

Working Towards Gender Justice

In the landmark case *Velásquez-Rodríguez*, the Inter-American Court interpreted the State's duties under the American Convention to include an affirmative obligation to investigate, prosecute, and punish human rights violators through the state's judicial tribunals.

Specifically, the Court determined that the State had an obligation "to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights." In establishing this principle, the Court set forth a reasonableness standard for the general positive obligations of States to prevent human rights violations.

LAST IN A TWO PART SERIES

This article continues Women's Rights as Human Right, which appeared Dec. 29

A State's obligation to take reasonable steps to prevent human rights violations extends not only to the actions of agents of the State, but also, in circumstances like those in the Campo Algodonero cases, to actions perpetrated by private actors. In *Velásquez-Rodríguez*, the Inter-American Court held that "when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention...the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction." A State is held responsible for the acts of private actors, "not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it...." Thus, state responsibility for the acts of private persons attaches either when the violation of an individual's rights "has occurred with the support or acquiescence of the government, or [when] the State has allowed the act to take place without taking measures to prevent it or to punish those responsible."



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While the American Convention imposes a general obligation on States to protect rights from violation by the State and private actors, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women ("Convention Belém do Pará") imposes a specific obligation on States to take additional measures to affirmatively protect the rights of women - in particular, vulnerable groups of women such as migrant women and young women and girls. Indeed, as the Inter-American Commission, a separate body charged with interpreting the region's human rights treaties, has recognized, an international and regional consensus has developed in human rights law "that gender-based violence is an open and widespread problem requiring State action to ensure its prevention, investigation, punishment, and redress." The "due diligence" standard embodied in these international documents includes the responsibility to prevent, prosecute, and remedy gender-based violence.

Convention Belém do Pará specifically recognizes that "[e]very woman has the right to be free from violence in both the public and private spheres," "[t]he right to have the inherent dignity of her person respected and her family protected," and "[t]he right to simple and prompt recourse to a competent court for protection against acts that violate her rights." Moreover, Convention Belém do Pará affirms that "[e]very woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights," and that "violence against women prevents and nullifies the exercise of these rights." The State parties to the Convention "agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence," including applying "due diligence to prevent, investigate and impose penalties for violence against women" and adopting "legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity."

Thus, as the Inter-American Commission has stated: the Inter-American system "recognizes that violence against women and its root, discrimination, is a serious human rights problem with negative repercussions for women and their surrounding community, and constitutes an impediment to the recognition and enjoyment of all their human rights, including the respect of their lives and their physical, mental, and moral integrity."

Human rights abuses of such a vast scale call for a wide range of remedies beyond those a U.S. court could issue. The cause of the harm is multidimensional and reflects a breakdown across society. In order to



effect real change and healing, the remedies must address the economic, political, and social underpinnings of the violence and impunity. As the International Center for Transitional Justice, which assists countries pursuing accountability for mass atrocities, has noted: consistent with the Inter-American Court's pronouncement in *Velásquez-Rodríguez*, the pursuit of gender justice should include "prosecutions for gender-based violence; reparations delivery to diverse groups of women and their families; memorials recognizing women's experiences; and institutional reform that serves human security needs and promotes women's access to justice."

Can an international court accomplish what Mexico could not - or would not — do alone?

The Court's remedies in the Campo Algodonero cases are appropriately broad and holistic: from a memorial in the field which gave the case its name, public recognition by Mexico of its fault in a ceremony and in print, and a Web site listing all of the women who have disappeared since 1993, to payment of money to the families and a requirement that Mexico properly and fully investigate the murders and disappearances.

The court has retained jurisdiction to monitor Mexico's compliance with the court's ruling, and will check up on Mexico's progress in a year.

Can an international court accomplish what Mexico could not - or would not - do alone? International condemnation can be a powerful force, provided a sense of pressure and urgency is maintained. The Inter-American Commission previously concluded that Brazil had violated human rights treaties by delaying for more than 15 years the prosecution of her abusive husband for her attempted murder. In response to the decision, Brazil enacted the Maria da Penha law to provide protection from and remedies for domestic violence at the national level.

Regardless whether Mexico is able to achieve some measure of justice in the near term, however, the Court's mere pronouncement of Mexico's fault is a healing act. This is the first time the Court has ruled against Mexico on a human rights complaint. It is also the first time the court has recognized gender-based murders, where women are killed because they are women. The Court's decision breaks legal ground by applying not only the basic human rights treaty of the Americas (American Convention of Human Rights), but, for the first time, also interpreting the women's convention (Convention Belém do Pará). The decision affirms women's rights in the broader human rights context, and provides a powerful statement of the basic liberties of which the women and their families were deprived. The decision is, quite simply, a landmark human rights case, one which confirms the experience of women and families in Juarez, a horror which Mexican authorities ignored for years.

M.C. Sungaila and David Ettlinger, a partner at the Los Angeles law firm Horvitz & Levy, filed a brief *pro bono* in the Inter-American Court of Human Rights for amici curiae Amnesty International and over 50 other groups and legal experts in the Campo Algodonero cases.