Violence*, Companion Report to the UN Secretary-General’s Study on Violence Against women, 2007, p. 26.

<sup>172</sup> Permanent Forum on Indigenous Issues, *Study on the extent of violence against indigenous women and girls in terms of article 22(2) of the United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, para. 26; IACHR, *Hearing on the Reports of Violations of Human Rights of Indigenous Peoples in Costa Rica*, 153 POS; IACHR, *Hearing on the Rights of Indigenous Peoples to Legal Recognition and Property in Peru*, 153 POS.

<sup>173</sup> Permanent Forum on Indigenous Issues, *Study on the extent of violence against indigenous women and girls in terms of article 22(2) of the United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, para. 26; ECLAC, *Guaranteeing indigenous people’s rights in Latin America: Progress in the past decade and remaining challenges*, November 2014, p. 255.

<sup>174</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, para. 819; IACHR, *Access to Justice of Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II., Doc. 65, December 28, 2011,

82. In addition, the IACHR has repeatedly stressed that discrimination against indigenous women is “a root cause of both the violence itself and the non-responsiveness to that violence.”<sup>175</sup> As was pointed out to the IACHR by civil society organizations and indigenous peoples and organizations, these discriminatory attitudes contribute to “stereotyped, discriminatory perceptions that indigenous women are inferior, sexually available and/or easy victims;”<sup>176</sup> provide the perpetrators with a sense of confidence that acts of violence against indigenous women will not be carefully investigated; and lead to dismissive responses of the police and broader society to indigenous women’s requests for help which are not deemed serious or worthy.<sup>177</sup>
83. It is also important to note that the multiple forms of discrimination faced by indigenous women are committed and sustained by both non-indigenous and indigenous perpetrators.<sup>178</sup> For example, organizations such as the Economic Commission for Latin America and the Caribbean (hereinafter “ECLAC”) have documented reports from indigenous women alluding to the patriarchal and unequal structure that exists in their own communities, which leads to the continuation of practices and beliefs that negatively impact their health and development.<sup>179</sup>
84. In this sense, according to the UN Special Rapporteur on the rights of indigenous peoples:

[T]he endemic violations of collective, civil and political, and economic, social and cultural rights can be seen as constituting a form of structural violence against indigenous women. Structural violence results in women being victimized by the realities of the circumstances of their everyday life and routinely excluded from the rights and resources otherwise

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para. 61; ECLAC, *Guaranteeing indigenous people’s rights in Latin America: Progress in the past decade and remaining challenges*, November 2014, p. 253.

<sup>175</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, para. 139; 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 (March 7, 2003), paras. 7, 11.

<sup>176</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, paras. 98, 139-140.

<sup>177</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, paras. 98, 139-140.

<sup>178</sup> ECLAC, *Guaranteeing indigenous people’s rights in Latin America: Progress in the past decade and remaining challenges*, November 2014, p. 253.

<sup>179</sup> ECLAC, *Guaranteeing indigenous people’s rights in Latin America: Progress in the past decade and remaining challenges*, November 2014, p. 256.

guaranteed to citizens. Structural violence is interlinked and mutually reinforcing with other forms of violence [...].<sup>180</sup>

85. The United Nations Commission on the Status of Women and the International Indigenous Women’s Forum have also observed that the social and economic marginalization of indigenous women makes them invisible to the State and undercuts their ability to both resist and report the human rights violations perpetrated against them, making them easy targets for violence.<sup>181</sup> The Commission recognizes that this impunity and invisibility undermines the ability of indigenous women to change their social and economic circumstances, and perpetuates the cycle of marginalization. In this sense, the former Secretary General of the United Nations Kofi Anna has affirmed that:

Impunity for violence against women compounds the effects of such violence as a mechanism of control. When the State fails to hold the perpetrators accountable, impunity not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is both acceptable and inevitable. As a result, patterns of violent behaviour are normalized.<sup>182</sup>

86. The poverty and marginalization faced by most indigenous women often results in violence against them,<sup>183</sup> and such violence imposes a stigma on the victims within their own community and further marginalizes them.<sup>184</sup> The stigma causes victims to refrain from reporting the violence and maintains the invisibility that causes and perpetuates these acts, solidifying

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<sup>180</sup> United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 46.

<sup>181</sup> Commission on the Status of Women, *Report on the fifty-seventh session*, E/CN.6/2013/11, March 4-15, 2013, para. 21; International Indigenous Women’s Forum, *Marin Iwanka Raya: Indigenous Women Stand Against Violence*, Companion Report to the UN Secretary-General’s Study on Violence Against women, 2007, p. 12.

<sup>182</sup> United Nations, *In-depth study on all forms of violence against women: Report of the Secretary-General*, A/61/122/Add.1 (2006), p. 76.

<sup>183</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, par 289: “The Inter-American Court has written that the authorities’ use of gender stereotypes against women and the resulting inaction on the part of the State when investigating cases involving gender violence, perpetuates the very violence they are purportedly going after, and constitutes discrimination in terms of women’s access to justice.”

<sup>184</sup> IACHR, Meeting of experts on the rights of indigenous women, November 8, 2014; United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 71.

the conditions of powerlessness and vulnerability that made the violence more possible in the first place.<sup>185</sup>

## ***B. Manifestations of Violence against Indigenous Women***

87. The Commission has received information in public hearings, expert meetings, country visits and questionnaires, among other methods, confirming that violence against indigenous women is perpetrated by State and non-state actors, and by indigenous and non-indigenous individuals in various contexts. Violence is often perpetrated against indigenous women during armed conflicts; the implementation of development, investment, and extractive projects; the militarization of their territories; situations of deprivation of liberty; within the family or domestic sphere; and in connection with their involvement in the defense of their human rights. In this section, the report will describe some of the different contexts in which violence is perpetrated against indigenous women, reflecting on the perpetrators, victims, and forms of violence in each context.

### **1. Violence in the context of armed conflict**

88. The IACHR reiterates that armed conflicts increase the vulnerability of marginalized people and groups to human rights violations, creating scenarios for indigenous women to be disproportionately targeted by State and non-state armed actors. The Commission has noted that, during an armed conflict, “all circumstances that have historically exposed women to discrimination and to receive an inferior treatment” are exacerbated, and “exploited and manipulated by the actors of the armed conflict in their struggle to control territory and economic resources.”<sup>186</sup>
89. Numerous types of violence have been used against indigenous women in the context of the armed conflicts that have taken place in the Americas, including acts of sexual violence, sexual slavery, murders, and disappearances. These acts of violence not only constitute violations of the rights to life and personal integrity of indigenous women, but also jeopardize

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<sup>185</sup> IACHR, *Access to Justice of Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II., Doc. 65, December 28, 2011, para. 90; Permanent Forum on Indigenous Issues, *Study on the extent of violence against indigenous women and girls in terms of article 22(2) of the United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, para. 11.

<sup>186</sup> IACHR, *Access to Justice of Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II., Doc. 65, December 28, 2011, para. 69.

their physical and cultural survival.<sup>187</sup> Examples from Guatemala, Colombia, Peru and El Salvador will be discussed in this section to exemplify the multiple forms of discrimination and violence suffered by indigenous women during armed conflicts.

90. The Commission notes that indigenous Mayan women were “specifically targeted by members of the military during the armed conflict in Guatemala,”<sup>188</sup> and constituted “approximately a quarter of the direct victims of human rights violations and acts of violence.”<sup>189</sup> The Commission for Historical Clarification stated that the indigenous Mayan peoples were targeted for “extermination en masse,” including their women, children and elderly.<sup>190</sup> The tactics used were of the most egregious cruelty and of the “most outrageous brutality,”<sup>191</sup> atrocities ranging from rape, torture, amputations, eviscerations, massacres, scorched earth operations, to the opening of the wombs of pregnant women.<sup>192</sup> It was observed that “the loathing and debasement of indigenous women in military parlance during the armed confrontation reached such extremes that women came to be regarded as *meat*.”<sup>193</sup>
91. The majority of the rape victims during the armed conflict in Guatemala were indigenous Mayan women.<sup>194</sup> These acts of violence were perpetrated in the context of a broader campaign to destroy the culture and identity of the Mayan people, involving the destruction of sacred places, cultural symbols and ceremonial centers, repression of indigenous language, culture and dress, and the brutal killing of elders, with the aim of disrupting their social order and way of life.<sup>195</sup> The Commission on Truth and Reconciliation

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<sup>187</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, para. 781.

<sup>188</sup> Commission for Historical Clarification, *Guatemala Memory of Silence*, report of the Commission on Truth and Reconciliation, prologue, paras. 85-88, 91.

<sup>189</sup> Commission for Historical Clarification, *Guatemala Memory of Silence*, report of the Commission on Truth and Reconciliation, para. 29.

<sup>190</sup> Commission for Historical Clarification, *Guatemala Memory of Silence*, report of the Commission on Truth and Reconciliation, paras. 85-88, 91.

<sup>191</sup> Commission for Historical Clarification, *Guatemala Memory of Silence*, report of the Commission on Truth and Reconciliation, prologue, p. 11.

<sup>192</sup> Commission for Historical Clarification, *Guatemala Memory of Silence*, report of the Commission on Truth and Reconciliation, paras. 29, 87,91.

<sup>193</sup> IACHR, *Application filed with the Inter-American Court of Human Rights in the case of María Tiu Tojín (Case 10,686) against the Republic of Guatemala*, 2007, para. 90.

<sup>194</sup> Commission for Historical Clarification, *Guatemala Memory of Silence*, report of the Commission on Truth and Reconciliation, prologue, paras. 85-88, 91.

<sup>195</sup> Commission for Historical Clarification, *Guatemala Memory of Silence*, report of the Commission on Truth and Reconciliation, prologue, paras. 85-88, 91.

of Guatemala concluded that these acts – committed with the intent to destroy the Mayan people of Guatemala in whole or in part – constituted a crime of genocide.<sup>196</sup> It should also be noted that quite recently, in the *Sepur Zarco* case, national courts in Guatemala have found the sexual slavery of indigenous women during the conflict to constitute a crime against humanity.<sup>197</sup>

92. As indicated earlier, the Inter-American Court has addressed the massacre of indigenous Mayan peoples in the cases of *Plan de Sánchez Massacre*, *Massacre of Río Negro* and “*Las Dos Erres*” *Massacre*, where the State of Guatemala was held internationally responsible for the grave human rights violations committed by members of the armed forces against Mayan communities.<sup>198</sup> The specific effects suffered by the indigenous women because of these human rights violations were underscored by the Court when determining the responsibility of the State and granting reparations to the victims and their families.<sup>199</sup> As an emblematic case of violence perpetrated against indigenous women in the armed conflict, the Commission also recalls the decision of the Inter-American Court in the case of *Tiu Tojín* to hold the State of Guatemala internationally responsible for the forced disappearance of María Tiu Tojín and her daughter, found to be perpetrated by members of the military.<sup>200</sup>
93. In relation to the situation in Colombia, the Commission has observed that indigenous women and their leaders are often victims of violence and discrimination in the armed conflict.<sup>201</sup> The troubling information presented in the Commission’s 2014 report on Colombia continues a trend in the country documented in the Commission’s previous reports on Colombia in 2006 and 2009, as can be seen in the most recent press releases of the

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<sup>196</sup> Commission for Historical Clarification, *Guatemala Memory of Silence*, report of the Commission on Truth and Reconciliation, para. 122.

<sup>197</sup> IACHR, Press Release, No. 031/16, *IACHR Welcomes Progress and Urges States to Ensure Favorable Conditions for the Exercise of Women’s Rights*, March 8, 2016.

<sup>198</sup> IA Court. *Case of Plan de Sánchez Massacre v. Guatemala*, Judgment of April 29, 2004; IA Court. *Case of the Massacre of Río Negro v. Guatemala*, Judgment of September 4, 2012; IA Court. *Case of “Las Dos Erres” Massacre v. Guatemala*, Preliminary Objections, Merits and Reparations, Judgment of November 24, 2009, Series C No. 211, para. 141.

<sup>199</sup> IA Court. *Case of Plan de Sánchez Massacre v. Guatemala*, Reparations, Judgment of November 19, 2004, Series C No. 116; IA Court. *Case of the Massacre of Río Negro v. Guatemala*, Judgment of September 4, 2012; IA Court. *Case of “Las Dos Erres” Massacre v. Guatemala*, Preliminary Objections, Merits and Reparations, Judgment of November 24, 2009, Series C No. 211.

<sup>200</sup> IA Court. *Case of Tiu Tojín v. Guatemala*, Judgment of November 26, 2008.

<sup>201</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, paras. 762, 812.

Commission on Colombia.<sup>202</sup> Both the UN Office of the High Commissioner on Human Rights and the IACHR have documented that these violent acts against indigenous women have been perpetrated by “agents of the State, members of post-demobilization paramilitary groups, and members of the FARC-EP and the National Liberation Army.”<sup>203</sup> Indigenous women from Colombia have expressed to the Commission in the past: “We don’t want any more widowed women, more orphans, we want to return to our lands.”<sup>204</sup>

94. The Commission has found that in Colombia, indigenous women are subjected to sexual enslavement, forced pregnancy, gang-rapes, sexual mutilation, and killings by various actors of the armed conflict.<sup>205</sup> Rape and sexual violence against indigenous women are used as weapons of war by armed actors<sup>206</sup> to both forcibly displace communities or to erode the communities’ capacity for resistance.<sup>207</sup> The Commission recognizes that indigenous women are most exposed to these acts of sexual violence because of the multiple forms of discrimination they face and the vulnerable nature of their territories.<sup>208</sup> Indigenous women and their leaders often are the targets of murder and disappearances during armed conflicts. The Commission notes how armed actors use selective murders and disappearances as a war tactic in order to disrupt the cohesion of the community by depriving it of its leaders and to instill fear in the indigenous

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<sup>202</sup> IACHR, Press Release No.11/17, *IACHR Condemns Murders of Human Rights Defenders in the Region*, February 7, 2017; IACHR, Press Release No.160/16, *IACHR Condemns the Increase in Killings of Human Rights Defenders in Colombia*, November 2, 2016; IACHR, Press Release No.21/16, *CIDH Condemns Murders and Threats against Human Rights Defenders in Colombia*, February 25, 2016, ; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II., October 18, 2006; IACHR, Annual Report, Chapter IV, Colombia, paras. 75-140.

<sup>203</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 32.

<sup>204</sup> IACHR, *Violence and discrimination against women in the armed conflict in Colombia*, OEA/Ser.L/V/II. Doc 67, October 18, 2006, para. 142.

<sup>205</sup> UN Department of Economic and Social Affairs, *State of the World’s Indigenous Peoples*, ST/ESA/328, 2009, p. 226; IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, para. 781.

<sup>206</sup> UN Department of Economic and Social Affairs, *State of the World’s Indigenous Peoples*, ST/ESA/328, 2009, p. 226.3

<sup>207</sup> International Indigenous Women’s Forum, *Marin Iwanka Raya: Indigenous Women Stand Against Violence*, Companion Report to the UN Secretary-General’s Study on Violence Against women, 2007, para. 36.

<sup>208</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, par. 815.

communities for taking up the causes of the murdered leaders or for opposing any kind of resistance.<sup>209</sup>

95. The consequences of the violence committed in the context of armed conflict places indigenous communities at grave risk. Given the strategic aim of intimidation and disruption of indigenous communities and the unique role of indigenous women within their communities, the Commission has observed that the sexual violence, murders, and forced disappearances in the armed conflict in Colombia have jeopardized the “physical and cultural existence of indigenous peoples.”<sup>210</sup> The Commission considers that the fact that women are the targets of the attacks against these communities further “aggravates the cultural, spiritual and physical equilibrium already in jeopardy” due to the unique role of indigenous women.<sup>211</sup>
96. The Commission has welcomed the signing of peace accords in Colombia as an indispensable step towards peace, which is a necessary precondition for the full respect of human rights. In this context, the Commission has taken note of positive measures adopted to include the perspectives of women in these processes, but also observes that indigenous women face enormous barriers in having their voices heard. The Commission also notes that, despite the positive measures implemented by the State of Colombia to enforce specialized protocols for the protection of women human rights defenders, indigenous women who organize to defend their rights continue to be the target of high levels of violence and harassment in the country.<sup>212</sup> They are crucial actors for the peace process and its follow-up, and it is crucial that they be included and that their voices are heard.
97. The State of Peru also suffered an internal armed conflict between the Peruvian government and illegal armed groups—the Shining Path and Tupac Amaru Revolutionary Movement—which has had dire consequences on women and indigenous women in particular. The Commission and the Court have processed cases related to the widespread use of sexual violence by Peruvian state agents as a weapon of war and the situation of impunity

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<sup>209</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 299; Colombia, para. 769; UN Department of Economic and Social Affairs, *State of the World’s Indigenous Peoples*, ST/ESA/328, 2009, p. 226.

<sup>210</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, para. 754.

<sup>211</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, para. 813; ECLAC, *Guaranteeing indigenous people’s rights in Latin America: Progress in the past decade and remaining challenges*, November 2014, p. 254.

<sup>212</sup> IACHR, Press Release No.11/17, *IACHR Condemns Murders of Human Rights Defenders in the Region*, February 7, 2017; IACHR, Press Release No.160/16, *IACHR Condemns the Increase in Killings of Human Rights Defenders in Colombia*, November 2, 2016.

that existed during the armed conflict in Peru.<sup>213</sup> It is worth noting that the Peruvian Truth and Reconciliation Commission established that the indigenous population amounted to 75% of the victims during the conflict in Peru.<sup>214</sup> The Commission also granted a hearing on the *National Reparations Plan in Peru*, in which it received information on, among other topics, the situation of indigenous women in Peru who had been and continued to be exposed to sexual violence, and whose marginalization persisted over time because of the lack of a gender perspective in the reparations program. The requesting organizations argued that the reparations program excluded women's concerns, focused exclusively on financial reparations, and in many ways re-victimized women.<sup>215</sup>

98. In the decision *Massacres of El Mozote and Nearby Places v. El Salvador*, the Court found that the State had conducted military operations between December 11 and 13, 1981 in various communities of the northern part of the department of Morazán, leading to massacres, the use of rape as a means of torture, and the setting to fire of homes, possessions and animals; all human rights violations leading to internal displacements.<sup>216</sup> The Court found that these acts of sexual violence jeopardized the rights to life, personal integrity, and privacy of the women affected. An investigation was opened into these events, yet it was halted based on the Law of General Amnesty for the Consolidation of Peace, despite the fact that the Court's final judgment was that the duty to investigate was a non-derogable obligation and amnesties for serious human rights violations were incompatible with the American Convention.

## 2. Violence in the context of development, investment, and extractive projects

99. The Commission has witnessed a noteworthy growth in the reception of information, individual petitions, and precautionary measures regarding human rights violations committed against indigenous peoples in the

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<sup>213</sup> IA Court. *Case of J. v. Peru, Preliminary Objection, Merits, Reparations, and Costs*, Judgment of November 27, 2013; IACHR, Report No. 67/11, Case 11.157, *Admissibility and Merits, Gladys Carol Espinoza González (Peru)*, March 31, 2011, para. 235; IACHR, Merits Report No. 5/96, Case 10.970, *Raquel Martín de Mejía (Peru)*, March 1, 1996.

<sup>214</sup> Comisión de la Verdad y Reconciliación de Perú, *Final Report*, Lima, CVR, 2003, p. 160.

<sup>215</sup> IACHR, *Hearing on the National Reparations Plan in Peru*, 157 POS, April 8, 2016; See also: IACHR, *Follow-Up hearing on the Recommendations to the IACHR Report "Access to Justice for Women Victims of Violence in the Americas"*, 137 POS, November 6, 2009.

<sup>216</sup> IA Court. *Case of Massacres of El Mozote and Nearby Places v. El Salvador*, Merits Reparations and Costs, Judgment of October 25, 2012.

context of development, investment, and extractive projects.<sup>217</sup> According to the UN Special Rapporteur on the rights of indigenous peoples, “[t]he commodification of land that is inherent in such practices is an assault on indigenous cultures and the importance placed on land.”<sup>218</sup> Forced displacement and migration; ecological degradation or contamination and their impacts on the right to health and culture; disintegration of the networks and social fabric; increased responsibilities; sexual violence and the trafficking of indigenous women and girls; as well as land disputes are some of the most common consequences of the implementation of these projects.<sup>219</sup> It is important to emphasize that indigenous women are disproportionately and especially affected by multiple forms of discrimination and violence in these situations.<sup>220</sup> As a result, the consequences of the implementation of these projects can be experienced by indigenous women as violations of their physical, sexual, spiritual, and cultural integrity.<sup>221</sup>

100. In this regard, the IACHR has been informed that the implementation of development projects can create and increase indigenous women’s “vulnerability to abuse and violence, such as sexual violence, exploitation

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<sup>217</sup> IACHR, *Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II., Doc. 47/15, December 31, 2015; IACHR, *Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II. (December 30, 2009), para. 287; IACHR, Press Release No.9/13, *IACHR Concludes its Working Visit to Suriname*, February 12, 2013; IACHR, *Hearing on Human Rights Situation of Indigenous People in Ecuador*, 153 POS; IACHR, *Hearing on the Extractive Industries and Human Rights of the Mapuche People in Chile*, 154 POS, March 17, 2015; IACHR, *Hearing on the Impact of Canadian Mining Companies on Human Rights in Latin America*, 153 POS; IACHR, *Hearing on the Reports of Destruction of Biocultural Heritage due to the Construction of Mega-Development Projects in Mexico*, 153 POS.

<sup>218</sup> United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 15.

<sup>219</sup> United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 15. See also, IACHR, *Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II., Doc. 47/15, December 31, 2015, para. 320.

<sup>220</sup> Permanent Forum on Indigenous Issues, *Study on the extent of violence against indigenous women and girls in terms of article 22(2) of the United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, para. 38; IACHR, Meeting of experts on the rights of indigenous women, November 8, 2014; IACHR, *Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II., December 30, 2009, para. 208.

<sup>221</sup> ECLAC, *Guaranteeing indigenous people’s rights in Latin America: Progress in the past decade and remaining challenges*, November 2014, p. 256: “Estos procesos no solo afectan principalmente a las mujeres en lo que refiere a cuestiones relacionadas con su salud física y mental, sino que también rompen sus redes sociales de apoyo y erosionan su vínculo con la madre tierra que es esencial par ellas.”

and trafficking.”<sup>222</sup> Indeed, many of these development projects trigger environmental degradation of their lands and territories as well as forced displacements of indigenous peoples. Indigenous communities, thus deprived of their lands and traditional ways of life and of subsistence, are then forced into poverty. This situation of poverty and vulnerability combined with the arrival of workers and laborers in these remote areas, and in addition to prejudice and discrimination, has led to forced prostitution and trafficking of indigenous women and girls, and all the consequences these practices have on their physical and psychological health, and on their culture.

101. During its working visit to Suriname in 2013, as well as during the hearing on the *Human Rights Situation of the Apetina Indigenous Community in Suriname*, the Commission was informed of the impacts of gold mining on the livelihood and sustainability of indigenous and tribal communities. Other problems reported were the use of mercury by mining companies and inadequate dumping procedures affecting the quality of the water of these communities and the health of the community members; incidents of forced displacement due to gold mining activities; child labor; and sexual violence perpetrated against women in mining areas.<sup>223</sup> In particular, indigenous women in Suriname have informed the Commission of the presence of high levels of mercury in the water bioaccumulating in the fish that the communities rely on for subsistence, causing health problems in pregnant women and children, who suffer from severe diarrhea and tremors.<sup>224</sup>
102. The Commission has found that “these projects bring with them an increase in involuntary prostitution of indigenous girls, forced/unwanted pregnancies, STDs, and sexual violence.”<sup>225</sup> In the case of Brazil, the IACHR has received information regarding the drastic social and cultural

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<sup>222</sup> United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 16; Información recibida por la CIDH en encuentro regional sobre “Violaciones a los derechos humanos de los pueblos indígenas y afrodescendientes en el contexto de proyectos extractivos y turísticos”. Ciudad de Panamá, 30 de julio de 2015.

<sup>223</sup> IACHR, Press Release No.9/13, *IACHR Concludes Its Working Visit to Suriname*, February 12, 2013; IACHR, *Human Rights Situation of the Apetina Indigenous Community in Suriname*, 150 POS, March 27, 2014.

<sup>224</sup> IACHR, Press Release No.9/13, *IACHR Concludes Its Working Visit to Suriname*, February 12, 2013; IACHR, *Human Rights Situation of the Apetina Indigenous Community in Suriname*, 150 POS, March 27, 2014.

<sup>225</sup> IACHR, *Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II., Doc. 47/15, December 31, 2015, para. 320; IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, para. 814; IACHR, *Hearing on the human rights situation of the people affected by extractive industries in the Americas*, 144 POS, March 28, 2012.

consequences of mining, and how these activities create conditions favorable for the emergence of prostitution, drug consumption, and domestic and sexual violence.<sup>226</sup> During a meeting of experts, indigenous women leaders informed the Commission of cases in which miners from these development projects have kidnapped and raped indigenous girls, who often end up residing in forced prostitution camps or forced into child pornography because of their rejection by their communities due to the stigma associated with such violence.<sup>227</sup> As a result of the lack of adequate jobs in the hinterland regions of Guyana, the serious impacts of mining on indigenous life-style, and the fact that their primary occupations do not provide sufficiently to cover their needs and those of their children, the Commission was also informed that indigenous women –who bear the socially defined role of care-givers, wives, mothers and grandmothers– were increasingly pushed to resort to prostitution as a means of supporting their families.<sup>228</sup>

103. In particular, the Commission notes the troubling information it has received concerning acts of sexual violence perpetrated against indigenous women in the context of development mega-projects implemented in Guatemala.<sup>229</sup> According to information received during its August 2013 country visit, the implementation of the Inter-Oceanic Canal [*Canal Seco Interoceánico*] and the highway *Franja Transversal del Norte* have led to cases of sexual violence perpetrated by the workers of the companies, which were denounced but remain in impunity.<sup>230</sup> The Commission further learned of two more cases in which 12 indigenous women from the San Juan Sacatepéquez Community and 11 indigenous women from the Maya Q’eqchi’ Community of Lote 8, Chacpayla reported acts of sexual violence perpetrated by men belonging to the police, the army and security guards of the companies in the context of

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<sup>226</sup> Guenter Francisco Loebens, *Mineração: uma ameaça devastadora*, p. 40, in CIMI, *Relatório sobre Violência contra os povos indígenas no Brasil*, 2015; UN Women Brazil, *Nota pública: ONU Mulheres alerta para violência contra mulheres indígenas e conclama garantia de direitos*, April 19, 2016.

<sup>227</sup> IACHR, Meeting of experts on the rights of indigenous women, November 8, 2014; CIDH. *Audiencia sobre la situación de derechos humanos de las personas afectadas por las industrias extractivas en las Américas*, 144<sup>o</sup> Período de Sesiones, 28 de marzo de 2012.

<sup>228</sup> Vanda Radzik, *Study on the Status of Indigenous Women’s Rights in Guyana, Claiming the Center-Indigenous Women’s Leadership for Sustainable Development*, Prepared for the Regional Conference of Indigenous Women of the Caribbean, October 9-12, 2008.

<sup>229</sup> Information received in a meeting with men and women leaders and indigenous organizations on August 25, 2013, in Nebaj, Quiché.

<sup>230</sup> Testimony received during a meeting with men and women leaders, indigenous communities and organizations on August 21, 2013, in Ciudad de Guatemala.

development mega-projects; cases which, at the date of approval of the present report, remained in impunity.<sup>231</sup>

104. The Commission also underscores that indigenous women can be displaced from their territories as a result of development, investment, and extractive projects. The displacement of indigenous women from their ancestral land separates them from the place on which the continuation of their way of life and survival depends, as well as the expression of their cultural and spiritual life.<sup>232</sup> The IACHR has established that access to, use and possession of their ancestral land is critical for the exercise of indigenous peoples' individual and collective human rights.<sup>233</sup> Indigenous women leaders present at a meeting of experts described to the Commission how, as part of their special relationship with the land, women are connected to the energy in addition to the objects in nature, illustrating how displacement from their ancestral lands severs the connection between indigenous women and the spiritual energy of their territories.<sup>234</sup>
105. The presence of third parties in the lands and territories of indigenous peoples often causes indigenous women to lose their traditional livelihood, slowly degrading their social structure and traditional way of life.<sup>235</sup> In cases where indigenous men become employed by the companies that implement large-scale projects in their territories, women's traditional activities have to change in order to compensate for the work previously done by men.<sup>236</sup> In other situations, the access to natural resources by indigenous women is limited and they have to find different ways to provide for their families or are forced to migrate to cities in search of employment. Indigenous women have also informed the IACHR of other effects, including increased work and

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<sup>231</sup> National Coordinator of Rural Organizations, Letter to the President of the Board of the Congress of the Republic of Guatemala, August 21, 2013; Information received by the IACHR during the visit of August 2013; Letter to the Inter-American Commission on Human rights from the Q'eqchi' Community of Lote 8, Chacpayla, Municipality of El Estor, Izabal, dated August 19, 2013.

<sup>232</sup> IA Court. *Case of Awas Tingni v. Nicaragua*, 2001, para. 148: "(...) The indigenous by virtue of their existence have the right to live freely in their own land; the close relationship that the indigenous maintain with the land must be recognized and understood as a fundamental basis for their culture, spiritual life, their integrity and their economic survival. For indigenous communities the relationship with the land is not merely a question of possession and production but also a material and spiritual element for which they must fully enjoy, including to preserve their cultural heritage and to transmit it to future generations."

<sup>233</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, para. 822.

<sup>234</sup> IACHR, Meeting of experts on the rights of indigenous women, November 8, 2014.

<sup>235</sup> IACHR, *Hearing on the Situation of Human Rights of Indigenous Peoples in Colombia*, 147 POS, March 14, 2013.

<sup>236</sup> IACHR, *Hearing on the human rights situation of the people affected by extractive industries in the Americas*, 144 POS, March 28, 2012.

family responsibilities due to the absence of their husbands and the weakening of their communal and family life, among others.<sup>237</sup> Indigenous women also reported an increase in family and sexual violence.<sup>238</sup>

106. Indigenous women are also at an increased risk for health problems associated with environmental contamination when development projects are implemented in their territories.<sup>239</sup> The Commission observes that the development projects can contaminate the water supply and affect women's health, causing such consequences as "high levels of toxins in breast milk, in the blood of the umbilical cord, and in blood serum and fatty tissue, causing infertility, miscarriages, premature births, early menstruation and menopause, cancers of the reproductive system, decreased lactation and the inability to produce healthy children."<sup>240</sup> For example, the IACHR was informed that in Ecuador's oil fields "cancer constitutes 32 percent of the deaths, three times more than the national average, affecting mainly women."<sup>241</sup> Furthermore, there has been an increase in "spontaneous abortions, cancers as well as skin, respiratory system and gastro-intestinal problems, *inter alia*, among indigenous women due to the storage of toxic waste related to development projects on indigenous lands.<sup>242</sup>

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<sup>237</sup> *Information received by the IACHR in the regional summit about "Human Rights Violations of Indigenous and Afro-descendant Peoples in the context of extractive and touristic projects."* Panama City, July 30, 2015; IACHR, *Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II., Doc. 47/15, December 31, 2015, paras. 320-321.

<sup>238</sup> Information received by the IACHR in the regional summit about "Human Rights Violations of Indigenous and Afro-descendant Peoples in the context of extractive and touristic projects." Panama City, July 30, 2015; IACHR, *Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II., Doc. 47/15, December 31, 2015, paras. 320-321.

<sup>239</sup> Permanent Forum on Indigenous Issues, *Study on the extent of violence against indigenous women and girls in terms of article 22(2) of the United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, para. 20; IACHR, Meeting of experts on the rights of indigenous women, November 8, 2014.

<sup>240</sup> Permanent Forum on Indigenous Issues, *Study on the extent of violence against indigenous women and girls in terms of article 22(2) of the United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, para. 21; IACHR, Meeting of experts on the rights of indigenous women, November 8, 2014.

<sup>241</sup> Permanent Forum on Indigenous Issues, *Study on the extent of violence against indigenous women and girls in terms of article 22(2) of the United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, para. 20.

<sup>242</sup> ECLAC, *Guaranteeing indigenous people's rights in Latin America: Progress in the past decade and remaining challenges*, November 2014, p. 254; ECLAC: Observatory of Gender Equality in Latin American and the Caribbean, *Indigenous Women in Latin America: Demographic and Social Dynamics in the Human Rights Context*, October 2013, p. 75.

107. Women are also affected in their child-rearing roles by high rates of infant mortality, birth defects and juvenile illnesses due to water contamination and accidents related to petroleum.<sup>243</sup> The United Nations has reported how pesticides and chemical fertilizers used by cultivation projects have destroyed the land and eco-system to such an extent that it leaves no choice for indigenous communities but to relocate.<sup>244</sup> The Commission has reiterated its concern over indigenous peoples' rights to health and to a healthy environment in the context of mining exploitation, and has stated that "[t]he impacts of the presence of heavy metals in the bodies of human beings may be irreparable [...] For this reason, the IACHR believes that it is necessary for States to take measures that will allow for the repair of territories degraded and contaminated by the realization of extractive activities, which should include the implementation of special programs that include as one of its core actions attention to the health of indigenous peoples."<sup>245</sup>
108. Lastly, the Inter-American Commission notes that the destruction of ancestral lands, natural resources, and sacred sites which can result from the implementation of development projects can prevent indigenous women, as spiritual leaders of their communities, from performing certain rituals and ceremonies, which serve to empower them as keepers of their traditions within their communities.<sup>246</sup> This violation of their right to culture and survival, affects them at the spiritual, individual, and collective levels. The Commission also underscores that individual acts of sexual violence and the health-related illnesses suffered by indigenous women threaten their physical integrity, the continuation of their culture and survival, and constitute a form of spiritual violence, harming them individually and collectively.<sup>247</sup>

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<sup>243</sup> IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II., December 30, 2009, p. 84-85 [Table: *The Case of the Ecuadorean Amazon*].

<sup>244</sup> UN Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, ST/ESA/328, 2009, p. 88.

<sup>245</sup> IACHR, *Indigenous Peoples, Afro-Descendent Communities and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II., Doc. 47/15, December 31, 2015, para. 279.

<sup>246</sup> ECLAC, *Guaranteeing indigenous people's rights in Latin America: Progress in the past decade and remaining challenges*, November 2014, p. 255; IACHR, Meeting of experts on the rights of indigenous women, November 8, 2014; IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, para. 145; UN Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, ST/ESA/328, 2009, p. 172.

<sup>247</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, para. 98; UN Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, ST/ESA/328, 2009, p. 172.

### 3. Violence related to the militarization of indigenous lands

109. The militarization of indigenous territories –which can result from armed conflicts, the implementation of development mega-projects, as well as government security policies – often places members of indigenous communities at grave risk of violence that implicates their rights to life, personal integrity, and their physical and cultural survival.<sup>248</sup> Armed groups, including members of organized crime, and State actors, sometimes acting through the aforementioned members of organized crime, mobilize in order to gain control over the natural resources on indigenous lands, exposing indigenous women to the risk of militarized violence.<sup>249</sup> In this context, the IACHR has received information that indigenous women have faced sexual violence, trafficking and the types of violence unique to militarization, like landmines, and forced recruitment.
110. Indigenous leaders have reported on the link between development mega-projects and the militarization of indigenous lands in the case of Nicaragua and the construction of the Trans-Oceanic Canal.<sup>250</sup> In a hearing on the human rights implications of this project, the Commission received information indicating that the police and the army have conducted excursions into indigenous lands, starting at the beginning of the project.<sup>251</sup> Indigenous leaders also reported to the Commission that the zones around the canal, over 50% of which affect the Rama and Criol indigenous peoples and afro-descendant peoples, have become militarized, with even primary schools being occupied as barracks.<sup>252</sup> Given the household responsibilities

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<sup>248</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, para. 787.

<sup>249</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 36: “According to the information received by the IACHR, the attacks reportedly come from non-State actors that belong to organized crime, as well as from sectors opposed to the causes led by the defenders, and the authorities have not prevented the attacks; to the contrary, according to the information received, there have reportedly been occasions in which the authorities themselves asked organized crime to do the ‘dirty work’ as a way to evade responsibility.”; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 51; International Indigenous Women’s Forum, *Marin Iwanka Raya: Indigenous Women Stand Against Violence*, Companion Report to the UN Secretary-General’s Study on Violence Against women, 2007, para. 29; IACHR, Response of the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua to questionnaire on the Human Rights Situation of Indigenous Women, January 2015.

<sup>250</sup> IACHR, Public Hearing, *Construction of the Trans-Oceanic Canal and its impact on human rights in Nicaragua*, 154 POS, March 16, 2015.

<sup>251</sup> IACHR, Public Hearing, *Construction of the Trans-Oceanic Canal and its impact on human rights in Nicaragua*, 154 POS, March 16, 2015.

<sup>252</sup> IACHR, Public Hearing, *Construction of the Trans-Oceanic Canal and its impact on human rights in Nicaragua*, 154 POS, March 16, 2015.

of indigenous women and their roles as spiritual leaders in charge of the continuation of indigenous culture, it is alleged that the militarization of their lands, the environmental damage, as well as the forced displacement and consequent danger of the extinction of the Rama language, will have a disproportionate impact on the indigenous women.<sup>253</sup>

111. At a regional level, the Commission has also received information indicating that the militarization of indigenous lands in the Americas exposes indigenous women to sexual violence, including rape by the military forces, forced prostitution, and sexual slavery.<sup>254</sup> The Commission highlights two cases decided by the Inter-American Court of Human Rights pertaining to the sexual torture of indigenous women in the context of militarization. In the cases of *Valentina Rosendo Cantú* and *Inés Fernández Ortega*, regarding two indigenous women who were raped by members of the Mexican military as discussed earlier, the Court specifically took into consideration the military presence in the area surrounding the victim's home and community in its analysis of the violations in the case.<sup>255</sup>
112. The Commission has also received information regarding the conflicts taking place in Colombia between third party individuals, armed groups and economic actors that want to lay claim to their traditional indigenous territories, because of their military and economic value, as well as the natural resources they hold.<sup>256</sup> The territories are also of military and economic strategic importance, as corridors for troop transport and safe haven, for weapons trafficking, and for the growing, processing, and trafficking of drugs.<sup>257</sup> Indigenous women leaders have informed the Commission that the struggle for control of land has, over the course of the conflict, provoked an increased presence of paramilitaries and organized crime, and an increase in cases of forced prostitution.<sup>258</sup> Specifically, the Commission notes its concern over the trafficking and sale of Miskito

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<sup>253</sup> IACHR, Public Hearing, *Construction of the Trans-Oceanic Canal and its impact on human rights in Nicaragua*, 154 POS, March 16, 2015.

<sup>254</sup> UN Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, ST/ESA/328, 2009, p. 226.

<sup>255</sup> IA Court. *Case of Rosendo Cantú v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 216, paras. 97-98; IA Court. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 215.

<sup>256</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, para. 759.

<sup>257</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, para. 759.

<sup>258</sup> IACHR, Meeting of experts on the rights of indigenous women, November 8, 2014.

children through the Rio Coco and Rio Abajo in Nicaragua.<sup>259</sup> Organizations of women, such as the Wanky Tangny, have publically denounced the existence of trafficking networks along the border between Nicaragua and Honduras.<sup>260</sup>

#### 4. Domestic Violence

113. Indigenous women have informed the Commission through various mechanisms of the problem of the problem of domestic violence. However, most of these incidents are not reported or documented in the Americas. In this regard, the UN Special Rapporteur on the rights of indigenous peoples has indicated the following: “[i]nformation on domestic violence is limited due to underreporting and lack of investment in data collection. Nonetheless, available data suggests that indigenous women are significantly more likely to be victims of domestic violence than non-indigenous women.”<sup>261</sup> It also should be noted that the consequences of domestic violence may be felt more acutely by indigenous women, due to lack of access to support services and justice, and to their specific cultural and economic circumstances.<sup>262</sup>
114. According to information received from indigenous groups, international and civil society organizations, colonization and the strategy of non-indigenous actors to disrupt the social cohesion of indigenous communities have introduced and perpetuated the problem of interpersonal, gender-based violence against indigenous women in their communities.<sup>263</sup> The Commission, in addressing the situation of violence against indigenous women in Canada, has already explained that:

The situation of indigenous women in Canada, in turn, exists within a historical context that includes the colonization process and its impacts in the present day. “[T]hrough policies imposed without their consent, indigenous peoples in Canada ‘have had to deal with dispossession of their traditional

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<sup>259</sup> IACHR, Response of the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua to questionnaire on the Human Rights Situation of Indigenous Women, January 2015.

<sup>260</sup> IACHR, Response of the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua to questionnaire on the Human Rights Situation of Indigenous Women, January 2015.

<sup>261</sup> United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 57.

<sup>262</sup> United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 58.

<sup>263</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, para. 59.

territories, disassociation with their traditional roles and responsibilities, disassociation with participation in political and social decisions in their communities, [and] disassociation of their culture and tradition.” One of the many negative impacts of these policies has been on the relationship between men and women in indigenous communities.<sup>264</sup>

115. Given that indigenous women are considered spiritual leaders and essential for the survival of indigenous communities, indigenous groups emphasize that “many indigenous philosophical, spiritual, cultural, and economic norms historically mediated against gender violence, which was viewed within the tradition as essentially deviant behavior.”<sup>265</sup> In fact, the IACHR has indicated that, in some indigenous communities, patriarchy and male dominance were imposed on matriarchal cultures, targeting the power of indigenous women as decision makers, leaders, and equal members of their community [...].<sup>266</sup> In these cases, the reversal of this traditional view of gender violence has been traced back to colonization and its violations of indigenous peoples’ collective rights.<sup>267</sup> The IACHR understands that domestic violence can also constitute spiritual violence, because it may affect both the women individually, and also entail harm to the collective identity of the communities to which they belong.<sup>268</sup>
116. The UN Permanent Forum on Indigenous Issues has also observed that “cultures of violence, imposed by systemic racism and the infliction of direct, symbolic and structural violence against indigenous peoples through

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<sup>264</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, paras. 59-60, quoting: Amnesty International, Report: *Canada, Stolen Sisters, A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*, AMR 20/003/2004, p. 8. Quoting Beverley Jacobs, “Native Women’s Association of Canada’s submission to the United Nations Special Rapporteur investigating the Violations of Indigenous Human Rights,” December, 2002; IACHR, Meeting of experts on the rights of indigenous women, November 8, 2014; ECLAC, *Guaranteeing indigenous people’s rights in Latin America: Progress in the past decade and remaining challenges*, November 2014, p. 253.; International Indigenous Women’s Forum, *Marin Iwanka Raya: Indigenous Women Stand Against Violence*, Companion Report to the UN Secretary-General’s Study on Violence Against women, 2007, p. 27.

<sup>265</sup> International Indigenous Women’s Forum, *Marin Iwanka Raya: Indigenous Women Stand Against Violence*, Companion Report to the UN Secretary-General’s Study on Violence Against women, 2007, p. 28.

<sup>266</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, para. 60.

<sup>267</sup> International Indigenous Women’s Forum, *Marin Iwanka Raya: Indigenous Women Stand Against Violence*, Companion Report to the UN Secretary-General’s Study on Violence Against women, 2007, p. 28.

<sup>268</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, para. 99.

colonization, are reproduced in countless ways, leading to the implosion and severe dysfunction of many indigenous communities and cultures and subsequent increased rates of violence against women and girls.”<sup>269</sup> Similarly, the UN Special Rapporteur on the rights of indigenous people has noted that many of the potential root causes for domestic violence against indigenous women “are linked to human rights issues specific to indigenous peoples and historical violations of their rights, including a violent family environment; abusive State policies at a young age; financial problems and poverty; unemployment; lack of education; poor physical and mental health; racism-induced stress; denial of rights to self-determination, land and culture, among others, leading to loss of identity and self-esteem; and a breakdown of community kinship systems and Aboriginal law.”<sup>270</sup>

117. The Commission has also received information on the prevalence of domestic violence suffered by indigenous women in countries including Guatemala, Mexico, Bolivia, Brazil, Ecuador, Canada and the United States of America. According to information received by the Public Office for the Defense of Indigenous Women’s rights in Guatemala [“Defensoría de la Mujer Indígena,” or “DEMI”], it is estimated that one third of indigenous women who live with a man suffer from domestic violence, with young women facing a higher rate of violence.<sup>271</sup> In the case of Brazil, for example, data from the Office of the Public Defender of the State of Mato Grosso do Sul indicated that reported cases of domestic violence against indigenous women in the region had increased almost 600% between 2010 and 2015, which brought the State to translate the Maia da Penha Law into two indigenous languages, Guarani and Terena<sup>272</sup>. With respect to Mexico, the civil society organization Equis has indicated that 47% of indigenous women over the age of 15 had suffered some form of violence in their relationships.<sup>273</sup> Regarding Bolivia, a twofold higher risk of partner violence has been identified for women who speak a language other than Spanish at

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<sup>269</sup> Permanent Forum on Indigenous Issues, *Study on the extent of violence against indigenous women and girls in terms of article 22(2) of the United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, paras. 6a, 31.

<sup>270</sup> United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 59.

<sup>271</sup> DEMI, *Statistics classified by ethnicity and type of cases handled by DEMI* [“Estadísticas con calificación étnica y tipología de casos atendidos por la DEMI”], information submitted to the IACHR.

<sup>272</sup> Defensoría Pública del Estado de Mato Grosso do Sul, *Pamphlets in Guarani and Terena*, page last consulted on June 15, 2017; G1 Matto Grosso do Sul, *Violência contra índias cresce e MS traduz cartilha sobre Maria da Penha*, page last consulted on June 15, 2017.

<sup>273</sup> IACHR, Response of Equis: Justice for Women to questionnaire on the human rights situation of indigenous women in the Americas, entitled *Situation of Afro-mexican and Indigenous Women 2011-2014*, May 2014.

home.<sup>274</sup> In Ecuador, women who identify themselves as indigenous report higher levels of partner violence than those who identify themselves as mestizo or white.<sup>275</sup> Indigenous women in Canada “are nearly three times as likely to experience violence as non-aboriginal women,” regardless of whether the violence occurs between strangers, acquaintances, or within a spousal relationship.<sup>276</sup> With regards to the United States, the Commission has received information indicating that “American Indians and Alaska Natives [women] are 2.5 times as likely to experience violent crimes – and at least 2 times more likely to experience rape or sexual assault crimes – compared to all other races,”<sup>277</sup> and that “39 percent of American Indian and Alaska Native women will be subjected to violence by an intimate partner in their lifetimes.”<sup>278</sup> The information received indicates that the perpetrators of the different types of violence are for the most part non-Native.<sup>279</sup> For example, regarding rape or sexual assault, an average of 67 percent of victims described the offender as non-Native; regarding physical assault, 63 percent of offenders were identified as non-Native.<sup>280</sup>

## 5. Violence in the exercise of their economic, social and cultural rights

118. Indigenous women suffer from multiple forms of violence in the exercise of their economic, social and cultural rights. The violation of these rights is inextricably linked to the structural violence that they face, as well as the

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<sup>274</sup> Pan American Health Organization, World Health Organization, *Strategy and Plan of Action on Strengthening the Health System to Address Violence Against Women*, 54<sup>th</sup> Directing Council 67<sup>th</sup> Session of the Regional Committee of WHO for the Americas, CD54/9, Rev. 1, 31 August 2015, para. 14.

<sup>275</sup> Pan American Health Organization, World Health Organization, *Strategy and Plan of Action on Strengthening the Health System to Address Violence Against Women*, 54<sup>th</sup> Directing Council 67<sup>th</sup> Session of the Regional Committee of WHO for the Americas, CD54/9, Rev. 1, 31 August 2015, para. 14.

<sup>276</sup> Pan American Health Organization, World Health Organization, *Strategy and Plan of Action on Strengthening the Health System to Address Violence Against Women*, 54<sup>th</sup> Directing Council 67<sup>th</sup> Session of the Regional Committee of WHO for the Americas, CD54/9, Rev. 1, 31 August 2015, para. 14 referring to Shannon Brennan, *Violent victimization of aboriginal women in the Canadian provinces*, 2009, Ottawa (Canada, Statistics Canada, May 17, 2011).

<sup>277</sup> NCAI Policy Research Center, *Policy Insights Brief, Statistics on violence against Native Women*. February 2013.

<sup>278</sup> NCAI Policy Research Center, *Policy Insights Brief, Statistics on violence against Native Women*. February 2013.

<sup>279</sup> NCAI Policy Research Center, *Policy Insights Brief, Statistics on violence against Native Women*. February 2013.

<sup>280</sup> NCAI Policy Research Center, *Policy Insights Brief, Statistics on violence against Native Women*. February 2013.

intersectional forms of discrimination that have historically affected them. The IACHR has established that many indigenous women live in a situation of poverty as a result of their exclusion from the social and economic benefits available in their countries.<sup>281</sup> The many forms of discrimination to which they are subjected – ethnic, racial, socio-economic, and gender-based – raise significant barriers for them to access basic health and education services, food, decent and quality employment, and full participation in public and political life in their countries, thus curtailing their access to their fundamental human rights.<sup>282</sup>

119. In different regions of the world, there have been “severe historical violations of indigenous women’s rights in relation to sexual and reproductive rights in the context of denial of their right to self-determination and cultural autonomy,” which include forced sterilization, the imposition of contraceptive measures absent consent or information, and attempts to coerce indigenous women into having children with non-indigenous men.<sup>283</sup> The Commission has received information that, while attempting to access healthcare, indigenous women in numerous Latin American countries have been forcibly sterilized or forced to use contraceptives.<sup>284</sup> The IACHR addressed the problem of forced sterilization of an indigenous woman in the case of *María Mamérita Mestanza Chávez*, in which the State of Peru recognized that the victim, an indigenous woman, was forced to undergo a surgical sterilization that ultimately led to her death.<sup>285</sup> In this case, the State and the petitioners reached a friendly settlement agreement.
120. During the hearing on *Maternal Health and Reports of Obstetric Violence in Mexico*, held during the 150<sup>th</sup> Period of Sessions, the IACHR was informed that obstetric violence disproportionately affects indigenous women and

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<sup>281</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143, November 3, 2011, para. 2.

<sup>282</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143, November 3, 2011, para. 8.

<sup>283</sup> United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 34; United Nations, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, January 5, 2016, A/HRC/31/57, para. 45.

<sup>284</sup> International Indigenous Women’s Forum, *Marin Iwanka Raya: Indigenous Women Stand Against Violence*, Companion Report to the UN Secretary-General’s Study on Violence Against women, 2007, p. 35; IACHR, *Access to Justice of Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II., Doc. 65, December 28, 2011, para. 116; IACHR, Response of Lawyers for Justice and Human Rights [“Abogadas y abogados par la Justicia y los Derechos Humanos”] to the questionnaire on the human rights of indigenous women in the Americas.

<sup>285</sup> IACHR, Report No. 71.03. Petition 12.191. Friendly Settlement. María Mamérita Mestanza (Peru), October 22, 2003.

women in a situation of poverty.<sup>286</sup> The Commission has also been informed of indigenous women in Mexico being denied medical attention when they arrive at hospitals while pregnant, incidents of medical malpractice, and violations of their right to access to information, among others.<sup>287</sup> The IACHR received information, in response to the questionnaire, regarding three indigenous women who gave birth on lawns outside of hospitals in Oaxaca, Mexico, after being rejected by hospital staff.<sup>288</sup>

121. During its recent working visit to Guyana, the Commission received information from several organizations with regards to the serious structural challenges indigenous peoples continue to face, including failure to respect their land rights, the acute poverty that affects people living in rural and remote areas, the failure to integrate an intercultural perspective in the country's education curriculum and to include indigenous languages, the problems of violence and trafficking of persons that affect indigenous women, and discriminatory social stereotypes that hinder social participation and access to decent work and adequate health care services for indigenous peoples.<sup>289</sup>

## 6. Violence against indigenous women human rights defenders and defenders of indigenous women's rights

122. The Commission also considers it important to take into account the violence and intimidation faced by the human rights defenders who work to advance the human rights of indigenous women, and address their situation of poverty and marginalization. The Commission has underscored that "murders, extrajudicial executions, and forced disappearances committed against human rights defenders are the most serious obstacles to the exercise of promoting and protecting human rights."<sup>290</sup> Across the region,

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<sup>286</sup> IACHR, *Hearing on Maternal Health and Reports of Obstetric Violence in Mexico*, 150 POS, 27 March 2014.

<sup>287</sup> Grupo de Información en Reproducción Elegida (GIRE), *Niñas y mujeres sin justicia. Derechos reproductivos en México*, 2015, p. 119-133; Response to the questionnaire on the Human Rights Situation of Indigenous Women from D. Uberoi, J. Hatanga y K. Bacharach, students of the course Gender, Sexual and Reproductive Health and International Human Rights Law (2014), Georgetown University Law Center. Received on 20 January 2015.

<sup>288</sup> Response to the questionnaire on the Human Rights Situation of Indigenous Women from D. Uberoi, J. Hatanga y K. Bacharach, students of the course *Gender, Sexual and Reproductive Health and International Human Rights Law (2014)*, Georgetown University Law Center. Received on 20 January 2015.

<sup>289</sup> IACHR, Press Release No.148/16, *IACHR Concludes Working Visit to Guyana*, October 13, 2016.

<sup>290</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 22.

the Commission has observed a pattern of assaults, threats, and harassment against the personal integrity of human rights defenders.<sup>291</sup> In this regard, the IACHR has received troubling information concerning the treatment of human rights defenders in Brazil, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, the United States and Venezuela, among other countries.<sup>292</sup>

123. In particular, the human rights organizations working on the defense of indigenous and women's rights have frequently been targets of attacks on their life.<sup>293</sup> On September 18, 2013, after a working visit to Guatemala, former IACHR Rapporteur on the rights of indigenous peoples Dinah Shelton expressed her concern over reports of murder, rape, threats, and acts of harassment directed against indigenous authorities and leaders and human rights defenders in the country.<sup>294</sup> In 2014, the Commission reported the murders of Mayan and Asháninka leaders and human rights defenders in Guatemala and Peru.<sup>295</sup> The IACHR further takes note of the concluding observations of the UN Committee on the Elimination of Racial Discrimination (CERD) in which CERD expressed its concern over the attacks and murders perpetrated against indigenous defenders in Guatemala,<sup>296</sup> as well as the serious physical assaults perpetrated against indigenous defenders in Honduras.<sup>297</sup> A group of indigenous women experts described to the Commission how indigenous women human rights defenders were being specifically targeted for such attacks, particularly in

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<sup>291</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 48.

<sup>292</sup> IACHR, *Hearing on the Situation of Environmental Rights Defenders in Panama*, 161 POS, March 17, 2017; IACHR, *Hearing on Criminalization of Human Rights Defenders who Oppose Hydroelectric Projects in Guatemala*, 161 POS, March 20, 2017; IACHR, *Situation of Environmental Rights Defenders in the Americas*, 161 POS, March 22, 2017; IACHR, *Hearing on the Situation of Indigenous Peoples and Extractive Industries in the United States*, 160 POS, December 9, 2016. IACHR, *Hearing on the Human Rights Situation of the Leaders and Defenders of the Shuar People in Ecuador*, 154 POS, March 17, 2015; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 30.

<sup>293</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 36.

<sup>294</sup> IACHR, Press Release No. 66/13, *Office of the Rapporteur on the Rights of Indigenous Peoples Conducted Working Visit to Guatemala*, September 18, 2013.

<sup>295</sup> IACHR, Press Release No. 3/14, *IACHR Urges the State of Guatemala to Investigate and Clarify the Circumstances Surrounding the Death of Human Rights Defender and Indigenous Leader*, January 20, 2014; IACHR, Press Release No. 102/14, *IACHR Condemns Killing of Four Asháninka Indigenous Leaders in the Department of Ucayali, Peru*, September 18, 2014.

<sup>296</sup> CERD, *Concluding Observations on the 14<sup>th</sup> and 15<sup>th</sup> periodic reports of Guatemala*, CERD/C/GTM/CO/14-15, May 15, 2015, para. 12.

<sup>297</sup> CERD, *Concluding observations on the combined initial and second to fifth periodic reports of Honduras*, CERD/C/HND/CO/1-5, March 13, 2014, para. 15.

the context of armed conflicts.<sup>298</sup> In a hearing before the Commission, civil society organizations denounced a differentiated use of violence against indigenous women leaders and defenders, and an increased use of targeted gendered and sexual violence as a strategy to pressure them away from their lands and towards cities, making way for extractive activities.<sup>299</sup>

124. Women human rights defenders face additional forms of discrimination.<sup>300</sup> The IACHR has received information regarding the particularly grave risk to women human rights defenders in the context of armed conflicts, often targeted for harassment, threats and attacks in order for the armed groups to exercise “social control” over territories.<sup>301</sup> Moreover, indigenous women human rights defenders are exposed to additional disrespect and harassment by State authorities and armed actors when they work to promote and defend women’s rights, exacerbating the dual discrimination they already face based on their gender and race.<sup>302</sup> Specifically, the Commission has been informed that women human rights defenders face criminalization and prosecution when promoting and defending women’s sexual and reproductive rights, in El Salvador, Honduras and Nicaragua, for example.<sup>303</sup> In these cases, they are “accused of undermining moral values or social institutions like the family.”<sup>304</sup> In Colombia, women human rights defenders who fought for land restitution on behalf of displaced persons and who were involved in the peace process - such as is the case of some indigenous leaders - have been specific targets of threats and violence.<sup>305</sup>

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<sup>298</sup> IACHR, Meeting of experts on the rights of indigenous women, November 8, 2014; See also Raquel Mejia c. Peru; IA Court. *Case of Tiu Tojín v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190.

<sup>299</sup> IACHR, *Situation of Environmental Rights Defenders in the Americas*, 161 POS, March 22, 2017.

<sup>300</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 283.

<sup>301</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 285; IA Court. *Case of Yarce et al. v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325.

<sup>302</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 286.

<sup>303</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 287.

<sup>304</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 283.

<sup>305</sup> IACHR, Press Release No.11/17, *IACHR Condemns Murders of Human Rights Defenders in the Region*, February 7, 2017; IACHR, Press Release No.160/16, *IACHR Condemns the Increase in Killings of Human Rights Defenders in Colombia*, November 2, 2016; IACHR, Press Release No.21/16, *CIDH Condemns Murders and Threats against Human Rights Defenders in Colombia*, February 25, 2016; IACHR, Press Release No.070/15, *IACHR Condemns Murder of Human Rights Defenders in Colombia*, June 12, 2015; IACHR, Press Release No.059/11, *IACHR Condemns Murder*

The Commission and the Court, in the matter of *Ana Teresa Yarce et al v. Colombia*, both concluded that there is a context of heightened risk faced by women human rights defenders in Colombia.<sup>306</sup> In this regard, it is important to note the important advances supported by the State of Colombia in the implementation of a specialized gender protocol to enhance the protection of women's rights defenders, indigenous women leaders, and journalists in the context of its national protection mechanism. Despite these efforts, the situation remains of concern to the Commission.<sup>307</sup>

125. The Commission was also informed in the context of a hearing of the violence with which Dakota State county authorities in the United States repressed women human rights defenders who were protesting peacefully against the Dakota Access Pipeline near the Standing Rock Indian Reservation, and how the most severe injuries on the frontline had been sustained by women.<sup>308</sup> In this sense, the Commission received allegations that a pregnant woman was injured by a rubber bullet, a young girl had lost her eye after being hit, and a young women nearly lost the use of her arm after a device exploded.<sup>309</sup>
126. The Commission has found that repeated attacks and threats against human rights defenders, along with the criminalization of their efforts, can have a significant chilling effect on their work.<sup>310</sup> Additionally, the Commission has received information about the exclusion of indigenous women human rights defenders from leadership roles in Nicaragua with the explanation that they supposedly lack experience in negotiating with the non-indigenous third-party actors.<sup>311</sup> The Commission was informed during both of its follow-up hearings on the situation of murdered and missing indigenous women in Canada about a similar situation where none of the indigenous women's associations were included by the government of Canada to participate in the design of the terms of reference and the implementation of the National Inquiry into the situation of Murdered and Missing Aboriginal

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*of Human Rights Activist and Expresses Concern over New Threats to Human Rights Defenders in Colombia*, June 20, 2011.

<sup>306</sup> IA Court. *Case of Yarce et al. v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325; IACHR, Report No. 86/13, *Cases 12.595, 12.596 and 12.621, Merits, Ana Teresa Yarce et al., Comuna 13*, Colombia, November 4, 2013.

<sup>307</sup> IACHR, Press Release No.11/17, *IACHR Condemns Murders of Human Rights Defenders in the Region*, February 7, 2017.

<sup>308</sup> IACHR, *Hearing on the Situation of Indigenous Peoples and Extractive Industries in the United States*, 160 POS, December 9, 2016.

<sup>309</sup> IACHR, *Hearing on the Situation of Indigenous Peoples and Extractive Industries in the United States*, 160 POS, December 9, 2016.

<sup>310</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II., Doc. 66, December 31, 2011, para. 287.

<sup>311</sup> IACHR, Response of the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua to questionnaire on the Human Rights Situation of Indigenous Women, January 2015.

Women, consulting only male-led indigenous organizations.<sup>312</sup> As such, the constant attacks – whether internal to their communities or external – aimed at undermining the efforts of human rights defenders of indigenous women’s rights, increases the gravity of the human rights situation of indigenous women, silencing the persons who defend and promote their rights. The combination of this pattern of violence against human rights defenders and the multiple and intersecting forms of discrimination faced by indigenous women create conditions that facilitate and perpetuate violence against indigenous women.

## 7. Violence in urban settings and during displacement and migratory processes

127. Across the Americas, an increasing number of indigenous peoples are compelled by economic need, armed conflict, and the denial of land rights, to migrate from their home communities in rural areas to urban centres.<sup>313</sup> They relocate in urban areas to study, find work, and seek out a better life for themselves and their families, but also “to flee conditions of family and social persecution that attempt against their life and their integrity.”<sup>314</sup>
128. This migration away from their usual safety nets, cultural practices, and their ancestral lands and resources, towards large cities, the labor market and vastly different values and customs make for a difficult transition into the urban setting. This transition is of greater difficulty and is a source of greater vulnerability for indigenous women and girls, who are faced with manifold sources of discrimination, who tend to find themselves in precarious socio-economic situations and have dependents to take care of. As was emphasized by the UN Special Rapporteur on the rights of Indigenous Peoples in her report on the situation of indigenous women, “Indigenous women and girls who leave their communities are highly vulnerable to trafficking, which can lead to multiple violations of their human rights, including severe economic and sexual exploitation and sexual violence.”<sup>315</sup> A

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<sup>312</sup> IACHR, *Follow-up on the Report “Missing and Murdered Indigenous Women in British Columbia,” Canada*, 158 POS, April 7, 2016; IACHR, *Follow-up hearing on the Situation of Disappearance and Murders of Indigenous Women and Girls in Canada*, 160 POS, December 9, 2016.

<sup>313</sup> United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples*, Victoria Tauli Corpuz, 6 August 2015, A/HRC/30/41, para. 60.

<sup>314</sup> IACHR, *Access to justice for women victims of violence in Mesoamerica*, OEA/Ser.L/V/II, Doc. 63, December 9, 2011, para. 309; United Nations, Committee of the Convention on the Elimination of All Forms of Discrimination against Women, *General Recommendation 26 on women migrant workers*, 2008, p. 5.

<sup>315</sup> United Nations, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, January 5, 2016, A/HRC/31/57, para. 31.

report from the Commissioner in charge of the Missing Women Commission of Inquiry of British Columbia, Canada affirmed that “there is no question that the transition from the North to an urban center makes young women particularly vulnerable” and, without support during this transition period, indigenous women face an increased vulnerability to homelessness, drug addiction, extreme poverty, and violence.<sup>316</sup>

129. For his part, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment highlighted, in a report of January 2016, that the abuse that women suffered during migration attained such levels that they could amount to torture and ill-treatment: “[m]igrants [...] worldwide face grave human rights violations during the migration process. Physical violence, threats and abductions by smugglers, traffickers and organized criminal groups are common. Women and girls are particularly vulnerable to sexual violence, exploitation and slavery along migration routes. Such abuses can amount to torture and ill-treatment [...]”<sup>317</sup>
130. In addition, migration or displacement towards cities in itself is perilous for indigenous women. In its report on *Access to justice for women victim of sexual violence in Mesoamerica*, the IACHR indicated that: “Migrant women suffer different forms of sexual violence such as forced prostitution, trafficking of persons for the purposes of sexual or labor exploitation; [...] rape and sexual abuses during transit or permanence in the destination country, [...] physical, sexual and psychological violence exercise in the home, and kidnappings.”<sup>318</sup> The obstacles that migrant women encounter in attempts to access the justice system are increased by their immigration status when they are fleeing the country where they lived.

## C. Conclusions

131. Through its different mechanisms, the Commission has consistently received information regarding the multiple forms of violence that indigenous women and girls suffer in different contexts, which in addition to causing violations of their collective rights and their civil, political, economic, social and cultural rights, constitute a form of structural violence. This violence is often perpetrated by State authorities, private actors, armed

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<sup>316</sup> Wally Oppal, “*Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Summary*”, Missing Women Commission of Inquiry (British Columbia: November 19, 2012), p. 139-140.

<sup>317</sup> United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples*, Victoria Tauli Corpuz, 6 August 2015, A/HRC/30/41, para. 60.

<sup>318</sup> IACHR, *Access to justice for women victims of violence in Mesoamerica*, OEA/Ser.L/V/II, Doc. 63, December 9, 2011, para. 309.

groups or, in some cases, members of indigenous communities. This violence is connected to and sustained by violations of the individual and collective rights of indigenous peoples, as well as the continuous and intersecting forms of discrimination faced by indigenous women.

132. The Commission highlights the need for a holistic approach to be used to respond and eradicate violence against indigenous women. As this report demonstrates, indigenous women and their communities suffer the impact of violence in a very specific way. Because of the unique role of indigenous women as spiritual leaders and guarantors of indigenous culture, the violence perpetrated in different contexts harms them physically, culturally, and spiritually. The individual and collective impact of these violations emphasizes the need for States to apply an intersectional focus in their policies towards indigenous peoples, taking into account the forms of historical and structural discrimination that indigenous women have experienced because of their ethnicity, race, gender and situation of poverty, which create a unique situation that cannot be adequately recognized through the consideration of each of the factors individually. States must, in accordance with the obligation of due diligence, intensify efforts to document these forms of violence as a necessary part of designing and implementing effective responses. This requires States to include indigenous women and their communities in these processes through consultation and engagement. The Commission also encourages indigenous communities to correspondingly engage all the means at their disposal to document cases of violence against indigenous women and to respond to them immediately.



CHAPTER 5  
ACCESS TO JUSTICE FOR  
INDIGENOUS WOMEN



## ACCESS TO JUSTICE FOR INDIGENOUS WOMEN

133. Although many States in the Americas have enacted legislation which provides for access to justice for women on an equal footing with men, and which also prohibits discrimination based on ethnicity, in practice however, this right is usually not guaranteed effectively for indigenous women.<sup>319</sup> Access to justice for indigenous women tends to be hampered by geographic, economic, cultural and linguistic barriers, all closely connected to the intersection of the multiple forms of discrimination they experience, as noted above. Article XXII, section 3, of the American Declaration on the Rights of Indigenous Peoples establishes that States will provide indigenous peoples with “equal protection and benefit of the law, including the use of linguistic and cultural interpreters.” However, this undertaking is far from attained in practice.
134. Indigenous women face obstacles in both national and indigenous justice systems. In national justice systems, there are usually no adequate or accessible mechanisms in place for indigenous women and racism is still a common practice.<sup>320</sup> In indigenous systems, men tend to be the primary

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<sup>319</sup> See IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.65, December 28, 2011; IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011; IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II Doc. 65, December 28, 2011; IACHR, Hearing Denunciation of missing and murdered indigenous women and girls in British Columbia, Canada, 144 POS, March 28, 2012; IACHR, *Hearing on the Situation of Human Rights of Indigenous Women*, 153<sup>rd</sup> Regular Session, October 28, 2014; IACHR, Press Release 11/07, *Justice Fails in Defending Women Victims of Violence: there is a pattern of impunity and discrimination*, March 6, 2007; IA Court. *Case of Rosendo Cantú v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment August 31, 2010, Series C No. 216; IA Court. *Case of Fernández Ortega v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment August 30, 2010, Series C No. 215; Regional Office for Central America of the United Nations High Commissioner for Human Rights, Diagnóstico sobre la situación de los derechos humanos de los pueblos indígenas en América Central, America, Volume I, November 2011, p. 222-223; Centro Latinoamericano y Caribeño de Demografía (CELADE)-Division of Population and Gender Matters of ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, Economic Commission for Latin America and the Caribbean, October 2013; United Nations, CEDAW Committee, Final Comments of the Committee on the Elimination of Discrimination against Women: Honduras, CEDAW/C/HON/CO/6, August 10, 2007, para. 13.

<sup>320</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.65, December 28, 2011 para. 59; IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 301.

decision-makers in institutions, which curtails the participation and incidence of women.<sup>321</sup> The IACHR notes that the two systems must follow internationally recognized human rights and, consequently, both systems must include measures guaranteeing compliance with the obligations of prevention, investigation, punishment and reparation.<sup>322</sup>

135. The following chapter is divided in five different sections. The first section touches upon the substance of the right to access to justice for indigenous women; the second section identifies the structural obstacles faced by indigenous women in state justice systems; the third section highlights the need to address access to justice for indigenous women from a multidisciplinary perspective; and the fourth section describes reparations from an intercultural and gender-based perspective, which aim to involve indigenous women, grant both individual and collective reparations, and to be transformative in the lives of these women. The fifth section describes the situation of indigenous justice systems, identifying obstacles and some good practices that have emerged throughout the region, as well as underscoring the human rights obligations these systems are required to meet.

## ***A. Right of Access to Justice***

136. Access to justice has been defined by the IACHR as the “de jure and de facto access to judicial bodies and remedies for protection in cases of acts of violence, in keeping with the international human rights standards.”<sup>323</sup> Moreover, “the State’s duty to provide judicial remedies is not fulfilled merely by making those remedies available to victims on paper; instead, those remedies must be adequate to remedy the human rights violations denounced.”<sup>324</sup> In other words, they must be available and effective in law and in practice.
137. Effective access to justice for indigenous women can only be achieved if two major obligations are fulfilled by the State: firstly, respect for the standard of due diligence, which requires the prevention, investigation, punishment, and redress of human rights violations against indigenous women; and

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<sup>321</sup> United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 44.

<sup>322</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.65, December 28, 2011 para. 199. See also Section V. F, *infra*.

<sup>323</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.68, January 20, 2007 para. 10.

<sup>324</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.68, January 20, 2007 para. 26.

secondly, the implementation of intercultural, gender-based, and multidisciplinary perspectives in the judicial system. The legal precedents of the Inter-American Court of Human Rights have emphasized that in order to ensure access to justice for members of indigenous communities, it is vital for States to grant effective protection that takes into account their particularities, social and economic characteristics, as well as their situation of special vulnerability, and their values and customs.<sup>325</sup> Moreover, in order to confront obstacles to adequately access justice, States have the obligation to ensure support for indigenous women from a gender-based perspective and in consideration of their circumstances of special risk to human rights violations.<sup>326</sup> The IACHR has underscored that effective access of indigenous peoples to judicial protection and due process of the law under the Convention is especially important given the context of historical and structural discrimination they experience.<sup>327</sup> Such protection must also be available in consonance with their culture and traditions, and guaranteed free from all forms of discrimination.

138. The Expert Mechanism on the Rights of Indigenous Peoples of the United Nations Human Rights Council has emphasized that the situation of access to justice for indigenous women must be addressed from a holistic perspective, inasmuch as access to justice is inextricably linked to other obstacles to human rights, which are often encountered by indigenous peoples, such as poverty, lack of access to health and education, as well as a lack of recognition of their right to land, territory and natural resources.<sup>328</sup>

## ***B. Main obstacles to access justice encountered by indigenous women***

139. Indigenous women and girls face a variety of obstacles in their access to justice, most of which are closely connected to the discrimination,

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<sup>325</sup> IA Court. *Case of Fernández Ortega v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment August 30, 2010, Series C No. 215, IA Court. *Case of Tiu Tojín v. Guatemala*, Merits, Reparations and Costs, Judgment November 26, 2008, Series C No. 190, para. 96.

<sup>326</sup> IA Court. *Case of Rosendo Cantú v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment August 31, 2010, Series C No. 216, paras. 184 and 213.

<sup>327</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc. 30/14, December 21, 2014, para. 118.

<sup>328</sup> United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*. Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, para. 35.

marginalization, and vulnerability to which they have been subjected historically. Discrimination in the official justice system, coupled with the high rates of marginalization and physical, emotional, and sexual violence they are subjected to, contributes to impeding their access to justice.<sup>329</sup> Laws, public policies and programs aimed at addressing the particular issues faced by indigenous women,—as a specific population group,—are in short supply, inasmuch as most of them tend to be targeted toward either indigenous peoples or towards women in general.<sup>330</sup> As the IACHR has underscored in its report *Missing and Murdered Indigenous Women in British Columbia, Canada*, States must first conduct consultation processes with indigenous women and then adopt the necessary initiatives, programs, and policies considering their needs and concerns.<sup>331</sup>

140. The obstacles most affecting indigenous women’s access to justice in the Americas are geographic, economic, cultural, and linguistic. The IACHR has noted in the past that geographic remoteness of indigenous territories and the lack of State services may force indigenous women to walk, sometimes for several days, in order to get to the nearest city to file a complaint, which also poses additional problems in introducing evidence to sustain their claims.<sup>332</sup> In its response to the questionnaire, the State of El Salvador indicated that one of the measures implemented to ensure indigenous women’s physical access to the institutions of justice was to introduce “Justices of the Peace” courts throughout the country.<sup>333</sup>
141. When women arrive in the towns or cities where the authorities are located, they also face economic problems, feel uncomfortable in an urban setting, and lack command of the language used in the courts of law.<sup>334</sup> It is very

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<sup>329</sup> United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*. Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, paras. 36-37.

<sup>330</sup> For example, in its Responses to the request for information from the United Nations Expert Mechanism on the Rights of Indigenous Peoples, the State of El Salvador wrote that it had special provisions regarding access to justice for indigenous women, children, young people and persons with disability.

<sup>331</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc. 30/14, December 21, 2014, para. 308.

<sup>332</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.65, December 28, 2011 para. 199; IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 305.

<sup>333</sup> Information provided by the State of El Salvador in its response to the Questionnaire *The Rights of indigenous Women in the Americas* prepared by the IACHR.

<sup>334</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.65, December 28, 2011 para. 199.

often the case that indigenous women are not provided interpreters for some or all of the proceedings, and are also confronted with the ethnic and cultural insensitivity of the operators of justice.<sup>335</sup> Additionally, justice officials are frequently unfamiliar with international human rights instruments of a collective and individual scope which are applicable to indigenous peoples, and rarely apply the ethical framework of women's human rights.<sup>336</sup> As such, many complaints to the authorities will simply be dismissed or set aside, even before an investigation has taken place.

142. In this regard, the UN Committee on the Elimination of Racial Discrimination (hereinafter "CERD") has voiced its concern over the failure of the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage of Honduras to investigate, prosecute, and punish allegations of crimes against indigenous and afro-descendent people. Consequently, said Committee urged Honduras to take the necessary measures to ensure access to justice of indigenous peoples, both individually and collectively depending on the circumstances.<sup>337</sup> Likewise, CERD noted its concern over the difficulties encountered by indigenous peoples in Guatemala to gain access to justice, particularly because of the failure to recognize and apply the indigenous legal system, as well as the lack of sufficient interpreters and court-appointed defense attorneys.<sup>338</sup> The United Nations Human Rights Council has also taken a position to this effect, regretting the lack of interpreters in Guatemala and urging the State to "take any measures that may be necessary to enable access to justice for all in their own language, by adopting effective policies to hire bilingual officials, by creating the number of interpreter positions as required, and adequately training professionals to perform the appropriate duties."<sup>339</sup> The IACHR also insisted in its 2016 country report on Guatemala that "[i]n a country with a large indigenous population, one of the key issues for the Commission is bilingual access to justice, which presupposes ensuring that in the state justice system indigenous persons

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<sup>335</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 305.

<sup>336</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 305.

<sup>337</sup> United Nations, Committee on the Elimination of Racial Discrimination, *Concluding observations on the first to the fifth periodical reports on Honduras*, CERD/C/HND/CO/1-5, March 13, 2014, para. 16.

<sup>338</sup> United Nations, Committee on the Elimination of Racial Discrimination, consideration of reports submitted by the States Parties under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination. Guatemala, CERD/C/GTM/CO/11, March 21, 2006, para. 14.

<sup>339</sup> United Nations, Human Rights Committee, Consideration of reports submitted by the States Parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee. Guatemala, CCPR/C/GTM/CO/3, July 4, 2012, para. 26.

can be heard in their own language and can express themselves fluently in the criminal proceeding, in accordance with the right recognized in Article 8(2)(a) of the American Convention and Article 12 of ILO Convention 169".<sup>340</sup> Regarding El Salvador, CERD has noted the difficulties that indigenous peoples encounter in attempting to gain access to justice, stemming from the high cost of litigation, and the lack of judicial services in remote areas.<sup>341</sup>

143. While the above-cited problems affect indigenous peoples in general, based on a diagnostic assessment of indigenous peoples in Central America conducted by the Office of the United Nations High Commissioner for Human Rights and the *Asociación de Investigación y Estudios Sociales (ASIES)*, indigenous women and girls are least able to exercise their right to access to justice, in both the official and the indigenous justice systems.<sup>342</sup> The CEDAW Committee has expressed its concern over the situation unfolding in Argentina, where even though "legislation provides for women's access to justice, their actual ability to exercise that right and bring cases of discrimination before the courts is limited by factors such as a lack of information on their rights, linguistic barriers, especially for indigenous women, and other structural difficulties in accessing the courts."<sup>343</sup> Likewise, the CEDAW Committee has voiced its concern over the fact that in Costa Rica, indigenous women had limited access to free legal assistance services.<sup>344</sup> The Committee has also urged Honduras to provide legal assistance and eliminate all impediments standing in the way of women who resort to courts, including fees for bringing actions and filing suits, as well as protracted delays in judicial proceedings.<sup>345</sup>

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<sup>340</sup> IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II., Doc.43/15, December 31, 2015., para. 408

<sup>341</sup> United Nations, Committee on the Elimination of Racial Discrimination, Consideration of the reports submitted by the States Parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee, El Salvador, CERD/C/SLV/CO/13, April 4, 2006, para. 16.

<sup>342</sup> Regional Office for Central America of the United Nations High Commissioner for Human Rights, *Diagnóstico sobre la situación de los derechos humanos de los pueblos indígenas en América Central*, Volume I, November 2011, p. 222-223.

<sup>343</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women, Argentina, CEDAW/C/ARG/CO/6, August 16, 2010, para. 15.

<sup>344</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women: Costa Rica, CEDAW/C/CRI/CO/5-6, August 2, 2011, para. 38.

<sup>345</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women: Honduras, CEDAW/C/HON/CO/6, August 10, 2007, para. 13.

144. The Inter-American Commission has received information from the Office of the United Nations High Commissioner for Human Rights in Guatemala indicating that indigenous women in that country do not usually report it when they are victims of intrafamily or sexual violence and of other violations, because they may be unaware of their rights, are concerned about being victims of further assaults, receive threats on their families, or are ashamed because of what their community will say.<sup>346</sup> These women have also claimed that they are afraid of being ignored and mistreated by judicial officials. When the women have opted to report these crimes, the lack of adequate and timely access to justice ends up making them feel guilty for doing so because it affects their families.<sup>347</sup> As has been noted above, the IACHR has observed that in many regions of the country, these indigenous women are unable to be understood in their own language, which adversely affects them whether they appear as victims, or as defendants charged with committing an alleged offense.<sup>348</sup>
145. The CEDAW Committee has expressed concern over how unaware indigenous women in Guatemala are about their rights.<sup>349</sup> For this reason, it has called on the State of Guatemala to take proactive measures to deal with the problem, such as creating general basic legal education programs, which take into account illiteracy and the languages these women speak.<sup>350</sup> By doing so, indigenous women can have the tools to learn about their rights and acquire the ability to exercise them. In light of a similar situation in Honduras, the CEDAW Committee recommended that the State conduct sustained legal awareness and public education campaigns in order to encourage and empower women.<sup>351</sup>

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<sup>346</sup> Information provided by the Office of the United Nations High Commissioner for Human Rights – Guatemala in its responses to the questionnaire *Indigenous women's rights in the Americas* prepared by the IACHR.

<sup>347</sup> Information provided by the Office of the United Nations High Commissioner for Human Rights – Guatemala in its responses to the questionnaire *Indigenous women's rights in the Americas* prepared by the IACHR.

<sup>348</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 205.

<sup>349</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women: Guatemala, CEDAW/C/HON/CO/6, February 12, 2007, para. 11.

<sup>350</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women: Guatemala, CEDAW/C/HON/CO/6, February 12, 2007, para. 12.

<sup>351</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women: Honduras, CEDAW/C/HON/CO/6, August 10, 2007, para. 13.

146. Obstacles faced by indigenous women and girls in accessing justice have also been underscored by the Inter-American Court in the cases of *Rosendo Cantú v. Mexico* and *Fernández Ortega v. México*, as indicated earlier. In the case of Valentina Rosendo Cantú, the Inter-American Court ruled that the State had obstructed her access to justice by not providing her with timely and specialized medical care when she filed the complaint, and for not acting with due diligence to investigate and punish the rape of which she was the victim.<sup>352</sup> The Court identified certain omissions and failures committed by the State in the investigation, such as not providing Valentina Rosendo Cantú the assistance of an interpreter and, therefore, requiring her husband to give her statement; and not ensuring that, in filing the complaint of rape, minimum conditions of privacy were respected, as required when this type of offense is involved.<sup>353</sup>
147. In both this case and that of Inés Fernández Ortega, because it was impossible for them to report and receive information in their language, the Inter-American Court held that their situation of vulnerability – based on their language and ethnicity – was not taken into consideration, which amounted to a *de facto* infringement of their right to access to justice.<sup>354</sup> The Court also emphasized that States have the obligation to refrain from taking actions, which directly or indirectly create situations of *de jure* or *de facto* discrimination.<sup>355</sup>
148. Some States of the hemisphere have institutions designed to ensure access to justice for women; however, so far, this has not translated into an actual improvement in the situation of indigenous women. With regard to Honduras, the CEDAW Committee has voiced concern because, despite the existence of an Office of the Special Prosecutor for Women, women continue to encounter obstacles in bringing cases of discrimination before the courts, due to factors such as poverty, lack of legal assistance, and information about their rights, as well as the attitudes of justice officials.<sup>356</sup> The IACHR has

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<sup>352</sup> IA Court. *Case of Rosendo Cantú v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment August 31, 2010, Series C No. 216, para. 174.

<sup>353</sup> IA Court. *Case of Rosendo Cantú v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment August 31, 2010, Series C No. 216, para. 179.

<sup>354</sup> IA Court. *Case of Rosendo Cantú v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment August 31, 2010, Series C No. 216, para. 185; IA Court. *Case of Fernández Ortega v. Mexico*, Merits, Reparations and Costs, Judgment August 30, 2010, Series C No. 215, para. 200.

<sup>355</sup> IA Court. *Case of Rosendo Cantú v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment August 31, 2010, Series C No. 216, para. 185; IA Court. *Case of Fernández Ortega v. Mexico*, Merits, Reparations and Costs, Judgment August 30, 2010, Series C No. 215, para. 200.

<sup>356</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women: Honduras, CEDAW/C/HON/CO/6, August 10, 2007, para. 12.

received information from civil society indicating that the special police station for women, the *Comisaría de la Mujer*, does not always complete the process of filing complaints brought by indigenous women; rather, when cases are postponed and women do not follow up, they simply close the case files.<sup>357</sup>

149. The Commission also underscores that discrimination and the barriers to adequately access justice also have serious judicial consequences on indigenous women, in terms of their over-representation in the prison population. For example, as documented in the report on *Missing and Murdered Indigenous Women in British Columbia, Canada*, statistics from 2008-2009 reveal that “Indigenous women represent 28% of women incarcerated and 37% of women sentenced to prison, although they only constitute approximately 4% of the Canadian adult population.”<sup>358</sup> These statistics were far worse for indigenous female youth in Canada, with “[...] indigenous female youth [representing] 6% of the Canadian female population yet 44% of the female youth in custody.”<sup>359</sup> In fact, data on the indigenous prison population suggests that the incarceration of women has become significantly higher than that of men, confirming that the intersectionality of discrimination affects indigenous women specifically increasing their vulnerability and lack of access to justice.<sup>360</sup>

### **C. Investigations from an intercultural and gender-based perspective**

150. The IACHR has noted that indigenous women and girls are caught in a situation of particular risk because of obstacles they face in seeking justice, which is further exacerbated by States’ failure to provide differential

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<sup>357</sup> Information provided by the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua in its response to the questionnaire *Indigenous women’s rights in the Americas*, prepared by the IACHR.

<sup>358</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, para. 88; NWAC, FAFIA and University of Miami school of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human rights*, 144 POS, March 28, 2012.

<sup>359</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, December 21, 2014, para. 88; NWAC, FAFIA and University of Miami school of Law Human Rights Clinic, *Briefing Paper for Thematic Hearing before the Inter-American Commission on Human rights*, 144 POS, March 28, 2012.

<sup>360</sup> Final Report of the Truth and Reconciliation Commission of Canada, vol.1: Summary, Toronto, 2015, Lorimer, p. 170; United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 40.

procedures and care to meet their specific needs in the area of justice.<sup>361</sup> Officials in charge of receiving complaints and conducting investigations do not usually take into consideration the particularities of the victims.<sup>362</sup>

151. The IACHR has held that States have the duty to establish and run judicial systems in accordance with the cultural diversity of indigenous peoples, which means they must provide sufficient economic and material resources for the judiciary to function, as well as offer intercultural training to the operators of justice, which includes education on indigenous cultures and identities.<sup>363</sup> It has also highlighted that States must, through the administration of justice, “incorporate the specific needs of indigenous women in their actions, respecting their cultural identity, ethnicity, language, and idiosyncrasy, even creating systems and methods of collecting evidence from the perspective of their culture in cases of violence.”<sup>364</sup>
152. For example, during the thematic hearing on the situation of human rights of indigenous women in Nicaragua held in 2014, the IACHR was informed of the State’s failure to incorporate an intercultural approach in Nicaraguan courts.<sup>365</sup> The Office of the United Nations High Commissioner for Human Rights in Guatemala has reiterated concern over the fact that the institutions charged with administering justice have not yet accepted ethnic and linguistic diversity as a fundamental element in the performance of their duties, which has especially affected women in rural areas and those who speak indigenous languages.<sup>366</sup> With respect to sexual violence, the IACHR has previously stressed States’ duty to act with the required due diligence for the prevention, punishment, and reparation of such acts, taking into

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<sup>361</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 294.

<sup>362</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 201.

<sup>363</sup> IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*, OEA/Ser.L/V/II. Doc. 59/06, December 30, 2009, para. 366; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.65, December 28, 2011, para. 60; Also see: IA Court. *Case of the Massacres of Río Negro v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment September 4, 2012, Series C No. 250, para. 231; IA Court. *Case of Tiu Tojín v. Guatemala*, Merits, Reparations and Costs, Judgment November 26, 2008, Series C No. 190, para. 96.

<sup>364</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 302.

<sup>365</sup> IACHR, Hearing No. 26. Situation of indigenous women’s human rights in Nicaragua, 153<sup>rd</sup> Regular Session, October 28, 2014.

<sup>366</sup> Regional Office for Central America of the United Nations High Commissioner for Human Rights, *Diagnóstico sobre la situación de los derechos humanos de los pueblos indígenas en América Central*, Volume I, November 2011, p. 223.

consideration the worldview and the cultural and community perspective of indigenous women.<sup>367</sup>

153. The Mexican State reported in its response to the questionnaire that the Supreme Court of Justice of the Nation (“SCJN”) has designed the *Protocol for Prosecution with a Gender-based Perspective* and the *Protocol for administrators of justice in cases involving the rights of indigenous persons, communities and peoples*, in an attempt to address the gender and ethnicity-based discrimination that is so widespread in Mexico.<sup>368</sup> The adoption of these protocols represents a step forward in ensuring access to justice from an intercultural and gender-based perspective. Nonetheless, the IACHR was subsequently informed that these protocols were not mandatory, and that further guidelines are required to adapt their application to the particular situation of indigenous women.<sup>369</sup>
154. The State of Colombia reported that it has created the *Casas de Justicia* program, which includes a strategic course of action called the *Public Policy for Access to Justice through an Ethnic Component Strategic Line*, with a view to promoting access to justice in a differential way through respect for the particularities of each indigenous people in the country.<sup>370</sup> It also indicated that it enacted Law 1381 of 2010 on native languages, creating instruments for the entities of the national and local government to provide the members of indigenous peoples with interpreters or translators.<sup>371</sup> The Colombian Constitutional Court recognized in several follow-up orders to Judgment T-025 of 2004 the need for State institutions to adapt their policies to the specific age, gender, and ethno-cultural needs of the populations affected by internal displacement and other victims of the armed conflict.<sup>372</sup>
155. The Commission observes that in the responses to the questionnaire prepared by the IACHR, no State indicated that it had any system or

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<sup>367</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 306.

<sup>368</sup> Information provided by the Mexican State, in its response to the questionnaire *Indigenous Women’s Rights in the Americas*, prepared by the IACHR.

<sup>369</sup> Information provided by Abogadas y abogados par la Justicia y los Derechos Humanos, in its response to the questionnaire *Indigenous Women’s Rights in the Americas*, prepared by the IACHR.

<sup>370</sup> Information provided by the Colombian State, in its response to the questionnaire *Indigenous Women’s Rights in the Americas*, prepared by the IACHR.

<sup>371</sup> Information provided by the Colombian State, in its response to the questionnaire *Indigenous Women’s Rights in the Americas*, prepared by the IACHR.

<sup>372</sup> Office of the Ombudsman, Comprehensive Care to Victims of Violence Unit, Protocol for guidance and assistance to victims of human rights violations and of international humanitarian law, who are members of indigenous peoples, 2011, p. 30.

procedures in place to collect evidence that incorporates the vision, culture, and perspective of indigenous women in cases pertaining to discrimination and violence against them. The responses only mentioned the existence of laws to eradicate violence and discrimination against women, as well as guidelines and protocols to address violence and promote equality, but none that concretely address the particular needs of indigenous women in the sphere of investigation and evidence-gathering.<sup>373</sup>

#### **D. Multidisciplinary Perspective**

156. In order to ensure access to justice for indigenous women, a multidisciplinary approach must be adopted, since the respect for their cultural and ethnic identity, language and particular characteristics is essential in this context. For this reason, the work of interpreters, translators, anthropologists, psychologists, healthcare professionals, among others is important.<sup>374</sup> The IACHR has voiced special concern because forensic medical and legal expert examinations do not ensure respect for indigenous customs in cases of sexual offenses.<sup>375</sup> In the interest of addressing this issue, the IACHR has indicated that States need to create systems and procedures for culturally appropriate expert examination in cases involving indigenous women.<sup>376</sup> With regard to sexual violence, the IACHR has found that States' duty to protect is comprehensive and encompasses both a public health and a legal approach, in which the State must meet the needs of the victims, including effectively addressing the physical and psychological consequences of sexual violence.<sup>377</sup>
157. The Commission acknowledges that it is crucial to have a variety of professionals available in order to render the process in the courts culturally appropriate. Interpreters guarantee effective communication and understanding of the court proceedings. In addition, other experts in the field of social sciences such as legal anthropologists or psychologists may also be required to inform the court about the worldviews of a specific

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<sup>373</sup> Information provided by the States of Colombia, Bolivia, El Salvador, Mexico, Paraguay and Peru, in its response to the questionnaire *Indigenous Women's Rights in the Americas*, prepared by the IACHR.

<sup>374</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 98.

<sup>375</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 305.

<sup>376</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.65, December 28, 2011, para. 59.

<sup>377</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 101.

indigenous community, the particular cultural beliefs which may influence behavior (in the courtroom and in society), the practices which may influence the suitability of a sentence or of a reparation, and the specific effects of a measure or decision on an indigenous community. However, the Commission continues to receive reports indicating that this multidisciplinary approach is not implemented in national courts. For instance, the IACHR has received information indicating that during judicial proceedings in Mexico, contextual information about the indigenous people to which the woman belongs, or about its worldview, is usually not taken into consideration.<sup>378</sup> Introduction of anthropological expert opinion evidence from a gender-based perspective is still not a widespread practice in judicial proceedings.<sup>379</sup>

158. Additionally, even though interpreters and translators play an essential role in access to justice for indigenous women, the IACHR has received information to the effect that they are often not made available by the States. The State of El Salvador indicated that the court system did not have interpreters of its own and, therefore, when such assistance was necessary, judicial officials had to obtain it from outside agencies or institutions.<sup>380</sup> The Office of the United Nations High Commissioner for Human Rights in Mexico identified in a sampling of 586 cases of indigenous persons deprived of their liberty in the State of Oaxaca, Mexico, that 84% had not been assisted by a translator at any time during their case proceedings.<sup>381</sup> Similarly, in a study conducted by the National Women's Institute in 2011, it was found that most indigenous women deprived of liberty in the States of Chiapas, Oaxaca and Veracruz were not accompanied by a translator or interpreter, and in the instances when they did receive assistance, the interpreter or translator was unfamiliar with the culture and customs of the person being charged.<sup>382</sup>

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<sup>378</sup> Information provided by Abogadas y abogados para la Justicia y los Derechos Humanos, in its response to the questionnaire *Indigenous Women's Rights in the Americas*, prepared by the IACHR.

<sup>379</sup> Information provided by Abogadas y abogados para la Justicia y los Derechos Humanos, in its response to the questionnaire *Indigenous Women's Rights in the Americas*, prepared by the IACHR.

<sup>380</sup> Information provided by the State of El Salvador, in its response to the questionnaire *Indigenous Women's Rights in the Americas*, prepared by the IACHR.

<sup>381</sup> Information provided by Abogadas y abogados para la Justicia y los Derechos Humanos, in its response to the questionnaire *Indigenous Women's Rights in the Americas*, prepared by the IACHR.

<sup>382</sup> Information provided by the State of Mexico, in its response to the questionnaire *Indigenous Women's Rights in the Americas*, prepared by the IACHR.

## ***E. Reparations from a gender-based and intercultural perspective***

159. Both the Inter-American Court and the IACHR have underlined the need to use a differential approach when granting reparations to certain groups, associations, and persons. The IACHR has stressed that in order to determine the scope of reparations, the cultural aspects characterizing the victim must be assessed, as well as her worldview, and conception of justice.<sup>383</sup> Victims' cultural differences need to be taken into account and assessed under the principle of equality, in an effort to break with existing prejudices and stereotypes, especially those targeting indigenous peoples and afro-descendant communities.<sup>384</sup>
160. The Inter-American Court first applied a differential analysis in the case of *Castro Castro Prison v. Peru* to determine reparations for victims, granting a higher compensation award to women who were subjected to sexual violence, to pregnant women, and women who went into labor while in detention.<sup>385</sup> In the judgment, the Court took into account that the women "were affected by the acts of violence differently than the men, that some acts of violence were directed specifically toward the women, and others affected them in greater proportion than the men."<sup>386</sup> In *Rosendo Cantú* and in *Fernández Ortega*, in addition to applying a gender-based perspective in its analysis, the Inter-American Court took into account membership of the victims in an indigenous community and their situation of special vulnerability.<sup>387</sup> Likewise, it held that the fact that the victims belonged to an indigenous community could require community-wide measures.<sup>388</sup>
161. In some States, laws or policies have been enacted that take into account a gender-based perspective and, at times, also victims' membership in indigenous peoples. In Colombia, on December 9, 2011, Decree 4633 of 2011

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<sup>383</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 11.

<sup>384</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 11.

<sup>385</sup> IA Court. *Case of the Miguel Castro Castro Prison v. Peru*, Judgment November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 433.

<sup>386</sup> IA Court. *Case of the Miguel Castro Castro Prison v. Peru*, Judgment November 25, 2006 (Merits, Reparations and Costs), Series C No. 160, para. 223.

<sup>387</sup> IA Court. *Case of Fernández Ortega et al v. Mexico, Preliminary Objection, Merits, Reparations and Costs*, Judgment August 30, 2010, Series C No. 215, para. 223; IA Court. *Case of Rosendo Cantú et al v. Mexico, Preliminary Objection, Merits, Reparations and Costs*, Judgment August 31, 2010, Series C No. 216, para. 206.

<sup>388</sup> IA Court. *Case of Fernández Ortega et al v. Mexico, Preliminary Objection, Merits, Reparations and Costs*, Judgment August 30, 2010, Series C No. 215, para. 223.

was approved, establishing measures of assistance, care, full reparation, and restitution of territorial rights for indigenous peoples and communities. The Decree specifically sets forth that the State is obligated to recognize that indigenous women have been affected differently in the conflict.<sup>389</sup>

162. At the hearing *Situation of women victims of human rights violations during the internal armed conflict in Guatemala*, held at the 144<sup>th</sup> Regular Session, the IACHR received information about the National Redress Program (PNR) with respect to indigenous women who were victims of gross and systematic violations of their human rights during the armed conflict. Based on the information received, the PNR was unable to fully perform its duties when these women were involved, inasmuch as i) no actual registration of all victims was carried out and the existing registration does not reveal the specifics of the violations committed against the women; ii) actions taken have been completely deficient in order to uncover the truth about the human rights violations committed against the women; iii) no reparation has been provided that takes into account the specific situation of women and girls; and iv) the mechanisms that have been used in the investigations into the rape and sexual violence lack a gender-based perspective.<sup>390</sup>
163. In Peru, the Truth and Reconciliation Commission attempted to determine whether sexual violence affected women differently from men, and was recognized for these efforts.<sup>391</sup> Nonetheless, a gender-based perspective was not adequately incorporated into the understanding of reparations in the final Reparations Program, and said program did not implement full and effective measures generally.<sup>392</sup> For example, the Reparations Program dismissed the effect of certain human rights violations, especially rape, on the situation of women and their capacity to access a stable income.<sup>393</sup> Likewise, the ethnicity of the victims was not taken into consideration to determine whether or not differential damages were caused by the intersection of multiple discriminatory factors.

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<sup>389</sup> Ministry of the Interior, *Decree-Law 4633 of 2011*, Article 16, Official Gazette No. 48.278 of December 9, 2011.

<sup>390</sup> IACHR, Hearing *Situation of women victims of human rights violations during the internal armed conflict in Guatemala*, 144 POS, March 27, 2012.

<sup>391</sup> Sieder, Rachel, Sierra, María Teresa, *Access to Justice for Indigenous Women in Latin America*, CMR. Michelsen Institute, 2011, p. 162.

<sup>392</sup> Sieder, Rachel, Sierra, María Teresa, *Access to Justice for Indigenous Women in Latin America*, CMR. Michelsen Institute, 2011, p. 163.

<sup>393</sup> *Access to Justice for Indigenous Women in Latin America*, CMR. Michelsen Institute, 2011, p. 190.

## 1. Participation of indigenous women

164. The IACHR has stressed that participation of indigenous women is essential in the design of reparations in the area of justice, as well as in the identification of challenges and priorities.<sup>394</sup> The IACHR has indicated that “the victim’s opinion also has to be considered; this helps the victim to regain the sense that she controls her life. It is a decisive factor in enabling the victim to regain her dignity, her personality and her self-esteem, which have sustained a severe blow as a result of the pain and suffering she experienced.”<sup>395</sup>
165. Effective participation of women in general and, particularly of indigenous women, in the development and implementation of reparations continues to be a challenge. In the case of the Truth and Reconciliation Commission in Peru, women were not sufficiently represented in the agencies charged with implementation of the Comprehensive Reparation Plan.<sup>396</sup> In some reparations processes, such as Guatemala’s, despite having a high degree of participation of indigenous women in the Multi-Institutional Body for Peace and Concord, which worked to create the National Redress Program, this did not translate into adequate implementation of reparations for these women.<sup>397</sup> The cultural reparations measures, for example, have not been sufficiently implemented.<sup>398</sup>
166. It is essential for States to continue to employ efforts to grant reparations with the participation and perspective of the victims involved.<sup>399</sup> The IACHR reiterates the need to design and adopt culturally appropriate policies, with

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<sup>394</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, para. 306. See also above section “Guiding Principles”.

<sup>395</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, paras. 107 and 110.

<sup>396</sup> Guillerot, Julie, “Linking Gender and Reparations in Peru: A missed Opportunity,” in Rubio Marín, Ruth (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations*, International Center for Transitional Justice, p. 190.

<sup>397</sup> Paz y Paz Bailey, Claudia, “Guatemala: Gender and Reparations for Human Rights Violations,” in Rubio Marín, Ruth (ed.), *What happened to the Women? Gender and Reparations for Human Rights Violations*, International Center for Transitional Justice, p. 115.

<sup>398</sup> Paz y Paz Bailey, Claudia, “Guatemala: Gender and Reparations for Human Rights Violations,” in Rubio Marín, Ruth (ed.), *What happened to the Women? Gender and Reparations for Human Rights Violations*, International Center for Transitional Justice, p. 125.

<sup>399</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, recommendation 28.

the participation of indigenous women, aimed at prevention, investigation, punishment, and reparation for acts that infringe their human rights.<sup>400</sup>

## 2. The element of *transformation* from the point of view of indigenous women

167. Reparations aimed at remedying a human rights violation by restoring the situation, to the extent possible, to what it was before are considered insufficient and limited in societies that were already characterized by exclusion and inequality, and where the victims are members of discriminated and marginalized sectors.<sup>401</sup> A merely restorative approach to reparations does not address structural factors and, therefore, does not guarantee non-repetition of human rights violations.<sup>402</sup> Transformative reparations must be distinguished from the actions taken by the State to fulfill its obligations vis-à-vis society in general in the area of social, economic and cultural rights.<sup>403</sup>
168. In the *Cotton Field* case, the Inter-American Court held for the first time that when there is a situation of structural discrimination, “reparations must be designed to change this situation, so that their effect is not only of restitution, but also rectification.”<sup>404</sup> The emphasis on granting reparations with a view to changing or transforming common practices and discriminatory beliefs reflects the inter-American system’s growing focus on the impact that gender notions, stereotypes and historical discrimination have on the perpetuation of violence against women.<sup>405</sup> The current United Nations

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<sup>400</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, recommendation 35.

<sup>401</sup> Díaz Gómez, Catalina; Nelson Sánchez, Camilo; Uprimny Yepes, Rodrigo (eds.), *Reparar en Colombia: los dilemas en contextos de conflicto, pobreza y exclusión*, International Center for Transitional Justice and Center for the Study of Law, Justice and Society (DeJuSticia), 2009, p. 33.

<sup>402</sup> Díaz Gómez, Catalina; Nelson Sánchez, Camilo; Uprimny Yepes, Rodrigo (eds.), *Reparar en Colombia: los dilemas en contextos de conflicto, pobreza y exclusión*, International Center for Transitional Justice and Center for the Study of Law, Justice and Society (DeJuSticia), 2009, p. 33.

<sup>403</sup> Díaz Gómez, Catalina; Nelson Sánchez, Camilo; Uprimny Yepes, Rodrigo (eds.), *Reparar en Colombia: los dilemas en contextos de conflicto, pobreza y exclusión*, International Center for Transitional Justice and Center for the Study of Law, Justice and Society (DeJuSticia), 2009, p. 51.

<sup>404</sup> IA Court. *Case of González et al (“Cotton Fields”) v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment November 16, 2009, Series C No. 205, para. 450.

<sup>405</sup> IACHR, *Legal Standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application*. Update of 2011 to 2014. See Ruth Rubio Marín and Clara Sandoval, “Engendering the Reparations Jurisprudence in the Inter-American Court of Human Rights: The Promise of the Cotton Fields Judgment,” *Human Rights Quarterly*, Vol. 33, 2011, p. 1068.

Rapporteur on Violence against Women, its Causes and Consequences has underscored that “guarantees of non-repetition offer the greatest potential for transforming gender relations. In promising to ensure non-recurrence, such guarantees trigger a discussion about the underlying structural causes of the violence and their gendered manifestations and a discussion about the broader institutional or legal reforms that might be called for to ensure non-repetition.”<sup>406</sup>

169. The Inter-American Court has issued measures of non-repetition in cases of indigenous women which, if adequately implemented, would have a transformative effect. In the cases of *Rosendo Cantú* and *Fernández Ortega*, the Inter-American Court ordered, for example, implementation of permanent training programs and courses on diligent investigation into cases of sexual violence against women, which include an ethnic and gender perspective, aimed at members of the Ministry of Public Prosecution, the judiciary, the police and the health sector.<sup>407</sup> In the case of the *Massacre of las Dos Erres*, the Inter-American Court also ordered measures, such as implementation of permanent training programs on human rights for the members of the Armed Forces, judges and prosecutors.<sup>408</sup>
170. Despite the importance of reparations with a transformative effect, the use thereof has not become widespread in the hemisphere. In some cases, it is possible to identify a rectifying element in the design of the reparations plans; however, it is currently unclear whether their effects have been adequate<sup>409</sup>. Some programs of the Comprehensive Reparations Plan of the Truth and Reconciliation Commission in Peru could have had a potentially transformative effect on the lives of indigenous women, if implemented properly. For example, the purpose of the Civil Rights Restitution Program is to issue documents, formulate official statements of absence due to disappearance, among other things; the Education Reparations Program seeks to make women literate and provide them with greater access to schooling at different levels; and the Collective Reparations Program includes training on production aspects, opportunities for employment or

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<sup>406</sup> Rashida Manjoo, “Promotion and Protection of all Human, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development,” Human Rights Council, A/HRC/14/22, April 19, 2010, p. 26.

<sup>407</sup> IA Court. *Case of Valentina Rosendo Cantú v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment August 31, 2010, Series C No. 216, paras. 223, 246, 249.

<sup>408</sup> IA Court. *Case of the Massacre of “Las Dos Erres” v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment November 24, 2009, Series C No. 211, para. 310.

<sup>409</sup> Sieder, Rachel, Sierra, María Teresa, *Access to Justice for Indigenous Women in Latin America*, CMR. Michelsen Institute, 2011, p. 163.

starting a business.<sup>410</sup> In the *Final Report of the Truth and Reconciliation Commission of Canada*, the Commission released a list of 94 calls to action, most of which contained a transformative effect. The calls for action were aimed specifically at various areas ranging from the child welfare system, to legal or health professionals, or to the media. Measures varied from State implementation of the United Declaration on the Rights of Indigenous peoples, to the education of public servants, legal professionals and high school students on the history of indigenous peoples and the legacy of residential schools.<sup>411</sup>

171. States must adopt measures of reparation with a transformative view, aimed at reforming the context of multiple discrimination against indigenous women existing in the Americas. For this reason, not only should measures of reparation be designed to address the specific situation of women and their communities, and also support changes in practices, attitudes and stereotypes of the authorities and the population in general. States must organize the structure not only for the purpose of punishing human rights violations, but also to prevent these acts and properly address the causes and social consequences in order to achieve structural change.<sup>412</sup>

## ***F. Systems of indigenous justice***

172. Because it is a manifestation of the right to self-determination of indigenous peoples, the international community has recognized indigenous peoples' right to have their own justice systems, forms of organization, authorities and customary law, as can be seen in certain international instruments and interpretations issued by various international organizations.<sup>413</sup> Both the

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<sup>410</sup> Guillerot, Julie, "Linking Gender and Reparations in Peru: A missed Opportunity," in Rubio Marín, Ruth (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations*, International Center for Transitional Justice, p. 177.

<sup>411</sup> Final Report of the Truth and Reconciliation Commission of Canada, vol.1: Summary, Toronto, 2015, Lorimer, p. 319 and ss.

<sup>412</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA Ser.L/V/II Doc.63, December 9, 2011, recommendation 27.

<sup>413</sup> United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*. Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, para. 9. See Articles 5, 34, 27 and 40 of the *United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, Articles 8(2) and 9(1) of the International Labor Organization's Convention No. 169 on Indigenous and Tribal Peoples.

instruments and interpretations underscore that respect for these systems and institutions must be afforded under international human rights law.

173. It is necessary for States to ensure that national judicial systems operate in accordance with the cultural diversity existing within them, as well as to adopt mechanisms to enable effective recognition and promotion of indigenous law, respecting both its traditional rules and international human rights law.<sup>414</sup> In the past, the IACHR has indicated that respect for indigenous legal systems must be recognized as a human right of a collective nature, without any implication that the State may be exempt from providing indigenous peoples with the services of the official justice system.<sup>415</sup>
174. In the constitutions and laws of various States of the Americas, indigenous legal systems and the jurisdiction of indigenous authorities have been recognized to varying degrees.<sup>416</sup> Despite this recognition, obstacles still stand in the way of full recognition and coordination with the official legal systems and, consequently, States have received recommendations to remedy this situation.<sup>417</sup> The Expert Mechanism on the Rights of Indigenous Peoples of the United Nations Human Rights Council has held that indigenous legal systems can play a crucial role in facilitating access to justice for indigenous persons, especially in locations where the official justice system is limited by factors such as distance, language, and systematic discrimination.<sup>418</sup> To this end, States must be willing to engage in intercultural dialogue, and to afford flexibility to indigenous authorities in the setting in place of indigenous jurisdictions, the implementation of their legal systems and in the spheres of competence of indigenous justice

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<sup>414</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.65, December 28, 2011, para. 200.

<sup>415</sup> IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*. OEA/Ser.L/V/II. Doc. 34, June 28, 2007, para. 293.

<sup>416</sup> United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*. Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, para. 14.

<sup>417</sup> See for example, Information received during the visit of the Rapporteur on the Rights of Indigenous Peoples and members of the IACHR Executive Secretariat to Guatemala August 21 to 30, 2013. Also see Regional Office for Central American of the United Nations High Commissioner for Human Rights, *Diagnóstico sobre la situación de los derechos humanos de los pueblos indígenas en América Central*, Volume I, November 2011, p. 224.

<sup>418</sup> United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*. Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, para. 20.

authorities, in full consideration of their right to their cultural perspectives and differences, autonomy and self-determination in these matters, so long as they comply with international human rights standards.<sup>419</sup>

175. The American Declaration on the Rights of Indigenous Peoples, recently adopted in 2016, provides a regional recognition of the status and importance of indigenous law and jurisdiction, and the need to ensure that such systems are respected at the national level:

**Article XXII - Indigenous law and jurisdiction**

1. Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.
  2. The indigenous law and legal systems shall be recognized and respected by the national, regional and international legal systems.
  3. The matters referring to indigenous persons or to their rights or interests in the jurisdiction of each state shall be conducted so as to provide for the right of the indigenous people to full representation with dignity and equality before the law. Consequently, they are entitled, without discrimination, to equal protection and benefit of the law, including the use of linguistic and cultural interpreters.
  4. The States shall take effective measures in conjunction with indigenous peoples to ensure the implementation of this article.
176. As the American Declaration on the Rights of Indigenous Peoples reflects in Article XXII.1, the right of indigenous peoples to develop and maintain their juridical systems and practices must be exercised in accordance with international human rights standards. The administration of justice, whether through national institutions or indigenous institutions, is a public good with individual and collective dimensions.<sup>420</sup> This means that both

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<sup>419</sup> UN Special Rapporteur on the Rights of Indigenous Peoples, *Human Rights, indigenous jurisdiction and access to justice: Towards intercultural dialogue and respect*, Presentation at the international seminar on investigative techniques and indigenous issues, Bogota, Colombia, February 2016.

<sup>420</sup> See also: United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to*

national and indigenous justice institutions must comply with the existing international human rights law standards, and those pertaining to the rights of women.

177. Access to justice for indigenous women is therefore linked to both access to the official justice system and to recognition and respect for indigenous law.<sup>421</sup> When indigenous women can access their own justice systems, they do not face ethnicity-based discrimination. In addition, the indigenous women at issue are familiar with the rules and procedures available to them. Indigenous systems can also take into account the broader context of the dispute and a more culturally appropriate approach to reparations can be adopted.<sup>422</sup> If international human rights standards are applied within these indigenous institutions, such culturally appropriate practices may be more efficient in affording access to justice and measures of redress to indigenous women.
178. The Commission must underscore, however, that indigenous women also face a variety of obstacles within indigenous justice systems. In its concluding remarks to Mexico, the CEDAW Committee expressed concern over harmful cultural practices, which are part of indigenous legal systems, inasmuch as they are based on the attribution of stereotyped roles of men and women in terms of gender perpetuating discrimination against indigenous women and girls.<sup>423</sup> As for Bolivia, the CEDAW Committee noted it was concerned that emphasis on the particularities of indigenous peoples could hinder adherence to the standards of non-discrimination and formal equality between women and men.<sup>424</sup> Special emphasis was placed on “the possibility that recognition of community justice by the State Party –though more accessible to the indigenous and peasant population- could become a

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*justice for indigenous women, children and youth, and persons with disabilities.* Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, para. 23; United Nations, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, 6 August 2015, A/HRC/30/41, para. 75.

<sup>421</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc.65, December 28, 2011, para. 200.

<sup>422</sup> Sieder, Rachel, Sierra, María Teresa, *Access to Justice for Indigenous Women in the Americas*, CMR. Michelsen Institute, 2011, p. 19-20.

<sup>423</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/MEX/CO/7-8, August 7, 2012, para. 34.

<sup>424</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women. Bolivia, CEDAW/C/BOL/CO/4, April 8, 2008, para. 22.

mechanism of perpetuation of stereotypes and prejudices that constitute discrimination against women and violate human rights.”<sup>425</sup>

179. Information provided to the IACHR indicates that indigenous authorities are usually men and therefore, in many instances, women stand trial before men of their communities and sometimes, of their own families, in keeping with the patriarchal structures of gender ideology.<sup>426</sup> In Santa Cruz del Quiché, Guatemala, for example, it was found that despite the fact that cases of rape, domestic violence and rejection of recognition of paternity by men tend to be widespread, the community Mayors are not usually willing to acknowledge those types of complaints filed by women.<sup>427</sup> The OHCHR-Guatemala has expressed concern because indigenous women and girls are victims of domestic and sexual violence in the following terms: “in practice, they do not have the ability to exercise their rights because of patriarchal prejudice.”<sup>428</sup> The OHCHR indicated in its study on the situation of human rights of indigenous peoples of Central America that indigenous women in Nicaragua required an analysis of the application of indigenous law in their own communities, since practices used there were harmful to their rights.<sup>429</sup>
180. The United Nations Expert Mechanism on the Rights of Indigenous Peoples has held that indigenous legal systems are highly dynamic and, consequently, respect for judicial autonomy of indigenous peoples and respect for international human rights law are not necessarily exclusive of each other.<sup>430</sup> By way of example, it cites the office of the indigenous Mayor of Santa Cruz del Quiche, Guatemala, where gender-based discrimination is

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<sup>425</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women. Bolivia, CEDAW/C/BOL/CO/4, April 8, 2008, para. 22.

<sup>426</sup> Regional meeting of experts on the situation of indigenous women in the Americas, held on November 8, 2014 at the IACHR.

<sup>427</sup> Sieder, Rachel, Sierra, María Teresa, *Access to Justice for Indigenous Women in Latin America*, CMR. Michelsen Institute, 2011, p. 21. Also see Regional Office for Central American of the United Nations High Commissioner for Human Rights, *Diagnóstico sobre la situación de los derechos humanos de los pueblos indígenas en América Central*, Volume I, November 2011, p. 223.

<sup>428</sup> Regional Office for Central American of the United Nations High Commissioner for Human Rights, *Diagnóstico sobre la situación de los derechos humanos de los pueblos indígenas en América Central*, Volume I, November 2011, p. 223.

<sup>429</sup> Regional Office for Central American of the United Nations High Commissioner for Human Rights, *Diagnóstico sobre la situación de los derechos humanos de los pueblos indígenas en América Central*, Volume I, November 2011, p. 352.

<sup>430</sup> United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*. Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, para. 23.

starting to be addressed, and the number of women selected as Mayors has increased.<sup>431</sup> In addition, in Cotacachi, Ecuador, development began in 2008 on the “Regulations for Good Coexistence and Good Treatment” or *Sumak Kawsaipa Katimachick*,<sup>432</sup> which seeks to bring ancestral practices and women’s human rights into harmony.<sup>433</sup>

181. The Commission considers fundamental to strengthen the ability of indigenous justice systems to protect indigenous women, treating them fairly and equitably, in consonance with the international human rights system.<sup>434</sup> Indigenous peoples have the right to promote, develop, and maintain their institutional structures and their own customs and legal systems, but they are not immune to the obligation to respect international human rights law.<sup>435</sup> Consequently, the self-determination enjoyed by indigenous peoples also means that indigenous authorities, in the same way as State authorities, have the obligation to respect the human rights of the persons subject to their jurisdiction. In this regard, the indigenous justice system must act with due diligence and ensure access to justice, without discrimination, for indigenous women. This entails an obligation to generate better documentation of the situation of indigenous women and the human rights violations to which they are subjected, as well as culturally appropriate complaint mechanisms, which engage women in their design and implementation.

## G. Conclusions

182. The historical and structural discrimination faced by indigenous women on the basis of their race and ethnic background, status as women and socio-

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<sup>431</sup> United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*. Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, para. 23.

<sup>432</sup> Sieder, Rachel, Sierra, María Teresa, *Access to Justice for Indigenous Women in the Americas*, CMR. Michelsen Institute, 2011, p. 34.

<sup>433</sup> Sieder, Rachel, Sierra, María Teresa, *Access to Justice for Indigenous Women in the Americas*, CMR. Michelsen Institute, 2011, p. 35.

<sup>434</sup> United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*. Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, para. 41.

<sup>435</sup> Article 34 of the *United Nations Declaration on the Rights of Indigenous Peoples*, E/C.19/2013/9, February 12, 2013, and Article 8 of ILO Convention No. 169.

economic condition, make them especially vulnerable to human rights violations. The right to access to justice therefore takes on particular importance and, accordingly, the IACHR reiterates its deep concern that, despite initiatives spearheaded by some States, the right of access to justice is not fully guaranteed for indigenous women in the Americas.

183. As noted above, the main obstacles to adequately justice for indigenous women are geographic, socio-economic, cultural and linguistic, but also flow from a State failure to act with due diligence, to adopt a holistic vision of the problem of violence against women, and to ensure an intercultural, gender-based and multidisciplinary judicial response. In order to contribute to increasing indigenous women's ability to obtain access to justice, States must adopt measures tending to empower indigenous women, give them access to meaningful participation in the civil and political spheres, as well as to improve their social and economic conditions.<sup>436</sup> At the same time, the State must guarantee that its agents and justice officials are trained and sensitized about gender and the various indigenous cultures, beliefs, and worldviews in their country. Indigenous justice systems must also act with due diligence when human rights violations are committed against women.
184. The obligation to include gender equality principles as well as due diligence standards required under international law also applies to indigenous justice systems. Therefore, it is important to work comprehensively in both State justice systems and indigenous systems on the measures necessary to respect and ensure indigenous women's human rights, in order to contribute in this way to the removal of barriers to accessing justice.<sup>437</sup>

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<sup>436</sup> United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*. Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, para. 43.

<sup>437</sup> United Nations, Human Rights Council, *Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*. Study by the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/EMRIP/2014/3/Rev.1, June 25, 2014, para. 46.



CHAPTER 6  
ECONOMIC, SOCIAL, AND  
CULTURAL DIMENSIONS OF  
INDIGENOUS WOMEN'S RIGHTS



## ECONOMIC, SOCIAL, AND CULTURAL DIMENSIONS OF INDIGENOUS WOMEN'S RIGHTS

185. Despite some advances in the past years in their economic, social, and cultural well-being, indigenous peoples continue to live in precarious conditions, as compared to the rest of the population, with higher rates of poverty, lack of access to basic services, education, and health care.<sup>438</sup> In Guatemala, for example, the highest levels of poverty are found in the 12 departments inhabited by an indigenous majority.<sup>439</sup> In Colombia, there are significant gaps in the effective enjoyment of economic, social, and cultural rights of indigenous peoples in comparison with the general average of the non-indigenous population of that country.<sup>440</sup> The same situation can be seen in Mexico, where indigenous peoples show considerably higher rates of illiteracy than the non-indigenous population, as well as difficulties in gaining access to health services.<sup>441</sup> On its country visit to Honduras in December 2014, the IACHR noted with concern that indigenous peoples experience higher levels of poverty than the rest of the population of the country, posting lower literacy rates, higher malnutrition rates, and a high incidence of contagious diseases and infections.<sup>442</sup>
186. As was indicated above, indigenous women in the Americas are exposed to multiple forms of discrimination, placing them in a situation of greater vulnerability, as compared to the rest of the population and to indigenous men, because of the various layers of discrimination that they face simultaneously. The IACHR has previously observed, with regard to economic, social and cultural rights, that discrimination against women, and

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<sup>438</sup> Regional Office for Central American of the United Nations High Commissioner for Human Rights, *Diagnóstico sobre la situación de los derechos humanos de los pueblos indígenas en América Central*, Volume I, November 2011, p. 13.

<sup>439</sup> Regional Office for Central American of the United Nations High Commissioner for Human Rights, *Diagnóstico sobre la situación de los derechos humanos de los pueblos indígenas en América Central*, Volume I, November 2011, p. 194.

<sup>440</sup> Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Liberties of Indigenous People*, James Anaya. Addition. The situation of indigenous peoples in Colombia: follow-up to recommendations made by the previous Special Rapporteur, A/HRC/15/37/Add.3, May 25, 2010, para. 49.

<sup>441</sup> Information provided by the Mexican State in its response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR.

<sup>442</sup> IACHR, *Preliminary observations on the situation of human rights in Honduras*, December 5, 2014.

especially against indigenous women, continues to be reflected in the labor market, in limited access to social security, in higher rates of illiteracy, as well as in the serious situation of poverty and social exclusion affecting them.<sup>443</sup>

187. This chapter examines the situation of economic, social, and cultural rights that indigenous women in the hemisphere are experiencing, as well as the major obstacles preventing them from fully enjoying these rights. It begins by describing the main issues faced by indigenous peoples in the Americas related to enjoyment of their economic, social, and cultural rights –with an emphasis on the rights to education, health, water, food, and work– and the impact that this situation has on indigenous women. Lastly, it addresses the importance of cultural rights to indigenous women. As a crosscutting issue, it discusses the importance of employing an intercultural and gender-based approach in the design and implementation of laws, policies, and programs aimed at addressing these issues.

## **A. *Barriers to the enjoyment of economic, social and cultural rights***

### **1. Education**

188. Education is a human right and a precondition for the realization of other rights. It constitutes a powerful tool for gender equality and a life free from poverty.<sup>444</sup> Indeed, education is one of the most economically sound investments for an individual or society; and this is particularly true for women, as it increases directly their wages and facilitates their access to broader health and social benefits.<sup>445</sup> Although this section of the report refers to the right to education of indigenous women in general, it will for the most part focus on access to education for indigenous girls, with a specific focus on primary education, as it constitutes a determining factor which has a direct impact on the socio-economic conditions of indigenous

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<sup>443</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA Ser.L/V/II/143 Doc.59, November 3, 2011, para. 4.

<sup>444</sup> UNICEF, *Millennium Development Goals, 2. Achieve universal primary education*, HQ99-0440; IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA Ser.L/V/II/143 Doc.59, November 3, 2011, para. 170; United Nations, Committee on Economic, Social and Cultural Rights, *General Comment No. 3*, December 8, 1999.

<sup>445</sup> Inter-agency Support Group on Indigenous People's Issues, *Thematic Paper on Education and Indigenous Peoples: priorities for Inclusive Education*, June 2014, p. 3.

women throughout their lives, and conditions their ability to pursue their education to the secondary level and beyond.

189. Based on this understanding and on the framework of its Millennium Development Goals, the United Nations made the right to education its target number 2, establishing that States should “[e]nsure that, by 2015, all children everywhere, boys and girls alike, will be able to complete a full course of primary schooling”.<sup>446</sup> In addition to the treaties at the international level, the Inter-American Court has established that States have the duty to ensure access to free basic education.<sup>447</sup> When indigenous communities are involved, the State must foster the right to education from an ethno-educational perspective, in other words, it must “take positive measures so that education is culturally acceptable from an ethnically differentiated perspective.”<sup>448</sup>
190. The Expert Mechanism on the Rights of Indigenous Peoples has underscored that indigenous peoples’ right to education “includes the right to provide and receive education through their traditional methods of teaching and learning, and the right to integrate their own perspectives, cultures, beliefs, values and languages in mainstream education systems and institutions.”<sup>449</sup> It must also be taken into consideration that the right of indigenous peoples to education encompasses mental, physical, spiritual, cultural, and environmental dimensions.<sup>450</sup> In addition to the intercultural perspective referred to above, education must be provided in conditions of equality and free from stereotyped gendered roles.<sup>451</sup> As the IACHR has indicated, indigenous women and girls encounter specific barriers to access and attendance in school, given the lack of educational options that fit their cultural and socio-economic context.<sup>452</sup> It is therefore essential that

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<sup>446</sup> UNICEF, Millennium Development Goals, *Goal No.2. Achieve universal primary education*, HQ99-0440.

<sup>447</sup> IA Court. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment August 24, 2010, para. 211.

<sup>448</sup> IA Court. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations and Costs, Judgment August 24, 2010, para. 211.

<sup>449</sup> United Nations, Expert Mechanism on the Rights of Indigenous Peoples, *Advice No. 1 on the right of indigenous peoples to education*, A/HRC/12/33, 2009, para. 3.

<sup>450</sup> United Nations, Expert Mechanism on the Rights of Indigenous Peoples, *Advice No. 1 on the right of indigenous peoples to education*, A/HRC/12/33, 2009, para. 3.

<sup>451</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA Ser.L/V/II/143 Doc.59, November 3, 2011, para. 176.

<sup>452</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA Ser.L/V/II/143 Doc.59, November 3, 2011, paras. 209-210.

education for indigenous women and girls be inclusive, as well as culturally and linguistically appropriate, to avoid perpetuating their marginalization.

191. Information provided to the IACHR demonstrates that illiteracy continues to be too common amongst indigenous women. In Guatemala, information from the second thematic report of the Office of the Ombudsman for Indigenous Women indicated that an average of 58.3% of all indigenous women in the country are illiterate, a proportion which was dramatically higher in some specific areas, reaching 87% amongst *chuj* indigenous women for instance.<sup>453</sup> In Paraguay, the illiteracy rate of indigenous women 15 years of age or older is 42.7%.<sup>454</sup> In Mexico, information from the 2010 National Survey highlighted that illiteracy among indigenous women who speak an indigenous language is four times higher (34.4%) than for those women who do not (8.1%), in addition to being much higher than that of men.<sup>455</sup>
192. As a result of the adoption of the Millennium Development Goals (MDG), the past decade has been marked with a solid improvement in terms of access to education and school attendance for indigenous children. According to information received at the IACHR, MDGs have improved gender parity as well as included an additional 52 million children in school around the world.<sup>456</sup> In addition, Intercultural Bilingual Education (IBE), which has focused on the promotion of both the indigenous language and the national language, and included indigenous knowledge in the curriculum, has proven to be successful. Available evidence suggests that IBE has boosted school attendance, cultural awareness of children and self-esteem, as well as has increased both student and parent's interest in education.<sup>457</sup> Indeed, access to education has increased substantially for indigenous girls and adolescents between the ages of 6 to 22.<sup>458</sup> For instance, between 2000 to 2010, school attendance of indigenous girls ages 6 to 11 years old increased by almost

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<sup>453</sup> Indigenous Women's Ombudsman's Office (Defensoria de la Mujer Indígena), *El Acceso de las Mujeres Indígenas al Sistema de Justicia Oficial de Guatemala, segundo informe*. Guatemala 2007, p. 27-28.

<sup>454</sup> Information provided by the State of Paraguay in its response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR.

<sup>455</sup> Information provided by Equis: Justicia par las Mujeres, Grupo de Información en Reproducción Elegida (GIRE), Simone de Beauvoir Institute for Leadership (ILSB) and JASS (Asociadas por lo Justo), in its response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR.

<sup>456</sup> Inter-agency Support Group on Indigenous People's Issues, *Thematic Paper on Education and Indigenous Peoples: priorities for Inclusive Education*, June 2014, p. 4.

<sup>457</sup> Inter-agency Support Group on Indigenous People's Issues, *Thematic Paper on Education and Indigenous Peoples: priorities for Inclusive Education*, June 2014, p. 7.

<sup>458</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 82.

20% in Costa Rica and Panama, reaching attendance rates of 88% in the former and 92% in the latter.<sup>459</sup> During the same period, the increase in school attendance of indigenous girls between the ages of 12-17 was even more significant, rising from as low as nearly 50% in some countries in Latin America to 70% of indigenous adolescents.<sup>460</sup> Some important increases have also been seen among indigenous young women between the ages of 18 and 22, where attendance was reported to have doubled over the last decade; however it did not surpass 40% in any country of Latin America.<sup>461</sup>

193. Nonetheless, and despite this marked increase in school attendance for indigenous girls of every age group, a significant gap remains between indigenous and non-indigenous girls, and it increases progressively with every additional year of education.<sup>462</sup> Indeed, there continues to be a lower probability that indigenous girls attain completion of elementary and high school.<sup>463</sup> The Commission has found it difficult to obtain recent data on access to education of indigenous children which was disaggregated by gender, but the data it was able to gather provided a basis for concern. In several countries, only a small percentage (less than 10%) of indigenous girls complete high school - in Panama (5.7%), Colombia (6.8%), Nicaragua (7.4%), and Ecuador (7.9%). In other countries, completion rates range from 10% to 20%: in México (13.1%) and Costa Rica (14.5%); while a few countries' rates are higher than 20%: in Uruguay (23.5%) and Peru (28.6%).<sup>464</sup> This has been attributed to factors including: failures in the implementation of EIB, such as the lack of sustained and secure funding, of infrastructure, and of qualified teachers; the unsatisfactory reflection of indigenous cultures, traditions, histories, languages and perspectives in the curricula; the persistence of negative stereotyping of indigenous culture and

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<sup>459</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 82.

<sup>460</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 83.

<sup>461</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 83.

<sup>462</sup> ECLAC, *Inclusive social development: The next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean*, 2015, p. 28-29; World Bank, *Indigenous Latin America in the Twenty-First Century: The First Decade*, 2015, p. 80-82.

<sup>463</sup> ECLAC, *Inclusive social development: The next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean*, 2015, p. 28-29; World Bank, *Indigenous Latin America in the Twenty-First Century: The First Decade*, 2015, p. 80-82. See also on the completion of high school by indigenous adolescents in general: Committee on the Rights of the Child, *General Comment No.20 (2016) on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, December 6, 2016, para. 35-36, 71.

<sup>464</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 92.

identity; ethnic, generational and gender inequalities; teenage pregnancy; the lack of recognition and support for second chance literacy and non-formal education programs, as well as the persistence of structural causes such as poverty, which require indigenous children to work and contribute to the family's financial subsistence.<sup>465</sup>

194. Another factor to be considered is the school completion rate at the different levels of education, as school attendance by indigenous girls and women by no means guarantees that they will remain in school until completion. The primary school completion rate has considerably increased in all countries, particularly in Costa Rica, Mexico and Panama, where rates have risen 20 percentage points between 2000 and 2010.<sup>466</sup> Ethnic inequality continues to be greater than gender-based inequality: with the exception of Uruguay, young indigenous girls complete primary school at a lower rate than non-indigenous girls in all countries. This inequality is more significant in comparing rural and urban settings, which exposes sharp differences between rural and urban indigenous girls.<sup>467</sup>
195. Several different barriers make it particularly difficult for indigenous girls and young women to access and remain in school. The lack of adequate infrastructure in schools, such as properly outfitted and functioning bathrooms, in indigenous communities and economically disadvantaged areas, affects young and adolescent girls-when they enter puberty.<sup>468</sup> School location is another one of the most common barriers, inasmuch as in many instances education facilities are located too far away from their communities, entailing a long journey, and the attendant transportation costs and risks of sexual violence.<sup>469</sup> The additional costs that must be incurred for school supplies and textbooks just add to the list of obstacles

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<sup>465</sup> ECLAC, *Inclusive social development: The next generation of policies for overcoming poverty and reducing inequality in Latin America and the Caribbean*, 2015, p. 28-29; United Nations, Human Rights Council, Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz, *Report on the Rights of Indigenous Peoples, including their economic, social and cultural rights in the post-2015 development framework*, A/69/267, August 6, 2014, para.60; Inter-agency Support Group on Indigenous People's Issues, *Thematic Paper on Education and Indigenous Peoples: priorities for Inclusive Education*, June 2014, p. 7.; ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 86.

<sup>466</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 89.

<sup>467</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 88.

<sup>468</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA Ser.L/V/II/143 Doc.59, November 3, 2011, para. 210.

<sup>469</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA Ser.L/V/II/143 Doc.59, November 3, 2011, para. 210.

encountered by them.<sup>470</sup> The State of Peru has noted, for example, that indigenous women tend to not complete their education, due to lack of economic resources, especially when they attempt to access higher education.<sup>471</sup>

196. Indigenous girls and women are also up against cultural barriers, when their families believe that the investment made in educating their daughters is not worth the cost, or when these girls have family and caregiver responsibilities that they are required to perform instead.<sup>472</sup> Based on information provided by the State of Peru, the highest school dropout rates for women are posted in rural areas, as little girls are required to drop out of school to do domestic chores.<sup>473</sup> Another reason girls may be compelled to leave school prior to completion is early motherhood.<sup>474</sup> In this regard, it is important to underscore that indigenous women's particular exposure to sexual violence has an impact on the exercise of their right to education.<sup>475</sup> ECLAC has identified that, given the remoteness of many indigenous communities and the long distances that must be travelled for children to attend school, families' fear for the safety of the girls and the risks of being victims of violence and sexual assault on the way to or back from school is an additional detractor to attendance.<sup>476</sup>
197. It is fundamental for States to pay special attention to the particular situation of indigenous women and to consult them regarding the design of responses to address the sexual violence perpetrated against women in the education sector, with the goal of ensuring measures that are sensitive to their worldview and reflect an intercultural perspective.<sup>477</sup> The IACHR has

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<sup>470</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 91.

<sup>471</sup> Information provided by the State of Peru in its response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR.

<sup>472</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA Ser.L/V/II/143 Doc.59, November 3, 2011, para. 211.

<sup>473</sup> Information provided by the State of Peru in its response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR.

<sup>474</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 91.

<sup>475</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II Doc. 65, December 28, 2011, para. 108; United Nations, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz*, August 6, 2015, A/HRC/30/41, para. 28.

<sup>476</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 91.

<sup>477</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II Doc. 65, December 28, 2011, para. 110.

previously stressed that an intercultural education, free of all forms of discrimination includes the right to live free from all forms of violence.<sup>478</sup>

198. Another major barrier for indigenous girls and women to access education is language. According to the United Nations Rapporteur on the Right to Education, teaching in the predominant language of a State, instead of indigenous languages, is a factor that has a bearing on accessing and remaining in school, inasmuch as it places linguistic, pedagogical, and psychological limitations on indigenous students.<sup>479</sup> ECLAC has found that students, whose mother tongue is not integrated into education programs or is only taught as a separate course, tend to perform poorly,<sup>480</sup> and that they perform even more poorly when the curriculum lacks sensitivity to the subject of cultural diversity.<sup>481</sup> The Committee on Economic, Social and Cultural Rights has consistently expressed concern that indigenous peoples in Guatemala do not always enjoy the right to an education taught in their native tongue.<sup>482</sup> It has been reported that departments of the country with 90% indigenous population have a very low number of educational establishments with a bilingual/intercultural education program in place.<sup>483</sup>

## 2. Health

199. As was recognized in the American Declaration on the Rights of Indigenous Peoples, at Article XVIII, “Indigenous peoples have the collective and individual right to the enjoyment of the highest attainable standard of physical, mental, and spiritual health.” According to the Committee on Economic, Social and Cultural Rights, this right to health contains certain interrelated and essential elements: availability, accessibility, acceptability, and quality.<sup>484</sup> Indigenous communities in general are grappling with

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<sup>478</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II Doc. 65, December 28, 2011, para. 110.

<sup>479</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 87.

<sup>480</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 87.

<sup>481</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA Ser.L/V/II/143 Doc.59, November 3, 2011, para. 212.

<sup>482</sup> United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights, *Concluding observations on the periodic report of Guatemala*, E/C.12/GTM/CO/3, December 9, 2014, para. 26.

<sup>483</sup> Escobar Figueroa, Pamela, *Avances y desafíos en las dimensiones del desarrollo humano de los pueblos indígenas de Guatemala*. United Nations Development Program, 2011. p. 14.

<sup>484</sup> Committee on Economic, Social and Cultural Rights, *General Comment 14. The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2000/4, para. 12.

deteriorating health conditions, stemming from insufficient and limited availability and accessibility to health care services. Health care facilities tend to be located far away from communities, and too often, the services offered are culturally inappropriate. For instance, during its visit to Guatemala in 2013, the IACHR was able to observe for itself serious geographic obstacles to providing effective health care services to indigenous communities;<sup>485</sup> and during its hearing on *Indigenous Women in the Americas*, it received information with regards to the precariousness of services for indigenous women in Oaxaca, Mexico, the nearest facilities located many hours away from their communities, as well as lacking emergency services and interpreters.<sup>486</sup> In the case of Brazil, indigenous women leaders have informed the Commission that in the State of Maranhão, many pregnant women are not receiving medical services due to the lack of equipment and infrastructure<sup>487</sup>. In addition, facilities in remote areas tend to be insufficiently equipped to adequately treat some of the illnesses to which indigenous communities are exposed as a consequence of the presence of extractive or development industries on their territories. For example, the Commission was informed of the lack of specialized medical response teams and materials in Espinar, in the region of Cusco, Peru to treat the consequences on health of the exposure of many community members to contamination arising from the exploitation of their territories.<sup>488</sup>

200. Even though health care coverage among indigenous peoples has undergone an overall expansion, there are still disparities between the indigenous and non-indigenous populations. According to the State of Peru, access to health for indigenous women remains limited.<sup>489</sup> The former Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, noted that indigenous peoples in Brazil endure poor health conditions, malnutrition, dengue fever, malaria, hepatitis, tuberculosis, and parasites; indigenous women present a disproportionately high incidence of cervical cancer, most likely as a result of the failure to practice early detection, and given their inadequate pre and

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<sup>485</sup> Complaint of the q'eqchi', poqomchi' and achi' Peoples, *Analysis of the situation of racism and discrimination in Alta Verapaz*. Information received on August 23, 2013, in Cobán, Alta Verapaz, Guatemala.

<sup>486</sup> IACHR, *Situation of discrimination against indigenous women in the Americas*, 144 POS, March 28, 2012. See also: information received from the participating organizations as a follow-up to the hearing.

<sup>487</sup> Conselho Indigenista Misionario – CIMI, *Relatório sobre Violência contra os povos indígenas no Brasil*, 2015, p. 123, 125.

<sup>488</sup> IACHR, *Situation of Human Rights of indigenous peoples and peasant communities in Espinar, Cusco*, 157 POS, April 8, 2016; ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013; p. 54.

<sup>489</sup> Information provided by the State of Peru in its response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR.

postnatal care.<sup>490</sup> The current UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, in her 2016 report on her mission to Brazil, stated that the prevalence of violence against indigenous women, the high levels of suicide in indigenous communities, as well as the illegal adoption of indigenous boys and girls in Brazil reflect the continuous lack of culturally appropriate services for indigenous women in the country<sup>491</sup>. As for the situation in Colombia, former UN Rapporteur James Anaya has reported that: “indigenous groups do not appear to have the same access to and enjoy the same quality care as the majority of Colombians.”<sup>492</sup> He voiced special concern because indigenous women in Colombia face difficulties in accessing sexual and reproductive health services, especially when they are victims of forced displacement.<sup>493</sup>

201. For its part, the requirement of acceptability for health services demands that health-related facilities, goods, and services be respectful of the culture of peoples and communities.<sup>494</sup> As such, it is vital for States to make interpreters available in order to enable full access to health services.<sup>495</sup> It is also important to emphasize that indigenous women’s health is not only a women’s individual responsibility, but also a collective responsibility of the members of the community, given that their health and well-being has a bearing on the cultural, spiritual, and social life in the community.<sup>496</sup> In order to meet this need, an intercultural approach has been promoted in the Americas, which entails the support and fostering of indigenous medicine

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<sup>490</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya. Addition. The situation of Indigenous Peoples in Colombia: follow-up on the recommendations made by the previous Special Rapporteur, A/HRC/15/37/Add.3, May 25, 2010, para. 62.

<sup>491</sup> United Nations, Human Rights Council, *Report on the Mission to Brazil of the Special Rapporteur on the Rights of Indigenous Peoples*, A/HRC/33/42/Add.1, August 8, 2016.

<sup>492</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya. Addendum. The situation of Indigenous Peoples in Colombia: follow-up on the recommendations made by the previous Special Rapporteur, A/HRC/15/37/Add.3, May 25, 2010, para. 52.

<sup>493</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya. Addendum. The situation of Indigenous Peoples in Colombia: follow-up on the recommendations made by the previous Special Rapporteur, A/HRC/15/37/Add.3, May 25, 2010, para. 52.

<sup>494</sup> Committee on Economic, Social and Cultural Rights, *General Comment 14. The right to the highest attainable Standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2000/4, para. 12.

<sup>495</sup> United Nations, Committee on the Elimination of Racial Discrimination, consideration of reports submitted by States Parties under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination. Mexico, CERD/C/MEX/CO/16-17, April 4, 2012, para.19.

<sup>496</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013, p. 54.

systems; and the establishment of health care models that respect and implement systems of traditional knowledge-based health care.<sup>497</sup>

202. Article 25 of ILO Convention N° 169 establishes the States' obligation to make adequate health care services available to indigenous peoples, or provide them with the necessary means for them to organize and provide these services under their own responsibility and control. In addition, the American Declaration on the Rights of Indigenous Peoples has established, in Article XVIII, that indigenous peoples "have the right to their own health systems and practices, as well as to the use and protection of the plants, animals, minerals of vital interests, and other natural resources for medicinal use in their ancestral lands and territories." In this regard, the Committee on the Elimination of Racial Discrimination has stressed the importance of States developing, in close consultation with indigenous communities, a comprehensive and culturally appropriate strategy for indigenous peoples to receive quality health care.<sup>498</sup> Given the special situation of vulnerability experienced by indigenous women and girls, it is essential to take into account their specific particularities in developing these strategies. According to ECLAC, the indigenous women's movement of Latin America has raised the need to build mechanisms of participation and of inclusion of indigenous women and peoples to make sure that appropriate and quality health services are provided, employing an intercultural approach to overcome linguistic differences, and discriminatory treatment.<sup>499</sup>
203. The IACHR has previously indicated that cultural factors stand as barriers to accessing health services for women. When indigenous women are involved, health services tend to be offered without taking into account their expectations, traditions, and beliefs which, coupled with the negative quality of the services indigenous women often receive, can discourage women from using these services.<sup>500</sup> Access to health can be significantly impaired by cultural insensitivity or disrespectful treatment by medical staff, which can simply make women and their families decide not to seek the medical care

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<sup>497</sup> ECLAC, *Indigenous Peoples in Latin America: Progress in the Past Decade and Remaining Challenges to Guaranteeing Indigenous Peoples' Rights*, November 2014, p. 215.

<sup>498</sup> United Nations, Committee on the Elimination of Racial Discrimination, consideration of reports submitted by States Parties under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination. Mexico, CERD/C/MEX/CO/16-17, April 4, 2012, para. 19.

<sup>499</sup> ECLAC, *Indigenous Peoples in Latin America: Progress in the Past Decade and Remaining Challenges to Guaranteeing Indigenous Peoples' Rights*, November 2014, p. 235.

<sup>500</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II Doc. 65, December 28, 2011, para. 9.

they require.<sup>501</sup> It should be noted as well that indigenous persons, and women in particular, often encounter discrimination when they access medical services at health care facilities. When they have preserved their own languages as their only means of communication, they also face a language barrier with health care system workers.<sup>502</sup> For example, the IACHR received information indicating that Colombian indigenous women have claimed that a lack of interpreters is one reason why they do not seek health care in hospitals and health care facilities.<sup>503</sup>

204. As for reproductive health, while some indigenous communities are reticent to deal with the topic because of the role played by women in their communities, many indigenous women wish to exercise their sexual and reproductive rights.<sup>504</sup> The IACHR has noted previously that, along with other groups of women, indigenous women encounter the greatest obstacles in accessing information on sexual and reproductive health. These barriers have led to massive human rights violations, for instance in cases where sterilization was practiced without consent, curtailing their rights to humane treatment, private and family life, and to a life free from violence and discrimination.<sup>505</sup> States have the obligation to ensure women's right to access information on this topic, taking into consideration the potential specific needs of indigenous women.<sup>506</sup>
205. One of the main health problems afflicting indigenous women is maternal mortality and morbidity, which continues to affect them to a greater extent than it affects non-indigenous women.<sup>507</sup> According to the Pan American Health Organization, the maternal mortality rate in Guatemala is still high, with 139.7 deaths for every 100,000 live births, which are mostly reported among indigenous women.<sup>508</sup> ECLAC reports that the risk of death of

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<sup>501</sup> IACHR, *Access to Justice for Women Victims of Sexual Violence: Education and Health*, OEA/Ser.L/V/II Doc. 65, December 28, 2011, para. 9.

<sup>502</sup> Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya. Addendum. The situation of indigenous peoples in Argentina, A/HRC/21/47/Add.2, July 4, 2012, para. 72.

<sup>503</sup> Response to IACHR Questionnaire provided by D. Uberoi, J. Hatanga and K. Bacharach, students of the Course *Gender, Sexual and Reproductive Health and International Human Rights Law (2014)*, Georgetown University Law Center. Received on January 20, 2015.

<sup>504</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013, p. 64.

<sup>505</sup> IACHR, *Access to information on reproductive health from a human rights perspective*, OEA/Ser.L/V/II. Doc. 61, November 22, 2011, paras. 7 and 53.

<sup>506</sup> IACHR, *Access to information on reproductive health from a human rights perspective*, OEA/Ser.L/V/II. Doc. 61, November 22, 2011, para. 48.

<sup>507</sup> IACHR, *Access to information on reproductive health from a human rights perspective*, OEA/Ser.L/V/II. Doc. 61, November 22, 2011, para. 11.

<sup>508</sup> Pan American Health Organization, *Health in the Americas, 2012 Edition: Country Volume. Guatemala*, p. 387.

indigenous women in giving birth in Mexico is nine times higher in predominantly indigenous municipalities with a high marginalization and geographic-social isolation index as compared to those with most access to services.<sup>509</sup> ECLAC reports similar rates for other Latin American States.<sup>510</sup>

206. The IACHR finds that States have certain fundamental obligations requiring immediate priority measures to be taken in the area of maternal health, and one of them is to prioritize efforts and resources to ensure access to maternal health services for women who tend to be at a higher risk, such as indigenous women.<sup>511</sup> The Inter-American Court ruled in the case of the *Sawhoyamaxa Indigenous Community v. Paraguay* that States have the obligation to adopt special measures to ensure mothers' right to accessing adequate medical care, especially during pregnancy, labor, and nursing.<sup>512</sup>

### 3. Food and Access to Water

207. Compared to the rest of the population, indigenous peoples have greater difficulty accessing adequate food and drinking water. This is the result of the situation of poverty they tend to live in as well as a historical disregard for their rights to control over their lands and natural resources, among other factors. As was held by the Inter-American Court in the judgment of the case of *Yakye Axa v. Paraguay*, access to and use of ancestral lands and natural resources are closely tied to the right to food and to clean water.<sup>513</sup> Consequently, when deprived of adequate food and water, their situation of vulnerability is considerably heightened. The current UN Special Rapporteur on the Rights of Indigenous Peoples has noted that in the State of Mato Grosso do Sul in Brazil, indigenous communities face land shortages, which has led to inadequate access to food and the highest rates of infant mortality recorded in the country.<sup>514</sup>

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<sup>509</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013, p. 66.

<sup>510</sup> See ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013, p. 66.

<sup>511</sup> IACHR, *Access to information on reproductive health from a human rights perspective*, OEA/Ser.L/V/II. Doc. 61, November 22, 2011, paras. 20.

<sup>512</sup> IA Court, *Case of Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment March 29, 2006 (Merits, Reparations and Costs), Series C No. 146, para. 177.

<sup>513</sup> IA Court, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgment June 17, 2005 (Merits, Reparations and Costs), para. 167.

<sup>514</sup> Human Rights Council, Report of the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya. Addendum. Report on the situation of human rights of indigenous peoples in Brazil, A/HRC/12/34/Add.2, August 26, 2009, para. 63.

208. The UN Special Rapporteur on the Right to Food has expressed concern about the absence in Guatemala of a special regime to protect the territories traditionally belonging to indigenous peoples.<sup>515</sup> He has also voiced special concern for women, given that they are the targets of discrimination based on their gender, racial, and ethnic background, situation of poverty, and residence in rural areas.<sup>516</sup> During the working visit to Guatemala conducted by the Office of the Rapporteur on the Rights of Indigenous Peoples, the IACHR noted with concern the forced evictions of indigenous communities, which have placed them in a precarious position and caused a food crisis. In turn, the CEDAW Committee has regarded issues of access to land for indigenous women in that country as troubling, because these women may be displaced as a result of new economic development plans.<sup>517</sup>
209. Discrimination against indigenous peoples and women, as reflected for example in violations of their rights in the labor setting and in the levels of poverty, is also a significant obstacle to the realization of the right to food.<sup>518</sup> In this regard, the Special Rapporteur on the Right to Food has recommended to the State of Guatemala that it combats discrimination against women, especially indigenous women, and recognizes their rights, particularly to access productive resources and ownership of these.<sup>519</sup>
210. In Mexico, the National Council for the Evaluation of Social Development Policy has noted that indigenous persons face greater lack of access to food than the non-indigenous population.<sup>520</sup> The UNDP reported that 38.7% of indigenous children in Mexico suffer from chronic malnutrition, while the

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<sup>515</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Right to Food, Sr. Olivier De Schutter. Addendum. Mission to Guatemala, A/HRC/13/33/Add.4, January 26, 2010, paras. 80-81.

<sup>516</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Right to Food, Mr. Jean Ziegler. Addendum. Mission to Guatemala, E/CN.4/2006/44/Add.1, January 18, 2006, para. 9.

<sup>517</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women. Guatemala, CEDAW/C/GUA/CO/7, February 12, 2009, para. 33.

<sup>518</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Right to Food, Sr. Jean Ziegler. Addendum. Mission to Guatemala, E/CN.4/2006/44/Add.1, January 18, 2006, para. 53.

<sup>519</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Right to Food, Sr. Jean Ziegler. Addendum. Mission to Guatemala, E/CN.4/2006/44/Add.1, January 18, 2006, para. 58.

<sup>520</sup> Information provided by Equis: Justicia par las Mujeres, Grupo de Información en Reproducción Elegida (GIRE), Simone de Boudoir Institute for Leadership (ILSB) and JASS (Asociadas por lo Justo), in their response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR.

rate for non-indigenous children is three times lower (12.5%).<sup>521</sup> In Guatemala, data from the National Maternal and Child Health Survey (ESMI 2008/2009) found that chronic malnutrition affecting indigenous children was almost twice as high as non-indigenous children, affecting 65.9% of indigenous children in comparison to 36.2% of non-indigenous children.<sup>522</sup> Indigenous children in Colombia are also particularly vulnerable to violations of the right to food, as exemplified by the situation of severe malnutrition that is presented by indigenous communities in the Sierra Nevada of Santa Marta, Chocó, Guaviare and Cauca, or by Wayúu children in La Guajira.<sup>523</sup>

211. In El Salvador, many indigenous persons live in conditions of poverty, which is further compounded by the historical loss of their lands and natural resources, thus making it difficult for them to gain access to food and contributing to malnutrition.<sup>524</sup> The CEDAW Committee has expressed its concern especially over Salvadoran indigenous women, given the persistence of the high levels of poverty and social exclusion they face, as well as the obstacles they encounter in exercising their basic social rights.<sup>525</sup>
212. Whether it results from poverty, the loss of their ancestral territories, the pollution thereof, or other factors, indigenous peoples are disproportionately deprived of clean drinking water. In its 2009 Report on the situation of human rights in Venezuela, the IACHR noted with grave concern that nine children from the Warao indigenous peoples had died as a result of their nutritional deterioration and lack of access to drinking

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<sup>521</sup> Information provided by Equis: Justicia par las Mujeres, Grupo de Información en Reproducción Elegida (GIRE), Simone de Boudoir Institute for Leadership (ILSB) and JASS (Asociadas por lo Justo), in their response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR.

<sup>522</sup> Guatemala, ENSMI, *National Maternal and Child Health Survey*, December 2010, p. 310; UN Women. Americas and the Caribbean, *Guatemala country report*.

<sup>523</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya. Addendum. The situation of Indigenous Peoples in Colombia: follow-up on the recommendations made by the previous Special Rapporteur, A/HRC/15/37/Add.3, May 25, 2010, para. 52; IACHR, *Precautionary measure No. 51/15 – Children and adolescents of the communities of Uribíá, Manaure, Riohacha and Maicao of the Wayúu people, in the department of La Guajira, Colombia*, December 11, 2015 (Resolution in Spanish only).

<sup>524</sup> Human Rights Council, Report of the Special Rapporteur on the Human Rights of Indigenous Peoples, James Anaya. Addendum. Report on the situation of human rights of indigenous peoples in El Salvador, A/HRC/24/41/Add.2, June 25, 2013, para. 48.

<sup>525</sup> United Nations, CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women. El Salvador, CEDAW/C/SLV/CO/7, November 7, 2008, para. 37.

water.<sup>526</sup> In Panama, the 2010 census revealed that nationwide, an average of 93.3% of all households have access to water that is suitable for human consumption, while in indigenous areas, the averages are much lower (28% in Ngäbe Buglé, 41% on Emberá, and 77% in Guna Yala, while 59%, 42%, and 94% respectively, did not have access to sanitation services).<sup>527</sup> Additionally, based on information provided by the State of Peru, in districts with 50% or more of the population whose first language is indigenous, 62% of households have no water and 59% have no sewage service.<sup>528</sup> As recently as December 2015, the IACHR has granted precautionary measures in favor of the children of various Wayúu indigenous communities in Colombia, urging the State to protect the children's rights to life and physical integrity, following reports of numerous deaths and illnesses related to contaminated water supplies. On January 26, 2017, the IACHR expanded the precautionary measures to include pregnant or lactating indigenous Wayúu women.<sup>529</sup>

#### 4. Poverty and obstacles to earning a decent and good quality living

213. Indigenous peoples in the Americas endure lower levels of economic and social development as compared to the non-indigenous population. Indigenous women are usually the most affected, inasmuch as they generally have less access to education and employment than indigenous men. According to the Special Rapporteur on the Rights of Indigenous Peoples, the basic needs of 23.5% of indigenous households in Argentina go unmet, while the percentage of non-indigenous homes with unmet basic needs is 13.8%.<sup>530</sup> For its part, the National Commission for the Development of Indigenous Peoples notes that in Mexico, 7.4 million persons live in extreme poverty, of which 60% are indigenous.<sup>531</sup> Information from the World Bank

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<sup>526</sup> IACHR, *Democracy and human rights in Venezuela*, 2009, OEA/Ser.L/V/II, Doc.54 (December 30, 2009), para. 1081

<sup>527</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya. Addendum. The situation of Indigenous Peoples in *Panama*, A/HRC/27/52/Add.1, May 7, 2014, para. 59.

<sup>528</sup> Information provided by the State of Peru in its response to the questionnaire *Indigenous Women's Human Rights in the Americas*, prepared by the IACHR.

<sup>529</sup> IACHR, *Precautionary measure No. 51/15 – Pregnant and Nursing Women of the Wayúu Indigenous Community, Colombia*, Extension, January 26, 2017 (Resolution in Spanish only).

<sup>530</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya. Addendum. The situation of Indigenous Peoples in *Argentina*, A/HRC/21/47/Add.2, July 4, 2012, para. 73.

<sup>531</sup> Information provided by Equis: Justicia par las Mujeres, Grupo de Información en Reproducción Elegida (GIRE), Simone de Boudoir Institute for Leadership (ILSB) and JASS (Asociadas por lo Justo), in their response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR.

indicates that 61% of indigenous persons in El Salvador live in conditions of poverty and 38.3% in extreme poverty.<sup>532</sup>

214. ECLAC has noted that indigenous and non-indigenous women tend to be mainly employed in the tertiary labor sector, which mostly includes commerce and services.<sup>533</sup> Unlike non-indigenous women, indigenous women also play an important role in the primary sector, as a great many of them live in rural areas. In the past years, a shift has been detected among indigenous women from traditional family farming and animal husbandry to other economic sectors, as well as the increased participation by women as labor in agroindustrial exports, and farm work, among other things.<sup>534</sup>
215. The IACHR has previously expressed its concern over indigenous women, whose human rights are especially at risk, given that their labor rights are usually not adequately protected by laws and regulations.<sup>535</sup> A high number of indigenous women belong to the category of unpaid workers, to a greater extent not only than non-indigenous women, but also than indigenous men.<sup>536</sup> In urban areas, a high number of indigenous women are engaged in domestic work.<sup>537</sup> As domestic workers, they usually do not have social security, they face discrimination, as well as long workdays, among other difficult conditions.
216. Based on the information received by the IACHR, indigenous women in Guatemala usually work as domestic help without being paid decent wages, and are often exposed to different forms of violence and discrimination.<sup>538</sup> The State of Peru indicated in its response to the IACHR questionnaire that indigenous women are more affected by unemployment and

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<sup>532</sup> United Nations, Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya. Addendum. The situation of Indigenous Peoples in El Salvador, A/HRC/24/41/Add.2, June 25, 2013, para. 45.

<sup>533</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013, p. 98.

<sup>534</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013, p. 98.

<sup>535</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA Ser.L/V/II/143 Doc.59, November 3, 2011, para. 114.

<sup>536</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013, p. 100.

<sup>537</sup> ECLAC, *Indigenous Women in Latin America: Demographic and social dynamics in the human rights framework*, October 2013, p. 102.

<sup>538</sup> Information received during the working visit at a meeting with indigenous leaders, communities and organizations on August 21, 2013 in Guatemala City, and in the petition of the q'eqchi', poqomchi' and achi' peoples, *Analysis of the situation of racism and discrimination in Alta Verapaz*, received on August 23, 2013, in Cobán, Alta Verapaz.

underemployment than the rest of the population; they often perform non-remunerated jobs or are paid lower wages for the same job. In Mexico, the 2009 Survey on Indigenous Women's Health and Rights (ENSADEMI) reflected that the vast majority - or 76.22% - of indigenous women, are either: self-employed (59.96%), work at home (9.84%) or without pay at family-owned businesses (6.42%).<sup>539</sup>

217. Indigenous women tend to have less access to social security than the rest of the population. The Commission has received information indicating that indigenous women in the Autonomous Region of the Northern Atlantic in Nicaragua do not have social security coverage even though they are entitled to it under the Constitution, because they mostly work in the informal sector and not under any contractual agreement.<sup>540</sup> This same situation can be seen in Mexico where, according to statistics from the Federal Government's 2013-2018 Social Development sectorial program, 81% of the indigenous population in rural areas does not have access to social security, as compared to 59.1% of the non-indigenous population.<sup>541</sup>
218. The IACHR notes that States have the obligation to create the conditions that will enable women to have full access to and control over their economic resources, unencumbered by any form of discrimination. This obligation entails devoting priority attention to women in the most vulnerable situations, such as indigenous women, who usually face the greatest obstacles in accessing and controlling their resources.<sup>542</sup>

## ***B. Indigenous Women's Cultural Rights***

219. According to the UN Special Rapporteur on Cultural Rights, cultural rights are meant to "protect the rights of each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their world view and the meanings they assign to human

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<sup>539</sup> Information provided by Equis: Justicia par las Mujeres, Grupo de Información en Reproducción Elegida (GIRE), Simone de Boudoir Institute for Leadership (ILSB) and JASS (Asociadas por lo Justo), in their response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR.

<sup>540</sup> Information provided by the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua in its response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR.

<sup>541</sup> Information provided by the government of Mexico in its response to the questionnaire *The Rights of Indigenous Women in the Americas*, prepared by the IACHR. See also: Gobierno de Mexico, *Programa sectorial de Desarrollo Social 2013 – 2018*, p. 36.

<sup>542</sup> IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, OEA Ser.L/V/II/143 Doc.59, November 3, 2011, para. 331.

existence and development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life.”<sup>543</sup> These rights also protect access to tangible and intangible cultural heritage as important resources enabling such identification and development processes.<sup>544</sup> The Expert Mechanism on the Rights of Indigenous Peoples has found that the right to culture in the context of indigenous peoples includes the right to self-determination, to their own culture, customs and languages, and the right to their institutions, and judicial systems.<sup>545</sup>

220. In order to ensure respect for the right to self-determination of indigenous peoples, the close connection between indigenous peoples' cultural and language rights and their rights related to their lands, territories and natural resources must be recognized.<sup>546</sup> Additionally, indigenous peoples' connections to traditional territories, to their homes and to their communities are important, even for those who have migrated elsewhere for work and education, to preserving and developing indigenous cultures.<sup>547</sup> The Inter-American Court has held that the culture of the members of indigenous communities “corresponds to a specific way of life, of being, seeing and acting in the world, constituted on the basis of their close relationship with their traditional lands and natural resources, not only because these are their main means of subsistence, but also because they are an integral element of their cosmology, their spirituality and, consequently, their cultural identity.”<sup>548</sup> The IACHR has previously noted that indigenous women belong to societies where ancestral land is an essential element of their existence and culture.<sup>549</sup> In the context of a visit conducted by the Commission to Colombia, indigenous women stated that their survival is linked to preserving their lands, because that is where they can freely

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<sup>543</sup> United Nations, General Assembly, *Report of the Special Rapporteur on the Cultural Rights. Women's Cultural Rights*, A/67/287, August 10, 2012, para. 7.

<sup>544</sup> United Nations, General Assembly, *Report of the Special Rapporteur on the Cultural Rights. Women's Cultural Rights*, A/67/287, August 10, 2012, para. 7.

<sup>545</sup> United Nations, Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, *Study on the role of languages and culture in the promotion and protection of the rights and the identity of indigenous peoples*, A/HRC/EMRIP/2012/3, April 30, 2012, para. 21.

<sup>546</sup> United Nations, Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, *Study on the role of languages and culture in the promotion and protection of the rights and the identity of indigenous peoples*, A/HRC/EMRIP/2012/3, April 30, 2012, para. 23.

<sup>547</sup> United Nations, Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples, *Study on the role of languages and culture in the promotion and protection of the rights and the identity of indigenous peoples*, A/HRC/EMRIP/2012/3, April 30, 2012, para. 24.

<sup>548</sup> IA Court. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, Judgment August 24, 2010, Merits, Reparations and Costs, Series C No. 214, para. 174.

<sup>549</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 126.

express their culture.<sup>550</sup> Indigenous woman from Trinidad and Tobago and from Belize, respectively, informed the Commission of the central role women play in passing down culture from one generation to the next, affirming that “culture is who we are as indigenous women,”<sup>551</sup> and that, “[indigenous] women are seen as the protectors and custodians of cultural values, customs and practices, and are protectors of that knowledge. They have the power to translate this knowledge to satisfy the sustainable lives of their children.”<sup>552</sup> In addition, they spoke of the strength and resilience of indigenous women, and of their ability to empower entire communities through the revival of their traditional knowledge on their culture or land preservation.<sup>553</sup>

221. In her report on indigenous peoples and their relationship to the land, former UN Special Rapporteur of the Working Group on Indigenous Populations, Erica-Irene Daes, identified several elements: a) indigenous peoples have a deep relationship with their lands, territories, and resources; b) it is a relationship involving a variety of dimensions and social, cultural, spiritual, economic, and political responsibilities; c) the collective dimension of that relationship is important; and d) the intergenerational aspect of this relationship is fundamental to the cultural identity, survival, and viability of indigenous peoples.<sup>554</sup> The IACHR has addressed the unique relationship between indigenous peoples and their lands on many occasions, expressing that “the use and enjoyment of the land and its resources are integral components of the physical and cultural survival of the indigenous communities and the effective realization of their human rights more broadly.”<sup>555</sup> The Commission has observed that the particular connection between indigenous communities and their lands and resources is linked to these peoples’ very existence, both in terms of material subsistence and of

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<sup>550</sup> IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, October 18, 2006, para. 137.

<sup>551</sup> Interview with Aleisha Holder, member and legal adviser of the Santa Rosa First Peoples Community of Trinidad and Tobago, July 7, 2017.

<sup>552</sup> Selene Solis, *Culture, Heritage, and Tradition*, Speaking at the Symposium “Indigenous Geographies and Caribbean Feminisms: Common Struggles against Global Capitalism,” St. Augustine University, Trinidad and Tobago, March 31, 2017.

<sup>553</sup> Cristina Coc, Keynote Address “Dignified Rebellion,” Speaking at the Symposium “Indigenous Geographies and Caribbean Feminisms: Common Struggles against Global Capitalism,” St. Augustine University, Trinidad and Tobago, March 31, 2017.

<sup>554</sup> United Nations, Economic and social council, *Prevention of discrimination and protection of indigenous peoples and minorities*, E/CN.4/Sub.2/2001/21, para. 20.

<sup>555</sup> IACHR, *Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II., December 30, 2009, para.55; IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, para. 116. See also IA Court. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 79, para. 149.

cultural integrity, and therefore “warrants special measures of protection.”<sup>556</sup> Likewise, the Inter-American Court has underscored that “for indigenous communities, relations to the land are not merely a matter of possession and production, but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.”<sup>557</sup>

222. Given that cultural and community identity is highly important to indigenous peoples, the forcible removal of children from their lands and the forced break up of families can have a variety of effects on the community in general and especially, on women and girls. State policies involving forced removal of children from families cause strong intergenerational impacts.
223. The situation of indigenous children and families in Canada provides an emblematic example of violations of the right to cultural identity. From 1879 to 1996, for over a century, as part of government assimilation strategies, the Canadian government established a mandatory residential schools policy for indigenous children. These government-funded and church-run schools and residences were “set up to assimilate Aboriginal people forcibly into the Canadian mainstream by eliminating parental involvement and community involvement in the intellectual, cultural, and spiritual development of Aboriginal children.”<sup>558</sup> This policy was based in racist and discriminatory beliefs, they “were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said, “to kill the Indian in the child.”<sup>559</sup> More than 150,000 First Nation, Métis and Inuit children were forcibly removed from their families and placed in boarding schools, where they were purposefully cut off from their indigenous traditions and cultures. At these boarding schools, the indigenous children were provided an inferior education, were instead encouraged to learn a craft or a trade, and school management and staff frequently mistreated and abused their students emotionally, physically and far too often, sexually. In addition to being

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<sup>556</sup> IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II., December 30, 2009, para.55; IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, para. 128.

<sup>557</sup> IA Court. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 79, para. 149. IA Court. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, paras. 124, 131. IA Court. *Case of the Plan de Sánchez Massacre v. Guatemala*. Reparations and Costs. Judgment of November 19, 2004. Series C No. 116, para. 85.

<sup>558</sup> Truth and Reconciliation Commission of Canada, *Interim Report*, Winnipeg, 2012, Library and Archives Canada, p. 1.

<sup>559</sup> Aboriginal Affairs and Northern Development Canada, *Statement of Apology by the Right Honorable Stephen Harper*, Ottawa, June 11, 2008.

removed far from their families, having their traditional clothes thrown away, their hair cut, and their customs mocked, they were not permitted to communicate in their native languages, including in letters to their families, who in most instances were neither English nor French speakers.<sup>560</sup>

224. While also acknowledging that residential schools have scarred many young men and have had lasting effects on them, the IACHR considers that the legacy of the residential school program is a cause and a consequence of the discrimination and violence existing today in Canada against women and indigenous girls.<sup>561</sup> This policy caused social disruption, the breakdown of families and communities, as well as trauma for former students.<sup>562</sup> Based on information gathered by the IACHR, many indigenous students grew up separated from their cultures, language, and families, affecting their sense of identity and their relationships to their families and communities.<sup>563</sup>
225. The separation of young children from their families, communities and cultures, paired with the severe discipline, abuse and neglect of children in these schools, are understood as having undermined the ability of many survivors to adequately parent their own children. The former UN Rapporteur on the rights of indigenous peoples, James Anaya, has noted that among the results of the residential school era has been a lack of intergenerational transmission of child-raising skills and high rates of substance abuse.<sup>564</sup> In this regard, he highlighted the fact that “Aboriginal children continue to be taken into the care of child services at a rate eight times higher than non-indigenous Canadians.”<sup>565</sup> The Commission also received information that demonstrated that the high rates of indigenous child removal in Canada were not only related to the trauma of survivors, but also to the inadequate funding of child welfare services on reserves by

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<sup>560</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc.30/14, 2014, para. 73.

<sup>561</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc.30/14, 2014, para. 73.

<sup>562</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc.30/14, 2014, para. 74.

<sup>563</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc.30/14, 2014, para. 75.

<sup>564</sup> Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on the situation of indigenous peoples in Canada*, A/HRC/27/52/Add.2, July 4, 2014, para. 31.

<sup>565</sup> Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on the situation of indigenous peoples in Canada*, A/HRC/27/52/Add.2, July 4, 2014, para. 31.

the Federal government, in comparison to non-indigenous children.<sup>566</sup> The Commission was also informed of the funding and service level disparities in child and family services for indigenous children compared to non-indigenous children that persist to this day.<sup>567</sup> In fact, the Truth and Reconciliation Commission concluded that: “Canada’s child-welfare system has simply continued the assimilation that the residential school system started.”<sup>568</sup>

### C. Conclusions

226. International and inter-American instruments provide for a wide array of economic, social and cultural rights, which are understood as indivisible and interdependent with civil and political rights. However, indigenous peoples, as compared to the rest of the population, continue to endure higher rates of poverty and lack of access to basic services, education, and health care, and indigenous women and girls are the most affected. As was demonstrated above, indigenous women and girls are particularly affected by violations of their right to education, to health, to food and to clean water, their right to work and their right to culture. These violations of their rights make them more susceptible to violence.
227. As such, the Commission underscores that the impact of various economic, social and cultural rights violations that still plague indigenous women increases their vulnerability to violence and to other violations of their fundamental rights, and requires immediate and effective State intervention. The effectiveness of any measure which relates to the protection of indigenous women will be contingent on State integration of a holistic, intercultural, and gender-based approach in the design and implementation of laws, policies, and programs aimed at addressing these issues.

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<sup>566</sup> CHRT, *First Nations Child and Family Caring Society of Canada v. Attorney General of Canada*, 2016 CHRT 2, January 26, 2016; IACHR, *Hearing on the situation of indigenous children in Canada*, 160 POS, December 9, 2016.

<sup>567</sup> Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on the situation of indigenous peoples in Canada*, A/HRC/27/52/Add.2, July 4, 2014, para. 31; CHRT, *First Nations Child and Family Caring Society of Canada v. Attorney General of Canada*, 2016 CHRT 2, January 26, 2016; IACHR, *Hearing on the situation of indigenous children in Canada*, 160 POS, December 9, 2016.

<sup>568</sup> Truth and Reconciliation Commission of Canada, *Executive summary*, Winnipeg, 2015, Library and Archives Canada, p. 138.



CHAPTER 7  
CONCLUSIONS AND  
RECOMMENDATIONS



## CONCLUSIONS AND RECOMMENDATIONS

228. The information gathered by the IACHR through its different human rights protection and promotion mechanisms corroborates that indigenous women have faced and continue to confront multiple forms of discrimination based on their gender, ethnicity, and situation of poverty, which heightens their exposure to human rights violations in different contexts. In this report, the Commission provides an analysis of the general human rights situation of indigenous women in the hemisphere, identifying areas where challenges must be addressed, as well as providing guidelines for States to use when designing and implementing measures to respect and ensure indigenous women's human rights.
229. The IACHR recognizes the efforts made by various States of the region to address the situation of indigenous women's human rights. However, formidable barriers still remain and it is essential that States continue working to find solutions to meet the particular needs of indigenous women and to fully respect and guarantee all of their human rights. It is important to include indigenous women and the organizations that represent them in the design and monitoring of State measures intended to advance their human rights, and to incorporate a holistic, gender, and ethno-racial approach, as described in this report.
230. Indigenous women also encounter different forms of discrimination and violence in their own communities. Consequently, indigenous justice systems must be compatible with internationally recognized human rights, just as State justice systems are required to be. Accordingly, they also have the duty to act with due diligence in preventing, investigating, and punishing violence against women, as well as to implement any necessary measures to eradicate the obstacles that prevent indigenous women from fully exercising their human rights without discrimination.
231. The Inter-American Commission on Human Rights concludes this report with ten recommendations to assist States in their ongoing efforts to prevent and respond to human rights violations affecting indigenous women, and confirms its disposition to collaborate in this process:
1. Design, adopt, and implement an action plan to repeal the domestic legal provisions that are inconsistent with the guiding principles laid out above, and refrain from adopting laws incompatible with these

guiding principles. Incorporate in all laws and policies that affect indigenous women a holistic approach to address the multiple and interconnected forms of discrimination encountered by them in different contexts, protecting both their individual and collective rights. The holistic approach must recognize the special role played by indigenous women in their communities, with a view to transform and rectify the structural and historical forms of discrimination affecting them;

2. Design, adopt, and implement a gender-based, ethno-racial, and intercultural perspective to prevent, investigate, prosecute, and punish all forms of violence against indigenous women. The gender-based, ethno-racial, and intercultural perspective must also be incorporated into the formulation of reparations so they have a transformative effect on the multiple and interconnected forms of discrimination faced by indigenous women;
3. Generate spaces of coordination between the State justice systems and traditional indigenous justice systems to incorporate a gender and intercultural perspective to improve the judicial protection of indigenous women when they suffer human rights violations. These spaces must promote the active participation of indigenous women in the systems of administration of justice and in the development of approaches to reparations;
4. In accordance with the right to self-determination, adopt appropriate measures to ensure the civil and political rights associated with indigenous women's exercise of full citizenship; and create spaces for the full and active participation of indigenous women in the design and implementation of initiatives, programs, and policies at all levels of government; those related to indigenous women, as well as those related generally to indigenous peoples as a whole;
5. Identify and institutionalize new forms of gender and cultural competency training for public servants from all sectors of government, including lawyers, judges, and teachers, in order to fully guarantee indigenous women's right to live free from violence and make sure that, in the performance of their duties, public servants fully respect the physical and psychological integrity of indigenous women;
6. Incorporate a gender and intercultural perspective in guaranteeing the right to a dignified life, free from discrimination; recognize that the right to a dignified life includes recognition of indigenous conceptions of community, culture, and family life; and therefore, revise its public policies, programs, and legislation in order to eradicate all forms of

discrimination against indigenous women, and adequately reflect a gender and intercultural perspective;

7. Adopt all appropriate measures to promote and protect indigenous women's economic, social, and cultural rights with the goal of ensuring full access to basic health and education services, food, and water, among other things. This includes guaranteeing the use and enjoyment of their ancestral lands and territories, ensuring their collective rights to ownership of their ancestral lands via titling, delimitation, demarcation and possession, as these steps are fundamental to the physical and cultural survival of indigenous peoples;
8. Produce comprehensive and disaggregated statistics on violence and discrimination against indigenous women, their access to justice, and their access to economic, social and cultural rights, as well as other quantitative and qualitative information that may be relevant to ensure their human rights; periodically update them to provide an accurate picture of the situation of violence and discrimination affecting indigenous women; and consider this information to design government policies and programs to effectively combat violence and discrimination against indigenous women, as well as to promote access to justice and the enjoyment of economic, social and cultural rights;
9. Adopt special and differentiated measures for the protection of the lives and safety of indigenous women human rights defenders and leaders, in view of the three tiers of vulnerability faced by them as women, members of indigenous communities, and often living in situations of poverty;
10. Ensure the application of each of the seven guiding principles detailed previously in this report when designing and implementing policies that affect indigenous women.