

Access to Information, Violence against Women, and the Administration of Justice





OAS/Ser.L/V/II.154

Doc. 19

27 March 2015

Original: Spanish

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Access to Information, Violence against Women, and the Administration of Justice in the Americas

OAS Cataloging-in-Publication Data

Inter-American Commission on Human Rights.

Access to information, violence against women, and the administration of justice in the Americas / Inter-American Commission on Human Rights.

v. ; cm. (OAS. Official records ; OEA/Ser.L)

ISBN 978-0-8270-6437-9

1. Women--Crimes against--America. 2. Sex discrimination in criminal justice administration--America. 3. Women--Violence against--America. 4. Criminal justice, Administration of--America. 5. Freedom of information--America.

I. Title. II. Series. OAS. Official records ;

OEA/Ser.L. 154 Doc.19

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EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. This report endeavors to offer an initial account of the challenges faced by women in the Americas in adequately accessing State-controlled information on violence and discrimination. At the same time, it seeks to systematize the international standards that have been developed in the Inter-American system on this subject, and to identify good practices in the region with regard to the application of and compliance with those standards.
2. In order to prepare this report, the Commission carried out a number of activities with the purpose of gathering information on the situation of access to information on violence and discrimination against women in the region. These activities included the circulation of a questionnaire of consultation to the States and civil society and a working visit to Colombia from September 29 to October 3, 2014. The Commission is grateful for the support provided by the Swedish International Development Cooperation Agency (ASDI-SIDA) in the execution of the Latin American and Caribbean component of this initiative.
3. With regard to the international standards on access to information as a human right for women, the IACHR stresses that this right is protected under Article 13 of the American Convention and Article IV of the American Declaration. It includes both the right of any person to request access to State-controlled information as well as the State's positive obligation to supply it.
4. The right of access to information creates obligations for all public authorities in all branches of power and in autonomous bodies at all levels of government. This right applies to all of the information controlled, collected, and produced by the State—or that the State is obligated to collect or produce—and the information on public services and funds that is controlled by those who administer them. Specifically, with regard to the information collected and produced by the State, the right of access to information also includes the State obligation to gather information on issues like violence and discrimination against women, as well as the obligation to produce and disseminate statistical information on those issues.
5. The right of access to public information gives rise to positive obligations for States, which are required to guarantee the availability of and timely access to complete, accessible, and trustworthy information. On the basis of the interrelation among and the interdependence of human rights, the right of access to public information is characterized as an instrumental right, as it is a prerequisite in order for individuals to know their rights and, consequently, to demand them. Inasmuch as States are the principal guarantors of human rights,

guaranteeing the availability (that is to say, the recording and production) of and access to information on human rights becomes a substantive obligation.

6. The IACHR notes that in order for the full exercise of the right of access to information to be guaranteed, State administration must be governed by the principles of maximum disclosure—pursuant to which transparency and access to information must be the general rule, subject to limited exceptions—and good faith. In view of these principles and of the provisions of Article 13.2 of the American Convention, the right of access to information may only be limited in compliance, that such limitations be of an exceptional nature, established by law, have a legitimate purpose, and be necessary and proportional.
7. As noted above, the right of access to information is closely related to the exercise of other human rights, and in that sense, the failure to comply with the obligations of respecting and guaranteeing women’s free access to information can be understood to lead to various violations of their rights to live free from violence and discrimination. As such, the right of access to information is essential in order for women to be able to fully exercise all of their rights, and in particular, their sexual and reproductive rights and their economic, social, and cultural rights. In these areas, access to information is instrumental to or facilitates the prevention of discrimination and violence and victims’ access to justice.
8. Within the framework of this report, the IACHR notes that with regard to discrimination and violence against women, the right of access to information means that the State must comply with two main obligations: (i) the obligation to guarantee the availability of and timely access to information, which includes recording and producing information and making effective mechanisms for accessing it available; and (ii) the obligation of active transparency.
9. Regarding the first of these obligations, Article 8 (h) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women “Convention Belém do Pará” establishes the State obligation to adopt measures targeted at ensuring “research and the gathering of statistics and other relevant information relating to the causes, consequences, and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish, and eradicate violence against women and to formulate and implement the necessary changes.” The importance of gathering data and producing statistics has been highlighted in the inter-American and the United Nations systems as a fundamental mechanism for designing and evaluating public policies and violence and discrimination prevention, assistance, and protection programs. The statistical information produced by the State must be properly disaggregated based on sex, race, ethnicity, age, social status, disability, and other factors that make it possible to address violence and discrimination against women from an intersectional perspective, that is to say, giving due consideration to the specific human rights violations that women may face as a result of the intersection of factors in addition to their sex, such as their age, race, ethnicity, and financial status, among others.

10. Likewise, the statistical information must be produced from an intercultural perspective. This implies that the information produced must take into account the various worldviews, practices, and needs particular to specific groups of women, such as indigenous women and Afro-descendants, among others.
11. As to the obligation of active transparency, the IACHR has maintained that women are unable to claim their rights if they do not know them, and therefore, this obligation means that it is the State's duty to disseminate information on women's rights and on the legal avenues for demanding them and putting them into effect. This information must be complete, understandable, up to date, and written in accessible language. Specifically, in the legal sphere, States must promote women's effective access to information on their rights, on how to access legal proceedings for prevention and protection, on the processing of cases, and on how to contribute to the investigation and the legal process. The dissemination of this information must take into account the diversity of the target audience and the different races, ethnicities, and languages included.
12. Access to information is a fundamental requirement in order to make it possible for women at risk of suffering imminent acts of violence to access the protection mechanisms established by national laws. Therefore, States must guarantee the dissemination of information about those mechanisms and the avenues through which to make use of and implement them. At the same time, they must adopt measures to guarantee the availability of high-quality free legal aid services for women who require them, the training of law-enforcement officials and other public employees who are involved with violence-related issues, and the implementation of action protocols for cases in which violence is imminent.
13. Furthermore, with regard to the main challenges to access to public information on discrimination and violence, the IACHR has on various occasions set forth that there are deficiencies in the availability, quality, and completeness of the public information on violence and discrimination against women. These include the failure to gather complete information in the various State bodies on all of the types of violence and discrimination, the failure to produce comprehensive statistics from that information and to disaggregate the statistical information according to factors like sex, race, ethnicity, age, social status, sexual orientation, gender identity, disability and other criteria that would make it possible to appreciate the true incidence of violence and discrimination in specific groups of women. In addition, the IACHR has observed that even in States with institutionalized mechanisms for gathering, processing, and producing information on violence against women, often that information is not adequately distributed. Likewise, the IACHR has noted that the region suffers from an overall lack of coordination between the diverse systems for gathering and producing information that coexist in the States, for example, the records kept by the free legal aid offices, the data gathered by observatories on violence or discrimination, and the judicial statistics mechanisms.
14. Another pressing challenge involves the effective implementation of international standards on access to information in the domestic sphere. In this regard, the IACHR has stated that although constitutional and/or legal

regulations on this matter are in place in the vast majority of countries, concrete information about the material implementation of those regulations and the effectiveness thereof is not available, which makes it difficult to evaluate the level of compliance with the State obligations on the matter.

15. Access to information in the realm of the administration of justice is an area of special interest for the IACHR that presents a number of challenges in terms of guaranteeing such access to information as a right that facilitates access to justice for women victims of violence and discrimination. In this context, the IACHR notes that the following stand out as priority challenges: ensuring women and their relatives have access to information on their pending violence or discrimination cases, the availability of appropriate and sufficient free legal aid services, and access to interpreters and information in other languages for women who do not speak the official State language, among others. The IACHR also underscores the importance of the existence of public information on administration of justice operations, including data on the number of arrests, trials, convictions, restraining orders, and judgments made; the amount of time it takes to decide the cases; the gender makeup of the justice systems; the budgets allocated to judicial activities; and the internal accountability mechanisms.
16. In this report, the Commission also highlights a series of initiatives undertaken by the States with regard to respecting and guaranteeing the right of access to information on discrimination and violence against women, in areas such as the constitutional and legal recognition of that right, the publication and dissemination of disaggregated legal statistics, the creation of databases on legal cases of discrimination and violence, the publicizing of decisions made by higher courts of justice, the provision of services in different languages, and the creation of specialized gender units within the judicial branches. These initiatives demonstrate that the States in the Americas have the potential to fully comply with their international obligations in this sphere.
17. Taking these considerations into account, the IACHR concludes this report with a number of recommendations designed to facilitate State initiatives for effectively respecting and guaranteeing the right of access to information on violence and discrimination against women. The IACHR emphasizes its disposition to collaborate with the States on their efforts in this sphere of protection, which is fundamental in order for women to be able to fully exercise their rights.

CHAPTER 1
INTRODUCTION

INTRODUCTION

A. *Objectives and Scope of the Report*

1. The objective of this report is to examine the challenges women face in gaining adequate and effective access to State-controlled information on the prevention of and protection from violence and discrimination, as well as on access to justice for victims. This report also seeks to systematize the international standards on this subject that have been developed in the inter-American system, to highlight some priority challenges, and to identify good practices in the region with regard to the application and enforcement of those standards.
2. The IACHR has continuously received information from various resources – for example, in the context of individual case petitions, hearings, communications from civil society organizations, and working visits – which demonstrates that violence and discrimination continue to be widespread and serious issues in the Americas which merit priority attention. Many of the cases decided by the Commission and the Court also have taken place in contexts where victims of violence and/or their family members have faced a number of barriers to access basic information about their cases before the justice system and ongoing investigations pertaining to disappearances and murders. In a significant number of these cases, the family members have been mistreated by the authorities in their efforts to seek information managed by the State. The Commission has issued statements pertinent to the content and scope of the right to access to information in cases such as *Paloma Ágelica Escobar Ledezma et al.* (Mexico),¹ *Jessica Lenahan (Gonzales) et al.* (United States),² *María Eugenia Morales de Sierra* (Guatemala),³ *Ana, Beatriz and Celia González Pérez* (Mexico),⁴ *Maria da Penha Maia Fernandes* (Brazil),⁵ *Diana Ortiz* (Guatemala),⁶ and *X and Y*

¹ IACHR, Report No. 51/13, Merits, Case 12.551, *Paloma Ágelica Escobar Ledezma et al.* (Mexico), July 12, 2013.

² IACHR, Report No. 80/11, Merits, Case 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011.

³ IACHR, Report No. 4/01, Merits, Case 11.625, *María Eugenia Morales de Sierra* (Guatemala), January 19, 2001.

⁴ IACHR, Report No. 53/01, Merits, Case 11.565, *Ana, Beatriz and Celia González Pérez* (Mexico), April 4, 2001.

⁵ IACHR, Report No. 54/01, Merits, Case 12.051, *Maria da Penha Maia Fernandes* (Brazil), April 16, 2001.

⁶ IACHR, Report No. 31/96, Merits, Case 10.526, *Diana Ortiz* (Guatemala), October 16, 1996.

(Argentina),⁷ among others. Likewise, the Inter-American Court has delivered judgments in the cases of *María Isabel Véliz Franco v. Guatemala*;⁸ *J. v. Peru*;⁹ *Valentina Rosendo Cantú et al. v. Mexico*;¹⁰ *Inés Fernández Ortega v. Mexico*;¹¹ *Claudia Ivette González, Esmeralda Herrera Monreal, and Laura Berenice Ramos Monárrez (“Cotton Field”) v. Mexico*;¹² and *Miguel Castro-Castro Prison v. Peru*,¹³ among others.

3. Although the Inter-American Commission has adopted several regional reports focused on access to justice and violence and discrimination against women, it has only recently begun to examine access to information in greater detail from a gender perspective. The IACHR has emphasized that access to information is closely linked to women’s enjoyment of other fundamental human rights, such as the right to personal integrity, the right to privacy, the right to protection of the family, and the right to live free from violence and discrimination.¹⁴ For example, the IACHR has maintained that, in the sphere of health, the right of access to information is especially important for ensuring that women are in a position to make free and informed decisions regarding reproduction and their sexuality.¹⁵
4. This report thus focuses on access to information as a right that is instrumental in order to respect and guarantee women’s rights to live free from violence and discrimination. In this framework, the Commission will first set forth the principal international standards on this subject and will then examine information received from State and non-State actors on the main challenges faced by women in accessing the information they need in order to exercise their rights in the spheres of the administration of justice; the implementation of legislation and violence and discrimination prevention, assistance, and protection programs; and State collection and production of information and statistics. Further on, the report will discuss information received by the States about the initiatives they are carrying out in the foregoing spheres on access to information, and lastly, it will make recommendations to the States in this area.

⁷ IACHR, Report No. 38/96, Merits, Case 10.506, *X and Y (Argentina)*, October 15, 1996.

⁸ I/A Court H.R., Case of *Veliz Franco et al. v Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277.

⁹ I/A Court H.R., Case of *J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275.

¹⁰ I/A Court H.R., Case of *Rosendo Cantú et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August, 31, 2010. Series C No. 216.

¹¹ I/A Court H.R., Case of *Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010. Series C No. 215.

¹² I/A Court H.R., Case of *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 20.

¹³ I/A Court H.R., Case of *Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160.

¹⁴ IACHR. *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 4; IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, paras. 1, 26, 31.

¹⁵ IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011.

B. Methodology

5. In order to prepare this report, the Commission carried out a number of activities to collect information on issues related to access to information on violence and discrimination against women in the region.
6. As one of those activities, the IACHR circulated a questionnaire to consult States and civil society with the goal of collecting relevant information on the main roadblocks faced by women in obtaining adequate access to State-held information concerning violence and discrimination.¹⁶ The IACHR thanks the States and civil society organizations that responded to the questionnaire and sent their responses to the Commission.¹⁷
7. The IACHR also undertook a working visit to Colombia from September 29 to October 3, 2014. As part of this trip, the IACHR delegation visited the cities of Cali, Cartagena, and Bogotá, and met with organizations of Afro-descendent women, women victims of armed conflict, and community leaders. The IACHR delegation also organized two events—one academic and one public—to disseminate the inter-American standards on the rights of women and access to information. During the visit, the IACHR received information on specific cases of Afro-Colombian women, which will be discussed in this report in order to illustrate the main challenges in this field.
8. In drafting this report, the Inter-American Commission took into account the information received during its working visits, as well as those situations dealt with by the IACHR in the exercise of its authority with regard to petitions and cases; precautionary measures; public hearings; thematic and country reports; and in the context of its press releases and the requests for information made to the States based on the competencies granted to the Commission by Article 41 of the American Convention. In its analysis, the IACHR also included the approaches developed by various international organizations charged with overseeing international treaties. Specifically, those approaches developed by the Offices of the UN Special Rapporteurs on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and on Violence against Women, as well as by the United Nations Committee on the Elimination of Discrimination against

¹⁶ See, Annex, Questionnaire circulated by the IACHR on *Access to Information in the Americas from a Gender Perspective*, March 29, 2014 (hereinafter “Questionnaire”).

¹⁷ The States that sent their responses to the questionnaire prepared by the Commission were: Argentina, Bolivia, Colombia, Ecuador, the United States, Guatemala, Guyana, Mexico, Paraguay, Peru, and Suriname. Likewise, the Commission received the responses prepared by the Inter-American Commission on Women, the organization Alianza Política Sector de Mujeres de Guatemala [Guatemala Women’s Sector Political Alliance], and the Due Diligence Project. The Commission also received a response from the International Pro Bono network consisting of information provided by civil society organizations from Argentina, Bolivia, Chile, Colombia, Mexico, Panama, Peru, and Venezuela.

Women (hereinafter “CEDAW”), in addition to other mechanisms of the universal system of human rights, were taken into account in this report. The IACHR also took into consideration the information that States and various civil society organizations provided to the Commission itself, as well as the public information available through public institutions and in the media, which it duly verified.

9. Finally, the IACHR is especially grateful for the support of the Swedish International Development Cooperation Agency (ASDI-SIDA) in the execution of the Latin America and Caribbean component of this initiative.

CHAPTER 2
STANDARDS ON THE RIGHT OF
ACCESS TO PUBLIC
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AND DISCRIMINATION AGAINST
WOMEN

STANDARDS ON THE RIGHT OF ACCESS TO PUBLIC INFORMATION ON VIOLENCE AND DISCRIMINATION AGAINST WOMEN

10. The inter-American system has firmly established the right of access to information.¹⁸ In this regard, the organs of the system have developed a number of standards related to its content and scope, the requirements for its restriction, as well as the State obligations to which it gives rise. OAS Member States have also affirmed in different occasions their commitment to adopt the legal and policy measures necessary to guarantee the right to access to information within their jurisdictions.¹⁹
11. In the next section, the Commission briefly reviews the main standards and develops in more detail specific aspects related to the scope of the right to access information as an essential instrument to guarantee the rights of women to live free from violence and discrimination, the right to access justice, and the need for an inter-sectional perspective in the treatment of violence and discrimination.

A. Content and Scope of the Right of Access to Information

12. Access to information is a human right protected by Article 13 of the American Convention and Article IV of the American Declaration. In this regard, the Inter-American Court established in the case *Claude Reyes et al. v. Chile* that:

by expressly stipulating the right to ‘seek’ and ‘receive’ ‘information,’ Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of

¹⁸ See, for example, IACHR, *The Inter-American Legal Framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011.

¹⁹ See, e.g., OAS General Assembly Resolutions AG/RES. 1932 (XXXIII-O/03) June 10, 2003; AG/RES. 2057 (XXXIV-O/04) June 8, 2004; AG/RES. 2121 (XXXV-)/05 June 7, 2005; AG/RES. 2252 (XXXVI-O/06) June 6, 2006; AG/RES. 2288 (XXXVII-)/07) June 5, 2007; AG/RES. 2418 (XXXVIII-O/08) June 3, 2008; AG/RES. 2514 (XXXIX-O/09) June 4, 2009; AG/RES. 2607 (XL-O/10) June 8, 2010; AG/RES. 2661 (XLI-O/11) June 7, 2011; AG/RES. 2727 (XLII-O-12) June 4, 2012, and AG/RES. 2811 (XLIII-O/13) June 6, 2013.

the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case.²⁰

13. With this judgment, the Inter-American Court of Human Rights became the first international tribunal to recognize that the right of access to public information is a fundamental human right, protected by human rights treaties that bind countries to respect it. As the IACHR has acknowledged, since then the countries of the region have furthered the legal recognition of the right and the establishment of procedures and bodies responsible for protecting and guaranteeing it. However, the IACHR has insisted on the need to disseminate the scope and possibilities of this right since, in practice, only rights that are known are demanded and protected.
14. Both the universal and inter-American human rights systems have widely stressed the fact that access to information facilitates the exercise of other human rights; that is to say, access to information is, in many cases, essential in order for individuals to give effect to other rights.²¹ The IACHR thus considers access to information to be a condition precedent for demanding and exercising other human rights.
15. Under the terms established by Article 13 of the American Convention, all individuals have the right to request access to information. In this respect, the Inter-American Court has specified that it is not necessary to prove direct interest or personal involvement in order to procure State-held information,²² except in cases where a legitimate restriction allowed by the American Convention applies, under the terms that will be explained below. Along these lines, the Model Inter-American Law on Access to Public Information²³ adopted by the OAS General Assembly establishes that any person making a request for information to any public authority covered by said law shall be entitled “to

²⁰ I/A Court H.R., Case of *Claude Reyes et al. v. Chile*, Merits, Reparations and Costs, Judgment of September 19, 2006, Series C No. 151, para. 77.

²¹ In the framework of the Inter-American System, see, for example: IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 4; IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, paragraphs 1, 26, 31. In the framework of the United Nations System, see, for example: *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, September 4, 2013, U.N. Doc. A/68/362, para. 19.

²² I/A Court H.R., Case of *Claude Reyes et al. v. Chile*, Merits, Reparations and Costs, Judgment of September 19, 2006, Series C No. 151, paragraph 77; I/A Court H.R., Case of *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2010, Series C No. 219, para. 197.

²³ OAS, Model Inter-American law on access to public information, AG/RES. 2607 (XL-O/10), Adopted at the fourth plenary session, held on June 8, 2010.

make an anonymous request for information [and] to make a request without providing justifications for why the information is requested.”²⁴

16. With respect to the entities obligated to guarantee the right of access to information, the IACHR and the Office of the Special Rapporteur have specified that:

the right of access to information generates obligations at all levels of government, including for public authorities in all branches of government, as well as for autonomous bodies. This right also affects those who carry out public functions, provide public services, or manage public funds in the name of the State. Regarding the latter group, the right of access to information obligates them to turn over information exclusively on the handling of public funds, the provision of services in their care, and the performance of public functions.²⁵

17. The IACHR has further noted that the right of access to information covers all of “the information that is in the care of, possession of, or being administered by the State; the information that the State produces, or the information that it is obliged to produce; the information that is under the control of those who administer public services and funds and pertains to those specific services or funds; and the information that the State collects and that it is obligated to collect in the performance of its functions.”²⁶

18. Lastly, the IACHR has defined the various State obligations generated by the right of access to information: the obligation to respond in a timely, complete, and accessible manner to requests made; the obligation to offer a legal recourse that satisfies the right of access to information; the obligation to provide an adequate and effective legal remedy for reviewing denials of requests for information; the obligation of active transparency; the obligation to produce or gather information; the obligation to create a culture of transparency; the obligation to adequately implement the laws on the access to information; and the obligation to adjust domestic legislation to the demands of the right of access to information.²⁷

19. The Commission considers important to clarify that these principles and obligations are also pertinent to the scope of the right to access information under the American Declaration. The Commission has recognized in the past that the right to access information is contained in various dispositions of the

²⁴ OAS, Model Inter-American law on access to public information, AG/RES. 2607 (XL-O/10), Adopted at the fourth plenary session, held on June 8, 2010, paragraph 5.e.-f.

²⁵ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 19.

²⁶ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 21.

²⁷ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paras. 23-44.

American Declaration – in particular Article IV – and can be implicated in cases of violence against women.²⁸ This is of particular relevance for OAS Member States that have not ratified the American Convention or have denounced the same.²⁹

20. The Commission takes advantage of this opportunity to reiterate that the American Declaration is a source of international obligations for all the OAS Member States.³⁰ These obligations are considered to flow from the human rights obligations of Member States under the OAS Charter.³¹ Member States have agreed that the content of the general principles of the OAS Charter is contained in and defined by the American Declaration, as well as the customary legal status of the rights protected under many of this instrument’s provisions.³²
21. The American Declaration is part of the human rights framework established by the OAS Member States, referring to the obligations and responsibilities of the States, and requires that they refrain from supporting, tolerating, or participating in acts or omissions that contravene their commitments in the area of human rights. As the Declaration is a source of legal obligations, the States must implement in practice, within their jurisdictions, the rights established in that Declaration.³³ One such right is the right to freedom of investigation, opinion, expression and dissemination under Article IV of the Declaration, protecting the right to access to information. When elaborating on the content and interpreting Article IV of the Declaration, the Commission considers appropriate to take into account Article 13(1) of the American Convention and the inter-American system’s pronouncements on access to information. As has been indicated in the past, the American Convention represents in many instances an authoritative

²⁸ IACHR, *The Right to Truth in the Americas*, August 13, 014, para. 34; IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, paras. 181-198.

²⁹ A group of 23 OAS Member States have ratified the American Convention and continue being State parties to said instrument. See, Table, Status of Ratifications and Signatures, American Convention on Human Rights, available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm

³⁰ See I/A Court H.R., Advisory Opinion OC10/89 “*Interpretation of the Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*,” July 14, 1989, Ser. A, No. 10 (1989), para. 45. In that opinion, the Court maintained that “for the Member States of the Organization, the Declaration is the text that defines the human rights referred to in the Charter.”

³¹ OAS Charter, Articles 3, 16, and 51.

³² IACHR, Report No. 80/11, Case 12.626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, para. 115.

³³ See, as a reference, the Statute of the Inter-American Commission on Human Rights (1979), Article 1, which establishes that the Commission was created “to promote the observance and defense of human rights” and defines human rights as those set forth in the American Declaration and in the American Convention. See also, Articles 18 and 20 of the Statute and the American Convention on Human Rights, Article 29(d), which provides that no provision of this Convention shall be interpreted in the sense of “excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.” See also, Rules of Procedure of the Inter-American Commission on Human Rights (2009), Articles 51 and 52, which empower the Commission to receive and examine petitions alleging the violation of rights enshrined in the American Declaration with respect to OAS Member States that are not parties to the American Convention.

expression of the fundamental principles set forth in the American Declaration.³⁴ In this sense, while the Commission does not apply the American Convention in relation to Member States that have yet to ratify said treaty, its provisions are relevant to informing an interpretation of all dispositions of the Declaration.³⁵

B. Main Guiding Principles behind the Right of Access to Information

22. The IACHR has noted that in order for the full and effective exercise of the right of access to information to be guaranteed, state administration must be governed by the principles of maximum disclosure and good faith.³⁶
23. The principle of maximum disclosure calls for designing a legal regime in which transparency and the right of access to information are the general rule and only subject to strict and limited exceptions.³⁷ Along the same lines, principle 4 of the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission establishes that “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”³⁸
24. Likewise, the Model Inter-American Law on Access to Public Information is based on the principle of maximum disclosure, “so that all information held by public bodies is complete, timely, and accessible, subject to a clear and narrow regime of exceptions set out in law that are legitimate and strictly necessary in a democratic society.”³⁹
25. As the IACHR has maintained, the following consequences derive from the principle of maximum disclosure: “(1) the right of access must be subject to a limited regime of exceptions, and these exceptions must be interpreted restrictively, with all their provisions interpreted to favor the right of access;

³⁴ IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, doc. 30/14, December 21, 2014, para. 110.

³⁵ IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev. February 28, 2000, para. 38.

³⁶ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 8.

³⁷ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 10.

³⁸ IACHR, *Declaration of Principles on Freedom of Expression*, approved by the Inter-American Commission on Human Rights during its 108th regular period of sessions, held on October 2-20, 2000. Available at: <http://www.oas.org/en/iachr/mandate/Basics/principlesfreedom.asp>

³⁹ OAS, Model Inter-American Law on Access to Public Information, AG/RES. 2607 (XL-O/10), Adopted at the fourth plenary session, held on June 8, 2010, para. 2.

(2) denials of information must be reasoned, and in this sense the burden of proving that the requested information cannot be released falls to the State; and (3) the right of access to information should take precedence in the event of doubts or legal vacuums.”⁴⁰

26. In turn, the principle of good faith establishes that:

to guarantee the effective exercise of the right of access to information, it is crucial that those bound to guarantee this right act in good faith; that is, that they ensure the strict application of the right, provide the necessary measures of assistance to petitioners, promote a culture of transparency, contribute to making public administration more transparent, and act with due diligence, professionalism, and institutional loyalty. They must take the actions necessary to serve the general interest and not betray the people’s confidence in State administration.⁴¹

27. Furthermore, the IACHR considers that the guarantee of women’s full and effective exercise of the right of access to information on violence and discrimination requires, in addition to the application of the aforementioned principles, that State actions be motivated by the principles of equality and non-discrimination, which are the core of the inter-American human rights system.⁴²

28. In this regard, the Declaration of Principles on Freedom of Expression sets forth that “all people should be afforded equal opportunities to receive, seek, and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth, or any other social condition.”

29. Likewise, the IACHR has maintained that “the right of access to information constitutes a legal tool for securing transparency in government undertakings and for assuring oversight and effective participation by all sectors of society on a nondiscriminatory basis. Encouraging and promoting information access among the poorest sectors of the hemisphere’s societies will enable their active and informed participation regarding the design of public policies and measures that directly affect their lives.”

⁴⁰ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 10.

⁴¹ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 15.

⁴² IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, paragraph 23.

C. *Restrictions on the Right of Access to Information*

30. The right of access to information is not an absolute right; rather, it may be subject to limitations. These limitations must fully comply with the requirements derived from Article 13(2) of the American Convention, that is, they must fulfill the conditions of exceptional nature, legal establishment, legitimate purpose, and necessity and proportionality.⁴³
31. The exceptional nature of permissible limitations on the right of access to information is a consequence of the principle of maximum disclosure. On this issue, the IACHR has stated that, according to this principle, “the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.”⁴⁴
32. In the same way, limitations on the right of access to information must be expressly prescribed by law in advance, and the establishment thereof must be sufficiently clear and specific so as to avoid an excessive degree of discretion from being granted to the public officials who decide whether or not to disclose the information.⁴⁵ According to the interpretation provided by the Inter-American Court, the word “law” in this context—as well as in all cases in which the American Convention makes use of that term with regard to the restrictions that it authorizes for each of the protected rights—shall be understood to mean a “general legal norm tied to the general welfare, passed by democratically elected bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose.”⁴⁶
33. Furthermore, the laws that set limitations on the right of access to public information must expressly correspond to an objective that is permissible under Article 13.2 of the American Convention, that is, to ensure “respect for the rights or reputations of others” or the protection of “national security, public order, or

⁴³ IACHR, *The Inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 45.

⁴⁴ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 48.

⁴⁵ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 49; IACHR. Arguments before the Inter-American Court in the case of *Claude Reyes et al. v. Chile*. Transcribed in: Case of *Claude Reyes et al. v. Chile*, Merits, Reparations and Costs, Judgment of September 19, 2006, Series C No. 151, para. 58 f).

⁴⁶ I/A Court H.R., *The word “Laws” in article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 38.

public health or morals.” The scope of these concepts must be clearly and precisely defined and must coincide with their meaning in a democratic society.⁴⁷

34. In addition, all limitations imposed on the right of access to public information must be necessary in a democratic society in order to satisfy a legitimate public interest. In this regard, the IACHR has noted:

Among several options for accomplishing this objective, the one least restrictive to the right must be chosen, and the restriction must (i) be conducive to the attainment of the objective; (ii) be proportionate to the interest that justifies it; and (iii) interfere to the least extent possible with the effective exercise of the right. With specific regard to the requirement of proportionality, the Inter-American Commission has asserted that any restriction to access to information held by the State, in order to be compatible with the Convention, must overcome a three-part proportionality test: (a) it must be related to a legitimate aim that justifies it; (b) it must be demonstrated that the disclosure of the information effectively threatens to cause substantial harm to this legitimate aim; and (c) it must be demonstrated that the harm to the objective is greater than the public’s interest in having the information.⁴⁸

35. In addition to the aforementioned requirements, “when there is in fact a reason allowed by the Convention for the State to limit access to information in its possession, the person who requests the access must receive a reasoned response that provides the specific reasons for which access is denied.”⁴⁹
36. With regard to the legitimacy of these limitations, the organs of the Inter-American system have particularly emphasized that victims and their relatives, as well as the society as a whole, have the right to access information on serious violations of human rights in the archives of the State. This is the case even if the archives in question pertain to the security agencies or military or police agencies. Specifically, the Inter-American Court has noted that “it is essential that, in order to guarantee the right to information, the public powers act in good faith and diligently carry out the necessary actions to assure the effectiveness of this right, particularly when it deals with the right to the truth of what occurred in cases of gross violations of human rights [...]”⁵⁰ To this respect, it has stated

⁴⁷ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 52.

⁴⁸ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 53.

⁴⁹ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 55; Inter-American Court of Human Rights, Case of *Claude Reyes et al. v. Chile*, Merits, Reparations and Costs, Judgment of September 19, 2006, Series C No. 151, paragraph 77; Inter-American Court of Human Rights, Case of *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2010, Series C No. 219, para. 230.

⁵⁰ I/A Court H.R., Case of *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2010, Series C No. 219, para. 211.

that it cannot be left to the institution accused of committing mass human rights violations to decide whether or not the information exists, and whether or not to make it public. Similarly, the State cannot release itself from its obligations simply by alleging that the required information on mass human rights violations committed in the past was destroyed. On the contrary, the State has the obligation to search for such information by all possible means⁵¹. In that sense, the Model Inter-American Law, establishes that the exceptions to access to public information “do not apply in cases of serious violations of human rights or crimes against humanity.”⁵²

37. With regard to the right to truth, the Court and the Commission have held that the right to truth is closely linked with access to information and access to justice.⁵³ The right to truth has two dimensions. The first dimension is, as mentioned above, “the right for victims and their family members to know the truth about the events that led to serious violations of human rights, and the right to know the identity of those who played a role in those violations.”⁵⁴ The second dimension is that both the victims and all of society are considered holders of the right to truth, meaning that “every society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future.”⁵⁵ Thus, the dissemination of information to all of society enables it to recognize and learn from past mistakes, make reparations and rebuild the society in a way to prevent the repetition of such human rights violations.⁵⁶

D. Access to Information on Discrimination and Violence against Women

38. As noted above, access to information is closely tied to the attainment of other human rights.⁵⁷ That is to say, access to information is a prerequisite for demanding and exercising other human rights, and therefore, the failure to respect and guarantee this right for women may lead to the infringement of their rights to live free from violence and discrimination. In these areas, in particular,

⁵¹ I/A Court H.R., Case of *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*. Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2010, Series C No. 219, para. 211.

⁵² OAS, Model Inter-American Law on Access to Public Information, AG/RES. 2607 (XL-O/10), Adopted at the fourth plenary session, held on June 8, 2010, para. 44.

⁵³ IACHR, *The Right to Truth in the Americas*, August 13, 2014, para. 69.

⁵⁴ IACHR, *The Right to Truth in the Americas*, August 13, 2014, para. 70.

⁵⁵ IACHR, *The Right to Truth in the Americas*, August 13, 2014, para. 71.

⁵⁶ IACHR, *The Right to Truth in the Americas*, August 13, 2014, para. 109.

⁵⁷ See, for example: IACHR, *The inter-American legal framework regarding the right to access to information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 4; IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, paras. 1, 26, 31.

access to information is instrumental in preventing discrimination and violence as well as in ensuring victims' access to justice.

39. In this regard, it is important to underscore that the rights to live free from discrimination and violence are closely related. This connection is reflected in Article 6 of the Belém do Pará Convention, which establishes that the right of all women to live free from violence includes, inter alia, the right to live free from all forms of discrimination.⁵⁸ The IACHR has also established that this link is also reflected in the American Declaration. In this sense, one important precedent is the Commission's merits decision in the case of *Jessica Lenahan (Gonzales) et al. v. United States*, in which the prevention and eradication of violence against women were found to be key obligations comprehended within the duty to eliminate all forms of discrimination under Article II of the American Declaration on the Rights and Duties of Man.⁵⁹ The IACHR has also consistently reaffirmed the connection between the problems of violence and discrimination in its reports.⁶⁰
40. Article 1 of the Belém do Pará Convention defines violence against women as "any act or conduct, based on gender, which causes death or physical, sexual, or psychological harm or suffering to women, whether in the public or the private sphere." According to Article 1 of the same Convention, that definition includes any form of 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.

41. In establishing its standards on State obligations with regard to discrimination and violence, the Commission has highlighted the importance of taking into account the differences among women and the specific conditions of vulnerability to which some groups of women are subjected. The Commission has thus underscored

the duty of States to take special account of the inextricable link between the factors that expose women to discrimination along with their sex, such

⁵⁸ Here, the Commission considers it important to note that all OAS Member States, with the exception of the United States and Canada, have ratified the Convention of Belém do Pará.

⁵⁹ IACHR, Report No. 80/11, Case 12,626, Merits, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, paras. 115-121.

⁶⁰ See, for example: IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, paragraphs 59 et seq.; IACHR, *Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application*, November 3, 2011, para. 22 et seq.

as their age, race, ethnicity, and economic position, among others. The principle of intersectionality has been established in Article 9 of the Convention of Belém do Pará, since discrimination and violence do not always affect women in the same measure. There are women that are exposed to the violation of their human rights on the basis of more than one risk factor. Some examples highlighted by the Commission are the alarming situation of girls and indigenous women in the guarantee and exercise of their human rights.⁶¹

42. As noted above, the right of access to information generates a number of specific obligations for States. According to the Commission, access to information as an instrumental right for the effective exercise of women's rights to live free from discrimination and violence requires the fulfillment of three main obligations: (i) the obligation to collect and produce information, (ii) the obligation of active transparency, and (iii) the obligation to respond to requests for information made thereto, and to offer a recourse that satisfies the right of access to information. These obligations will be discussed below.

1. The Obligation Collect and Produce Information

43. In general, due to the principle of good faith, States have the obligation to guarantee the availability of and access to information by collecting, recording or producing the information they need in order to fulfill their international, constitutional, and legal obligations.⁶²
44. To comply with these obligations, States should produce statistical information that is disaggregated by groups in a situation of vulnerability, and in this respect the Commission has maintained that “the production of information that is properly categorized so as to determine what sectors are disadvantaged or relegated in the exercise of their rights, from this perspective, is not only a way to guarantee the effectiveness of a public policy, but is also an indispensable obligation that allows the State to fulfill its duty to provide such sectors with special and prioritized attention. As an example, the desegregation of data by sex, race, or ethnicity is an indispensable tool for illustrating problems of inequality.”⁶³
45. In particular, regarding access to public information on discrimination and violence, the Belém do Pará Convention establishes that States undertake to progressively adopt a set of measures and programs that guarantee women's right to adequate, effective, and timely access to justice in cases of violence against them. Pursuant to Article 8 (h) of the Convention, these include measures

⁶¹ IACHR, *Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application*, November 3, 2011, para. 28.

⁶² IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 35.

⁶³ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 35.

designed “to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences, and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish, and eradicate violence against women and to formulate and implement the necessary changes.”

46. The obligations derived from Article 8 of the Belém do Pará Convention must be interpreted jointly with the obligations set forth in Article 7 of that same international instrument, which establishes a number of immediate State duties, such as the duty to apply due diligence to prevent, investigate, and impose penalties for violence against women. The IACHR has expressly stated that:

The obligation of due diligence to prevent situations of violence, especially where widespread or deeply-rooted practices are concerned, imposes upon the States a parallel obligation. On the one hand [sic], States should monitor the social situation by producing adequate statistical data for designing and assessing public policies. On the other hand, States should take into account the policies implemented by the civil society. The obligation undertaken in Article 7.b of the Convention of Belém do Pará must be read in combination with the obligation established in Article 8.h to guarantee that statistics and other relevant data on the causes, consequences, and incidence of violence against women are researched and compiled with a view to evaluating the effectiveness of measures to prevent, punish, and eradicate violence against women and then formulating and introducing any needed changes.⁶⁴

47. In the same way, the need to gather and disseminate information on discrimination and violence against women has been affirmed on many occasions in the United Nations framework.⁶⁵ In this sphere, particular emphasis has been placed on the idea that court statistics represent an important contribution towards understanding the response of the criminal justice system to violence against women by, for example, making it possible to assess the effectiveness of laws and sanctions designed to protect women through statistics that track repeat offenders.⁶⁶

⁶⁴ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 42.

⁶⁵ See, for example: United Nations, *Resolution 26/15 of the Human Rights Council: Accelerating efforts to eliminate all forms of violence against women: violence against women as a barrier to women's political and economic empowerment*, July 11, 2014, U.N. Doc. A/HRC/RES/26/15, paragraph 7; United Nations, *Resolution 23/7 of the Human Rights Council: Elimination of discrimination against women*, June 20, 2013, U.N. Doc. A/HRC/RES/23/7, paragraph 12; United Nations, *Report of the Working Group on the issue of discrimination against women in law and in practice*, April 19, 2013, U.N. Doc. A/HRC/23/50, paragraph 97(g); United Nations, *Intensification of efforts to eliminate all forms of violence against women. Report of the Secretary-General*, August 1, 2012, U.N. Doc. A/67/220, paras. 77-78.

⁶⁶ See, for example: United Nations, *Report of the Secretary-General, In-depth study on all forms of violence against women*, July 6, 2006, U.N. Doc. A/61/122/Add.1, para. 209.

48. In this regard, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) establishes positive obligations regarding information on education (Article 10), health care for rural women (Article 14.2.b), and family planning (Article 16.1.e). Furthermore, the CEDAW Committee has stated that “States parties have an international responsibility to create and continuously improve statistical databases and the analysis of all forms of discrimination against women in general and against women belonging to specific vulnerable groups in particular.”⁶⁷ The Committee has recommended that States encourage “the compilation of statistics and research on the extent, causes, and effects of violence, and on the effectiveness of measures to prevent and deal with violence”⁶⁸ and specifically, the analysis and use of data on violence against women, in particular in relation to the number of reported cases, prosecutions, and convictions, as well as on the sentences imposed on the perpetrators and the compensation, in order to determine the benefits of the law, and to elaborate policies and programs to promote women’s access to justice.⁶⁹
49. Along the same lines, the Report of the United Nations Secretary-General on the intensification of efforts to eliminate all forms of violence against women provides specific recommendations on the obligations that States must fulfill with regard to gathering, disseminating, and using information on violence against women:

States should ensure the systematic and coordinated collection and dissemination of data, as well as its analysis, including on prevalence, frequency, causes, and consequences of violence against women and on the impact of measures to address such violence. Statistical data should be disaggregated by sex, race, age, ethnicity, and other relevant characteristics. [...]

States should use available data to monitor trends and progress and inform legislative and policy reforms and the provision of targeted and effective services. The development of uniform standards of data collection and capacity-building of statisticians to collect data in a gender-sensitive manner are critical. Qualitative research should be intensified to cover the economic, political, and social determinants of violence against women.⁷⁰

⁶⁷ United Nations, Committee on the Elimination of Discrimination against Women, *General recommendation No. 28: on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, December 16, 2010, U.N. Doc. CEDAW/C/GC/28, para. 10.

⁶⁸ United Nations, Committee on the Elimination of Discrimination against Women, *General recommendation No. 19: violence against women*, February 19, U.N. Doc. A/47/38(SUPP) para. 24.

⁶⁹ United Nations, Committee on the Elimination of Discrimination against Women, *Access to Justice – Concept note for Half Day General Discussion*, endorsed by the Committee on the Elimination of Discrimination against Women at its 53rd session, 2012, page 7. Available at: <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/ConceptNoteAccessToJustice.pdf>

⁷⁰ United Nations, *Intensification of efforts to eliminate all forms of violence against women. Report of the Secretary-General*, August 1, 2012, U.N. Doc. A/67/220, paras. 77-78.

50. Consequently, and with regard to access to information for the prevention of violence and discrimination against women, States have the specific obligation to produce meaningful statistics and other types of relevant information on the causes, consequences, and incidence of violence against women. This information should be used as a foundation for designing and assessing the effectiveness of public policies and other measures adopted in order to prevent, punish, and eradicate violence and discrimination against women. The Commission has reiterated numerous times that State data collection efforts—both quantitative and qualitative—are indispensable in order to fully understand the scale of the existing problems and to properly design legislation and public policies in order to respond to these issues.⁷¹
51. The IACHR stresses the importance of States incorporating women and the organizations that represent them into their mechanisms for gathering information. In this respect, the IACHR has previously set forth that “States must compile that information in partnership and consultation with the various sectors that have the critical data, including the victims themselves, their communities, state centers and agencies tasked with this issue, academia, international organizations, and civil society organizations. A cooperative relationship between the producers and users of statistics must be institutionalized.”⁷²

2. The Obligation of Active Transparency

52. As the IACHR has maintained, “the obligation to provide information proactively (also called the obligation of active transparency) lays the groundwork for the States’ obligation to provide public information that is essential for people to be able to exercise their fundamental rights or satisfy their basic needs in this area.”⁷³
53. Concerning the scope of the obligation of active transparency, the IACHR has indicated that States have the obligation to “provide the public with the maximum quantity of information proactively, at least in terms of: (a) the structure, function, and operating and investment budget of the State; (b) the information needed for the exercise of other rights—for example, those pertaining to the requirements and procedures surrounding pensions, health, basic government services, etc.; (c) the availability of services, benefits, subsidies, or contracts of any kind; and (d) the procedure for filing complaints or requests, if it exists.”⁷⁴

⁷¹ IACHR, *Press release 9/13: IACHR concludes its working visit to Suriname*, February 12, 2013.

⁷² IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 44.

⁷³ IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, para. 25.

⁷⁴ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 32.

54. On this matter, the Model Inter-American Law stipulates that States should disseminate proactively information regarding any direct request or complaints mechanisms available; a description of the powers and duties of its senior officers, and the procedure they follow to make decisions; any statutes, policies, decisions, rules, guidelines, manuals, or other records containing interpretations, practices, or precedents regarding the discharge by the public authority of its functions, that affect the general public; any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that public authority.⁷⁵
55. With regard to discrimination and violence, the Commission has already pointed out, that women cannot possibly claim their rights unless they know what those rights are.⁷⁶ The Commission recalls that, indeed, “the lack of information about the judicial recourses available and the fact that violence and discrimination against women are still accepted in American societies, have kept down the number of complaints of acts of violence against women.”⁷⁷ Highlighting the need for active transparency, ISIS International described the problem as follows:
- Women do not know what their rights are. Women in general, but particularly women of little means, do not understand their rights and are unfamiliar with the mechanisms available to them to assert those rights. Violence against women continues to be a widespread and culturally accepted practice. Laws are a means of regulation but cannot by themselves effect the cultural change needed to eradicate violence against women.⁷⁸
56. Consequently, active transparency with regard to discrimination and violence entails the state obligation to disseminate information on women’s rights and the legal avenues for claiming and enforcing those rights, as well as information related to the development of laws and public policies on violence and discrimination. This information must be complete, understandable, up to date, and written in accessible language.
57. In this respect, the CEDAW Committee has also established that the policy followed by the States to eliminate discrimination against women “must ensure that women, as individuals and groups, have access to information about their rights under the Convention and are able to effectively promote and claim those rights. The State party should also ensure that women are able to participate actively in the development, implementation, and monitoring of the policy. To this end, resources must be devoted to ensuring that human rights and women’s

⁷⁵ OAS, Model Inter-American law on access to public information, AG/RES. 2607 (XL-O/10), Adopted at the fourth plenary session, held on June 8, 2010, para. 12.1.

⁷⁶ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 230.

⁷⁷ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 231.

⁷⁸ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 231; Elizabeth Guerrero, *Violencia Contra las Mujeres en América Latina y el Caribe: Balance de Una Década 1990-2000* [Violence against Women in Latin America and the Caribbean 1990-2000: An Assessment of a Decade], ISIS International, Santiago, Chile, April 2002, p. 21.

non-governmental organizations are well-informed, adequately consulted, and generally able to play an active role in the initial and subsequent development of the policy.”⁷⁹

58. The foregoing implies that the State has the obligation to create forums for participation where the women who receive State-produced information can be heard with regard to their specific access-to-information needs. This is especially important for women in traditionally marginalized groups, such as indigenous women and Afro-descendants, given that they face greater obstacles to accessing public information and formal forums for participation.
59. Likewise, the Commission recalls that, as it has stated in the past, in order to meet the objectives of effectively distributing information on discrimination and violence, it is essential for States to adopt specific measures targeted at “the need to legitimize, protect, and support the work of nongovernmental organizations that provide interdisciplinary services to victims of violence by providing information on how to file complaints when women become the victims of violence and how to seek and obtain effective judicial protection.”⁸⁰ Regarding this point, the IACHR underscores that it is essential for States to adopt specific measures targeted at protecting the organizations and journalists that work to research, promote and defend the rights of women, particularly when they request that the State provide access to public information. The Model Inter-American Law on Access to Public Information stipulates that the State is obligated to guarantee that “the requester shall not be sanctioned, punished, or prosecuted in response to the exercise of the right of access to information.”
60. Along these lines, in resolution AG/RES 2579 (XL-0/10)⁸¹ the OAS General Assembly recognized the work that women human rights defenders are doing within the region and noted that, in view of their gender-specific role and needs and the particular risks they face by virtue of the discrimination they have traditionally suffered, women human rights defenders deserve to have States ensure that the important activities that they carry out are fully protected and effective.⁸² The State duty to prevent and respond to these issues is not limited to providing material measures to protect the lives and personal integrity of the defenders, or to ensuring that State agents do not interfere in the full exercise of

⁷⁹ United Nations, Committee on the Elimination of Discrimination against Women, *General recommendation No. 28: on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, December 16, 2010, U.N. Doc. CEDAW/C/GC/28, para. 27.

⁸⁰ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 239.

⁸¹ OAS General Assembly, *Human Rights Defenders: Support for individuals, groups, and organizations of civil society working to promote and protect human rights in the Americas*, adopted in the plenary session held on June 8, 2010.

⁸² IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, para. 281.

their human rights.⁸³ It also entails the obligation to act to address the structural causes that have a detrimental impact on their security,⁸⁴ in order to create the conditions necessary for the effective enjoyment of the rights established in the American Convention.⁸⁵

61. Similarly, the IACHR expresses its concern with regard to the situation of women journalists and the differential risks that they face over their exercise of the profession in the Americas. Especially concerning is the lack of attention that has thus far been paid to the phenomenon and the obstacles to denouncing and understanding it. For this reason, States are reminded of the need to improve mechanisms of prevention, protection and judicial responses in order to fully comply with the obligations described in this report and guarantee women the full exercise of their freedom of expression.⁸⁶
62. In the judicial sphere, the obligation of proactive transparency implies that the State has the duty to promote women's effective access to information in their own languages about their rights, how to access protective and preventive legal proceedings, the processing of the cases, and how to facilitate further investigations and clarify the facts. In this regard, the IACHR has recommended that the States, in the sphere of the administration of justice, "undertake efforts and initiatives to get the available information to the general public in a format that is responsive to the needs of a variety of audiences and populations of differing economic and educational levels, different cultures and different languages."⁸⁷ In this sense, the Commission highlights the need to develop educational programs for the general public regarding human rights and the available judicial avenues to present complaints.⁸⁸
63. It is thus particularly essential for States to guarantee access to the information necessary in order for women to know the protective measures set forth by law for situations in which there is an immediate danger of violence, as well as the channels for demanding those measures in court and for ensuring that the police execute and implement them.
64. The foregoing in turn generates three specific State obligations. First, the States have the obligation to produce and disclose adequate information to facilitate

⁸³ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, (2011), para. 42; 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. 47.

⁸⁴ 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. 47.

⁸⁵ I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 111.

⁸⁶ IACHR. *Annual Report 2013*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 269.

⁸⁷ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, page 128.

⁸⁸ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, page 230.

access to mechanisms for providing appropriate, high-quality, free legal aid to women who require it, so that women may quickly and effectively access justice when facing situations of risk.

65. Second, the States should hold training programs for all public officials—especially the police, officers of the court, and public health center employees—on women’s human rights, including access to information rights, the international standards in this area, the State obligations with regard to discrimination and violence, and the institutional channels for ensuring that women in situations of risk are supported effectively and without delay.
66. In this respect, the Commission has recognized the prejudicial role of gender stereotypes in the access to justice for women and the need to train all public officials to eradicate this problem. In this sense, the CEDAW Committee has recommended that States implement education and public information programs to help eliminate prejudices that hinder women’s equality⁸⁹, while the Special Rapporteur on violence against women, its causes and consequences, has maintained that all frameworks of violence prevention should include, inter alia, “capacity-building activities, including training and awareness-raising, such as gender-sensitive training for all civil servants addressing violence and discrimination against women, awareness-raising campaigns with an aim to eliminating discriminatory attitudes and addressing stereotypical attitudes, and the integration of a gender equality perspective into school textbooks and curricula.”⁹⁰
67. Third, States should produce and widely disseminate the protocols for addressing violence against women in place with the courts of justice, the police, the office of the attorney general, the office of the ombudsman, hospitals, and any other public organization that could be involved in serving women at risk of imminent acts of violence; these action protocols must set forth the specific responsibilities and obligations of State agencies that attend to women in this situation.
68. All these measures must take into account the specific needs that certain groups of women may have when they try to access information, for example, girls, indigenous women, Afro-descendent women, and rural women. This implies that

⁸⁹ United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation N° 19: Violence against women*, 19 February 1993, U.N. Doc. A/47/38(SUPP) para. 24.f).

⁹⁰ United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, August 1, 2011, U.N.Doc. A/66/215, para. 75. Along the same lines, the Office of the Special Rapporteur has maintained that in order to fulfill their international obligations of due diligence with regard to prevention, States should adopt measures like “making the criminal justice system and police more aware of gender issues; access to and availability of support services; the promotion of awareness and a modification of discriminatory policies in the sphere of education and the media, and the collection of data and publication of statistics on violence against women.” (United Nations, *Violence against women in the family: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy*, submitted in accordance with Commission on Human Rights resolution 1995/85, UN Doc. E/CN.4/1999/68, March 10, 1999, para. 25.

dissemination of information cannot be limited to the use of Internet portals. While the Commission has recognized the importance of Internet for the exercise of the right of access to information and has stated that it is a unique tool to unlock the huge potential of this right in broad sectors of the population, the fact is that in many countries of the region universal access is still not guaranteed. To that extent, States should make efforts to ensure that information reaches all women without discrimination, through the use of the most effective and adequate communication channels according to the needs of each group of women, such as print media, public radio and television, public interest campaigns in private commercial and community media; as well as newsletters, brochures and billboards available in government offices, schools and hospitals.

3. The Obligation to Respond to Requests for Information Made thereto, and to Offer a Recourse that Satisfies the Right of Access to Information

69. While active transparency in this field is the primary means to guarantee the right of access to information of women, the Commission recalls that States also have the obligation to guarantee access to public information to those who request it.
70. As it has been previously explained, for most victims of gender violence, access to information facilitates the effective exercise of rights and decision-making. Also, for those civil society organizations working to defend and promote the rights of women, information requests are indispensable tools to fulfill its role of government “watchdog” and to allow their participation in public policy making.
71. In this sense, States have the obligation to respond in a timely, complete, and accessible manner to requests for information made thereto, pursuant to which they are obligated to offer a recourse that satisfies the right of access to information and to provide an adequate and effective legal remedy for reviewing denials of requests for information.⁹¹
72. The IACHR has stated that the recourse that must be made available to enable individuals to request information from the State, must include the following characteristics:
- (a) it must be a simple recourse that is easy for everyone to access and only demands basic requirements, like a reasonable method of identifying the requested information or providing the personal details necessary for the administration to turn over the requested information to the petitioner;
 - (b) it must be free or have a cost low enough so as not to discourage requests for information;
 - (c) it must establish tight but reasonable deadlines for authorities to turn over the requested information;
 - (d) it must allow

⁹¹ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, paragraph 23 et seq.

requests to be made orally in the event that they cannot be made in writing—for example, if the petitioner does not know the language or does not know how to write, or in cases of extreme urgency; (e) it must establish an obligation for administrators to advise the petitioner on how to formulate the request, including advising the petitioner on the authority competent to reply to the request, up to and including filing the request for the petitioner and keeping the petitioner informed of its progress; and (f) it must establish an obligation to the effect that in the event that a request is denied, it must be reasoned and there must be a possibility of appealing the denial before a higher or autonomous body, as well as later challenging the denial in court.⁹²

73. In this regard, the Commission reiterates that States cannot require those requesting information to justify the reasons for the request and that this right can be exercised anonymously. Similarly, it is recalled that the State must ensure that persons requesting information are not be criminalized, punished or prosecuted for exercising this right.
74. Finally, the Commission notes that the answer to requests of information necessary to prevent and eradicate violence and discrimination against women often reveal gaps in the availability of information. In this type of cases and in accordance with the principle of progressivity, States must ensure that the public interest information obtained through requests for information is subsequently and proactively released and available to the whole society, so that no use of further remedies to obtain it is needed.

⁹² IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second Edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 26.

CHAPTER 3
ACCESS TO STATE CONTROLLED
INFORMATION IN CASES OF
DISCRIMINATION AND VIOLENCE
AGAINST WOMEN: PRINCIPLES
CHALLENGES

ACCESS TO STATE-CONTROLLED INFORMATION IN CASES OF DISCRIMINATION AND VIOLENCE AGAINST WOMEN: PRINCIPAL CHALLENGES

75. In this section, the IACHR will review some of the issues that require States' priority attention with regard to access to information on violence and discrimination, focusing on three specific areas: (i) the deficiencies in the availability of public information; (ii) the problems in the domestic implementation of international standards on access to information; and (iii) the challenges in the area of the administration of justice.
76. The challenges presented in this section were put together from the information that the IACHR received by means of its various working mechanisms, such as the processing of individual petitions and precautionary measures, hearings on the topic, and working visits. In addition, the Commission has received relevant information from the States and the civil society in their responses to the questionnaire on access to information in the Americas from a gender perspective, which is also included in this section. Finally, the information received by the IACHR is complemented with the standards of the United Nations human rights system with regard to the issues addressed.

A. Shortcomings in the Availability, Quality, and/or Integrity of Public Information on Discrimination and Violence against Women

77. The IACHR has found in several instances that specific problems exist in regards to the availability, quality, and integrity of public information on violence and discrimination against women. Among the problems illustrated in the information received by the IACHR are the failure to compile complete information on all forms of violence and discrimination in the various organs of the State, the failure to produce comprehensive statistics based on that information, and the lack of any breakdown of statistical information by factors such as sex, race, ethnicity, age, disability, social condition, and other criteria that would make it possible to take stock of the actual impact of violence and discrimination on specific groups of women.
78. The IACHR has stated that it is concerned about "the disorganized proliferation of state efforts to compile data on [violence] and the fact that the various

agencies are all using different formats. Coordination among institutions is poor and sectors (government, administration of justice, health, international and regional organizations, academia and civil society) have to do more to share information.”⁹³ In that regard, the IACHR has emphasized the problem of the failure of the various state organs to produce comprehensive statistics and the need for a breakdown of that information by factors such as sex, race, ethnicity, social condition, disability, and sexual orientation, among others, with a view to making visible the real impact of violence and discrimination on specific groups of women.⁹⁴

79. In particular, the IACHR has found that lack of institutional coordination also occurs among state entities when it comes to designing and implementing statistical systems related to sexual violence against women that include complaints, investigations, socio-demographic variables, characteristics of the victims, and investigative procedures, among other situations.⁹⁵
80. The Mexican State informed the IACHR that the General Law on Women’s Access to a Life Free from Violence included a provision establishing a National Data and Information Bank on cases of Violence against Women (BANAVIM), which creates unique electronic records for each woman affected by violence. This data base generates a record on protection orders and identifies situations that require urgent governmental measures in light of the best interest of women in situations of violence. The record is formed from the information entered by the various offices or mechanisms involved in preventing, addressing, and punishing violence. One of the objectives of this tool is to direct the development of statistics on and assessments of violence that make it possible to systematically learn of the characteristics and patterns of this phenomenon, with the aim of detecting geographic areas and spheres of society that pose a risk to women, as well as the needs for services for women.⁹⁶
81. The Commission considers that this initiative is a major step forward in establishing a uniform system of data on violence against women, yet it observes that no data has been provided on the level of coverage of this information system. In view of this circumstance, the Commission invites the State to incorporate into the Data Bank those States of the Mexican federation that are not yet part of it, and to adopt measures to incorporate indicators in the record such as the race, ethnicity, and socioeconomic status of women victims of

⁹³ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 193.

⁹⁴ IACHR, *Press Release 119/14: IACHR Urges States to Respect and Guarantee Human Rights of Rural Women*, October 15, 2014.

⁹⁵ IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, December 9, 2011, para. 283.

⁹⁶ IACHR, *Response of Mexico to the questionnaire on access to information from a gender perspective in the Americas*, July 24, 2014; National Data and Information Bank on Cases of Violence against Women, available at: <https://www.mujereslibresdeviolencia.gob.mx/>.

violence so as to generate information that allows for an approach to the problem of violence with an intersectional perspective.⁹⁷

82. The Commission also received information from the State of Argentina in its response to the questionnaire regarding a Treaty of Cooperation implemented on September 11, 2012 between the National Counsel of Women and the National Institute of Statistics and Census (INDEC) to produce statistics on gender-based violence, including as indicators the victims' age, sex, civil status, occupation, connection with the aggressor, among other factors.⁹⁸ The State of Argentina further informed the Commission that each of the administrative agencies responsible for registering information on gender-based violence receives training and technical assistance from specialized staff in order to ensure uniformity across administrative agencies.⁹⁹
83. The Commission received information from civil society organizations on the availability and quality of the statistical information during its working visit to Colombia in 2014. For example, the organization *Corporación Humanas* informed the Commission that one of the difficulties when it comes to monitoring the State's information system on sexual and family violence is that there is no clarity as to the databases the state institutions have, and that the information provided by different entities is varied and difficult to reconcile, for they do not have uniform or complete variables. By way of example, the organization indicated that in the State's figures on sexual violence it is very difficult to distinguish when the data reported reflects incidents in the context of the armed conflict.¹⁰⁰
84. Along similar lines, the Commission has observed that collecting statistics on violence in Haiti is hindered by the existence of rudimentary data systems that lack coordination.¹⁰¹ The IACHR has had an opportunity to note that, in Bolivia, there is a disparity in the figures on violence among the various civil society organizations and state entities, particularly in relation to violence against indigenous and peasant women in rural areas.¹⁰² In this respect, the Commission has indicated that this "suggests that violence against women is rendered 'invisible' as a consequence of the failure to report cases and the lack of mechanisms for recording and establishing statistics on the issue. This situation is directly related to ... the discontinuity and absence of effective measures for

⁹⁷ CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Mexico*, August 7, 2012, CEDAW/C/MEX/CO/7-8, paras. 15 and 16(a).

⁹⁸ IACHR, Response of the State of Argentina to questionnaire on access to information from a gender perspective in the Americas, August 19, 2014.

⁹⁹ IACHR, Response of the State of Argentina to questionnaire on access to information from a gender perspective in the Americas, August 19, 2014.

¹⁰⁰ IACHR, Responses of Corporación Humanas, Centro Regional de Derechos Humanos y Justicia de Género, to the questions asked in the context of the meetings with Commissioner Tracy Robinson during her working visit to Colombia, September 1, 2014.

¹⁰¹ IACHR, *Observations upon Conclusion of its April 2007 Visit to Haiti*, March 2, 2008, para. 48.

¹⁰² IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, June 28, 2007, para. 327.

implementing policies against violence, for there is no thorough diagnosis of the dimension of the problem.”¹⁰³

85. The Commission has also received information that indicates that in some countries of the region the institutional mechanisms needed to compile comprehensive information on violence against women and to produce complete statistics have not been sufficiently developed. Thus, for example, according to the information received by the IACHR from the State of Ecuador, several mechanisms exist in the country that provide attention in relation to violence against women and that keep an administrative record in this respect. Nonetheless, that information is not processed so as to make it available to the citizenry.¹⁰⁴ Similarly, the IACHR has been informed by the State of Suriname that information on violence is collected mainly by the police, but they have not developed sufficient data-gathering mechanisms in the Office of the Attorney General or in the courts of justice.¹⁰⁵
86. The State of Guatemala, in its response to the questionnaire, informed of the creation of the National Institute of Statistics partly to improve national efforts to collect information on violence against women.¹⁰⁶ The creation of this institute is a product of the adoption of the Law against Femicide and other forms of Violence against Women by means of Decree 22-2008. The State of Venezuela reported to the Commission that the only statistics available on violence against women are gathered solely from denunciations to the Ombudsman and other public offices, but such information is not disaggregated and includes no statistics on the types of violence against women at the national and local level.¹⁰⁷ Additionally, the State of Venezuela indicates that it includes such information on the webpage of the Ministry of Women and makes printed copies of the laws available.¹⁰⁸ The State of Venezuela however also reported that problems such as illiteracy and access to the internet have repercussions for the right to access information in general.¹⁰⁹
87. The IACHR has observed that even in those States that have institutionalized mechanisms for the compilation, processing, and production of information on violence against women, often the dissemination of such information is

¹⁰³ IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, June 28, 2007, para. 327.

¹⁰⁴ IACHR, Ecuador’s Response to the Questionnaire on the protection and prevention of violence and discrimination against women, July 31, 2014.

¹⁰⁵ IACHR, Suriname’s Response to the Questionnaire on access to information in the Americas from a gender perspective, March 19, 2014.

¹⁰⁶ IACHR, Response of the State of Guatemala to questionnaire on access to information from a gender perspective in the Americas, August 18, 2014.

¹⁰⁷ IACHR, Response of the State of Venezuela to questionnaire on access to information from a gender perspective in the Americas, July 2, 2014.

¹⁰⁸ IACHR, Response of the State of Venezuela to questionnaire on access to information from a gender perspective in the Americas, July 2, 2014.

¹⁰⁹ IACHR, Response of the State of Venezuela to questionnaire on access to information from a gender perspective in the Americas, July 2, 2014.

insufficient. The Commission recalls that the obligation of active transparency in this respect requires not only making the information in the hands of the State formally available to the population, but also requires that the State adopt positive measures to ensure that the information is actually received by those to whom it is directed. In this regard, the Commission has reiterated that, as it has indicated in the past, “given the public interest in statistical information on the problem of violence against women, States must have appropriate legal and administrative mechanisms for guaranteeing broad access to such information, and must establish means for publicizing it and fostering debate and public scrutiny over policies in this area.”¹¹⁰

88. The Commission underscores the obligation of States to compile and make available complete statistical information to address the situation described in the foregoing paragraphs. The IACHR has elaborated on the scope of this obligation in several thematic reports, reiterating that States must collect and report information in a uniform format. The Commission has also underscored that the information collected is disaggregated on the basis of race, gender identity, ethnicity, sexual orientation, situation of disability, among other factors. In order to fulfill this obligation, the Commission has recommended for States to design a coordinated, interdisciplinary information reporting policy across all relevant Ministries in order to collect and make available reliable information that accurately reflects the specific situation of women.¹¹¹ This is a key ingredient to adequately assess and evaluate the progress of public policies aimed at the prevention, sanction and eradication of discrimination and violence against women.¹¹² For its part, the Economic Commission for Latin America and the Caribbean (ECLAC) has also emphasized the need for States to “develop unified and standardized methods for data collection, which guarantee the validity and reliability of the information” in relation to access to information in the context of violence against women.¹¹³

¹¹⁰ IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, June 28, 2007, para. 357.

¹¹¹ See, for example, IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, December 9, 2011, recommendation 14; IACHR, *Access to Women Victims of Sexual Violence: Education and Health*, December 28, 2011, recommendation 1; IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, recommendation 11; IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, November 3, 2011, recommendation 2.

¹¹² See, for example, IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, December 9, 2011, recommendation 14; IACHR, *Access to Women Victims of Sexual Violence: Education and Health*, December 28, 2011, recommendation 1; IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, recommendation 11; IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, November 3, 2011, recommendation 2.

¹¹³ ECLAC, *No More: The right of women to live a life free of violence in Latin America and the Caribbean*, October 2007, p. 106.

89. In connection with the aforementioned, the Commission recalls that in its previous thematic reports on violence and discrimination against women it has made specific recommendations to States on the need to compile comprehensive statistical information, in a unified and suitably disaggregated manner.¹¹⁴

90. Finally, the Commission notes the treatment of this matter by the United Nations treaty bodies. In the context of the mechanism for reviewing periodic reports by the States on the level of compliance with the United Nations human rights treaties, the Committee on Economic, Social and Cultural Rights has emphasized, in general, “the importance of the availability of reliable and comprehensive data for the development of public policies”¹¹⁵ and in that vein it has recommended that the States take “the necessary steps to make their official statistics comparable with data produced by relevant international institutions.”¹¹⁶ With respect to gender based violence in particular, the Committee specifically addressed the lack of information on gender based violence in the review of Ecuador’s last report, indicating:

The Committee is deeply concerned about the sexual violence and exploitation to which girls and women are being subjected.... The Committee is also concerned that disaggregated information on the age and sex of victims and on whether they live in rural or urban areas has not been forthcoming from the State party....

The Committee recommends that the State party step up its efforts to combat gender-based violence through prevention programmes and mechanisms for the protection of women, giving due consideration to the input that can be provided by women and women’s organizations.... The Committee requests the State party to include statistics in its next periodic report that are disaggregated by age, sex and geographic location of the victims of such violence.¹¹⁷

91. Similarly, the Committee on the Elimination of Discrimination against Women has persistently reiterated to the States the need to and importance of improving the systems for compiling and producing statistical data that is broken down by sex, age, race, ethnicity, geographic location, and socioeconomic context in the areas covered by the Convention on the Elimination of All Forms of

¹¹⁴ See, for example, IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, December 9, 2011, recommendation 14; IACHR, *Access to Women Victims of Sexual Violence: Education and Health*, December 28, 2011, recommendation 1; IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, recommendation 11; IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, November 3, 2011, recommendation 2.

¹¹⁵ United Nations, Concluding observations of the Committee on Economic, Social and Cultural Rights on the third periodic report of Argentina, U.N.Doc. E/C.12/ARG/CO/3, December 14, 2011, para. 11.

¹¹⁶ United Nations, Concluding observations of the Committee on Economic, Social and Cultural Rights on the third periodic report of Argentina, U.N.Doc. E/C.12/ARG/CO/3, December 14, 2011, para. 11.

¹¹⁷ United Nations, Concluding observations of the Committee on Economic, Social and Cultural Rights on the third periodic report of Ecuador, U.N. Doc. E/C.12/ECU/CO/3, December 13, 2012, para. 21.

Discrimination against Women, as evident in its most recent concluding observations on the reports submitted by Peru¹¹⁸, Colombia¹¹⁹, and Chile¹²⁰, among others. By way of example, on examining compliance with the state obligation to compile and analyze data, with respect to Peru, the Committee held:

The Committee welcomes the national system of gender indicators launched in 2013. It reiterates its concern, however, that statistical information disaggregated by sex, rural and urban areas and ethnicity in many aspects covered by the Convention is not available, which may constitute an obstacle to designing and implementing targeted policies and programmes and in monitoring their effectiveness with regard to the implementation of the Convention.

The Committee reiterates its recommendation ... that the State party include in its next periodic report statistical data and analysis, disaggregated by sex, rural and urban areas and ethnicity, indicating the impact of measures taken and results achieved in order to illustrate the situation of women in all areas covered by the Convention, in particular with regard to the issue of violence against women.¹²¹

92. In conclusion, the IACHR observes that the main challenges to compliance with the state obligation to collect and produce information have to do with developing coordinated institutional mechanisms for compiling complete data on all forms of violence and discrimination against women, and producing data that is integral, unified, and duly disaggregated at least by sex, race, ethnicity, age, socioeconomic status, and urban/rural location. The Commission also highlights the importance of the States adequately disseminating the information that is compiled and produced through such mechanisms, for which all measures necessary should be taken to ensure that such information is made available in several languages and that it is actually received by all women.

¹¹⁸ United Nations, Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of Peru*, U.N.Doc. CEDAW/C/PER/CO/7-8, July 24, 2014, paras. 40, 43, and 44.

¹¹⁹ United Nations, Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth reports of Colombia*, U.N.Doc. CEDAW/C/COL/CO/7-8, October 29, 2013, paras. 16, 37, and 38.

¹²⁰ United Nations, Committee on the Elimination of Discrimination against Women, *Concluding observations on the fifth and sixth periodic reports of Chile*, U.N.Doc. CEDAW/C/CHL/CO/5-6, November 12, 2012, paras. 43, 50, and 51.

¹²¹ United Nations, Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth reports of Peru*, U.N.Doc. CEDAW/C/PER/CO/7-8, July 24, 2014, paras. 43-44.

B. National Implementation of International Standards on Access to Information Managed by the State in relation to Discrimination and Violence against Women

93. The Inter-American Commission has received a significant amount of information on constitutional and/or statutory provisions on the right of access to information in the countries of the region. Nonetheless, the IACHR observes with concern the scarcity of information about the implementation of access-to-information laws in the area of discrimination and violence against women.
94. Thus, for example, the State of Suriname informed the IACHR that its Constitution contains a general provision that declares that all persons have the right to be informed, by the organs of the public administration, of progress in the processing of cases in which the person has a direct interest and on the final decisions reached in such cases, but that nonetheless there is no specific statute that regulates this provision.¹²² The information provided by the State indicates that the lack of a clear regulatory procedure challenges the proper implementation of the constitutional provision at issue.
95. On the other hand, the State of Bolivia informed the IACHR that its Constitution contains provisions that establish the responsibility of the federal government to release official statistics through a specialized institution. The State indicated to the Commission in its response to the questionnaire that it implemented this constitutional provision through the National System of Statistics Law (DL14100), which created the National Institute of Statistics. Specifically in the context of information on violence against women, the State informed the IACHR of Law No. 348 “Integral Law to guarantee women a life free from violence,” which charges the Ministry of Justice with the responsibility to generate information and facts as part of the integral care provided to women in situations of violence.¹²³
96. In this regard, the IACHR and the Office of the Special Rapporteur have recognized the progress made in the incorporation of the inter-American system’s standards on access to information into the domestic legal regimes of several States, either through the approval of special access to information laws or through decisions by their domestic courts. However, it has observed that in several Member States there continue to be difficulties in regulating the exceptions to the exercise of this right and in the implementation of some laws, particularly with regard to the training of public employees and the citizenry in

¹²² IACHR, Response of the State of Suriname to questionnaire on access to information from a gender perspective in the Americas, May 12, 2014.

¹²³ IACHR, Response of the State of Bolivia to questionnaire on access to information from a gender perspective in the Americas, July 2, 2014.

order to eradicate the culture of secrecy and provide citizens the tools to effectively monitor state activities, public administration and the prevention of corruption, all essential to the democratic process¹²⁴.

97. Likewise, the United Nations Special Rapporteur on promotion and protection of the right to freedom of opinion and expression has observed. Nonetheless, the Special Rapporteur has found that notwithstanding the positive steps taken by a number of States, as reflected in the many national legal instruments regulating access to information, multiple obstacles are frequently encountered in their implementation. Altering long-standing practices of government workforces is a complex process, especially when public bodies have been established or subjected to reforms during a previous authoritarian rule. The provision of information in a timely manner requires not only improvement of the technical capacity of public bodies to process and share information, but also the training and awareness-raising of public officials at all levels with regard to their duty to respond to public requests for information, while assigning absolute priority to information relating to human rights violations.¹²⁵
98. In this regard, the IACHR underscores the importance of having specific information on the implementation of the domestic provisions in order to evaluate the States' level of compliance with international standards in the area of access to information, which requires focusing the States' attention on the areas in which women require specific services.
99. In this sense, and recalling the instrumental nature of access to information, the IACHR considers that the effective implementation of this right for women should necessarily encompass access to information in relation to women's sexual and reproductive health, for this enables women to make free and informed decisions with respect to the most intimate aspects of their personality. Next, the IACHR examines three relevant cases in this regard.

Case study on access to information in relation to sexual and reproductive health

100. The IACHR has developed a series of standards on the right of access to information on reproductive matters, which include: (i) respect for the principle of informed consent; (ii) the duty of health care providers to protect the confidentiality of the patient's information; (iii) the State obligation to ensure the availability of all "information with respect to family planning methods as well as

¹²⁴ IACHR. *Annual Report 2013*. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (Conclusions and Recommendations). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Paras. 19 and 20.

¹²⁵ United Nations, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, September 4, 2013, U.N. Doc. A/68/362, para. 74.

to other lawfully provided sexual and reproductive health services;¹²⁶ (iv) ensuring women’s access to their medical history; and (v) the state obligation to produce reliable statistics on sexual and reproductive health.¹²⁷

101. The IACHR has had the opportunity to explore the content and scope of the standard of informed consent in the performance of medical procedures in the context of individual case petitions. The Commission has processed a number of cases concerning the performance of sterilizations without a proper informed consent process, such as María Mamérita Mestanza (Peru), I.V. (Bolivia), and F.S. (Chile).
102. In the case of María Mamérita Mestanza, an indigenous peasant woman was pressured and harassed by a health center to have a tubal ligation, which was finally done without her being informed of the consequences and risks entailed in the intervention. Ms. Mestanza died a few days later, as a result of a post-operative infection that was not addressed by the health center even though she had asked for assistance on several occasions.
103. On August 26, 2003, a friendly settlement agreement was reached by which the State recognized its responsibility for the violation of Ms. Mestanza’s rights, including the violation of her right to freely give her consent as a condition for performing the tubal ligation, and it undertook to adopt measures of reparation to benefit the victim, investigate and sanction those responsible in the regular courts, and to adopt measures of prevention to prevent the recurrence of such events. Among the measures that the State undertook to adopt are those necessary “so that that rules established for ensuring respect for the right of informed consent are scrupulously followed by health personnel.”¹²⁸
104. In the case of I.V. (Bolivia)¹²⁹, the IACHR examined the admissibility of a petition filed by a woman who was subjected to the surgical procedure of tubal ligation with respect to which she did not give her informed consent. The IACHR concluded that the facts, if proven, tended to establish violations of I.V.’s rights to personal integrity, access to information, and privacy and family life. Specifically, the IACHR indicated that the scope of Article 13(1) of the Convention could include a failure to adequately inform a woman of the effects, risks and consequences of the surgical sterilization and/or alternative methods.¹³⁰

¹²⁶ IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, para. 48.

¹²⁷ IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011.

¹²⁸ IACHR, Report No. 71/03, Petition 12,191, Friendly Settlement, María Mamérita Mestanza Chávez, Peru, October 10, 2003, para. 14, eleventh clause.

¹²⁹ IACHR, Report No. 40/08, Petition 270-07, Admissibility, I.V., Bolivia, July 23, 2008.

¹³⁰ IACHR, Report No. 40/08, Petition 270-07, Admissibility, I.V., Bolivia, July 23, 2008, para. 81.

105. In the case of F.S.¹³¹, the IACHR examined the admissibility of a petition filed by a rural woman living with HIV in which it was alleged that she was subjected to sterilization without her consent. The petition was admitted to analyze claims concerning the rights to humane treatment, personal liberty, a fair trial, privacy, family, equal protection and to judicial protection. In this admissibility report, the Commission emphasized that States can be held internationally responsible under Article 7 of the Convention of Belém do Pará for the surgical sterilization of a woman that is performed without her consent and the subsequent physical and psychological effects of the procedure, which constitute a form of violence against women a violation of access to information under Article 13(1).¹³²
106. In addition, in the context of its visit to Colombia in September of 2014, the IACHR received a number of stories from presumed victims of human rights violations which are emblematic of some of the main challenges that women face to access information from government entities in cases related to violence against women.
107. The Commission learned during the Colombia visit of the very alarming story of a young Afro-descendent woman who, after self-identifying to her father as a lesbian at the age of 11 years, was reportedly subjected to repeated rapes by her fathers' friends for a period of 14 years, which allegedly resulted in five pregnancies. After the young woman escaped, she claims she was raped by members of illegal armed groups as a form of punishment for her sexual orientation, which resulted in her forced displacement. She also informed the Commission that she lacked knowledge of her rights, did not know where to report these acts, or where to obtain any health-related information. The Commission considers that this type of situation illustrates the marginalization that women can face on the basis of their race, gender and sexual orientation, which can be particularly acute when they are victims of sexual violence. It also evidences the need for States to disseminate information about the available legal avenues for women to report acts of sexual violence and of the reproductive health and interdisciplinary services available by law.¹³³
108. The IACHR also received information during the visit from P.P., a Colombian woman who towards the end of her second pregnancy reportedly sought emergency care from a public hospital since she was bleeding. While treating her, the attending physician allegedly informed her the baby was dead and scheduled surgery to extract the dead fetus the next day, with no more than a cursory examination. P.P. claims that she was mistreated by the medical team during the preparation for the surgery and that following the procedure no physician came to inform her of the outcome, and did not deliver her child's body. She also contends that her medical history had numerous irregularities, and she suffered

¹³¹ IACHR, Report No. 52/14, Petition 112-09, Admissibility, F.S., Chile, July 21, 2014.

¹³² IACHR, Report No. 52/14, Petition 112-09, Admissibility, F.S., Chile, July 21, 2014, para. 41.

¹³³ IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, para. 48.

a post-surgical infection that was not properly treated in the hospital. The IACHR considers that this set of facts illustrates the need for public health officials to provide complete and timely information to women patients regarding maternal health issues, including ensuring that the women involved have access to medical treatment records.

109. By way of conclusion, the IACHR underscores that to effectively guarantee the right of access to information requires that the States bring their domestic law and institutional framework into line with the requirements of this right, and that they adequately implement the domestic provisions related to access to information with a gender perspective. As a result, the Commission observes with concern the unavailability of specific information on the implementation of these standards in the States, and in particular on the measures adopted to effectively ensure this right in the areas of state activity that have a special impact on the exercise of the human rights of women, such as the provision of sexual and reproductive health services.

C. Challenges in the Area of the Administration of Justice to Guarantee Access to Information in relation to Discrimination and Violence against Women

110. One aspect of special concern to the IACHR has to do with the availability and accessibility of judicial information on violence and discrimination against women. This aspect is of particular alarm considering that access to information for women victims of violence is a requirement for them to be able to effectively access justice and to obtain the judicial remedies available under national legislation. In this section, the IACHR will examine some of the principal challenges in this area in light of the international standards set forth at the beginning of this report.
111. The IACHR's 2007 report *Access to Justice for Women Victims of Violence in the Americas* offered a general overview of the structural problems within the justice systems which affect the prosecution of cases of violence against women. Among these, are the precarious nature of and lack of coordination in the information system for compiling statistics on incidents and cases of violence against women. In the same report the IACHR noted that within the systems for the administration of justice it has observed "faults and weaknesses in processing and recording data on cases involving violence against women. These faults and weaknesses are compounded by the fact that the statistics from every quarter of government grossly underestimate the magnitude of the problem of gender-based violence."¹³⁴ In this respect, the IACHR has noted that the failings in the availability and quality of information and the statistical data on violence against

¹³⁴ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, January 20, 2007, para. 188.

women stand in the way of developing public policies in the area of justice which are coherent with the seriousness and prevalence of this problem.

112. The structural problems affecting the information systems for compiling statistics in cases of violence against women also raise important concerns regarding public accountability. The United Nations established that “accurate and comprehensive data and other documentation are crucial in monitoring and enhancing State accountability for violence against women and for devising effective state responses.”¹³⁵ Making such information public—for example, on the number of complaints, investigations, prosecutions and conviction rates—facilitates the monitoring of how public funds are spent and the results achieved. The availability of these statistics to the public would also inform civil society organizations’ advocacy for and States’ implementation of reforms and actions related to the prevention, investigation, prosecution and sanction of violence against women.
113. One of the areas in which the Commission has identified important failings with respect to access to information controlled by the administration of justice is the judicial prosecution of cases of violence and discrimination.
114. One first relevant element in this area is the guarantee of victims’ access to information about their cases pending before the administration of justice. While various States expressly provide in their legal systems for victims’ ability to access their judicial records, the Commission observes that in practice this can become difficult due to factors such as the lack of training of judicial officers, women’s lack of knowledge of the means of requesting information on their cases, the lack of legal assistance, not speaking the official language of the State, and the challenges persons in rural areas face in accessing courts due to the long distances, among others.
115. In this respect, the IACHR recalls the observations it made in 2009 with respect to Bolivia, when it noted that:

a series of shortcomings continue to plague investigations into cases of violence against women and that matters are made worse when the victim lacks the necessary wherewithal or information to follow up and ensure that the authorities responsible perform their legal obligations. Concretely, the IACHR was informed that a series of obstacles continued to hinder access to adequate and effective judicial protection mechanisms, including a shortage of justice operators and the lack of independence and suitability of a number of them; high illiteracy rates among women, in particular indigenous women and those who live in poverty and in rural areas; lack of information about their rights; lack of legal assistance adequate to their needs; delays in judicial proceedings and the costs associated therewith;

¹³⁵ United Nations, Report of the Secretary-General, *In-depth Study on All Forms of Violence against Women*, A/61/122/Add.1, July 6, 2006, para. 274. Available at: <http://www.un.org/womenwatch/daw>

absence of institutionalized training programs for justice administration officials and the police, and lack of statistical data, among other difficulties.¹³⁶

116. In addition, in the context of its working visit to Colombia in September and October of 2014, the IACHR received information with respect to the problems Afro-descendent women face accessing justice in situations of violence. The information received indicates that women victims of violence and their families often do not have direct access to information about their cases within the justice system, and similarly, access to the case files is often denied to the organizations that represent them.
117. Second, in this area, it is essential that free legal services exist and are available to women who require them. According to the information received by the IACHR a significant number of the States in the region have such mechanisms in place. Nonetheless, the Commission notes with concern the information it has received indicating that the capacity of the existing legal services frequently fails to meet the demand for the same, and that these services are inadequate for handling the particular needs of women victims of violence. In this regard, the compilation of information regarding the functioning of free legal services, their level of coverage, and their quality is fundamental for the States to be able to evaluate the design and implementation of such programs and to make the adjustments necessary to ensure that all women have access to legal counsel to facilitate their access to justice effectively and in equal conditions.
118. Third, effective access to justice for women victims of violence or discrimination requires that special measures are adopted to ensure that women who do not speak the official language of the State receive information in their own language and have interpreters available during all stages of the proceedings. This is of particular importance for indigenous women in cases of violence and discrimination. It is also important that interpretation is available in all instances with relevance to a case of violence, such as the police, the Prosecutor's Offices, and health institutions, among others.
119. In this respect, the Inter-American Court has underscored that several rights can be implicated when an indigenous woman who has suffered sexual violence is unable to file a complaint before the authorities in her own language. These types of barriers can violate the obligation to guarantee, free from all forms of discrimination, access to justice in the terms of the American Convention and other inter-American instruments.¹³⁷

¹³⁶ IACHR, *Follow-up Report– Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, August 7, 2009, para. 204.

¹³⁷ I/A Court HR. *Case of Rosendo Cantú and one other v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010 Series C No. 216, para. 185; I/A Court HR. *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215, para. 201.

120. As a result, the IACHR considers that some noteworthy challenges to ensuring effective access to information in the area of the administration of justice have to do with the possibility of persons to readily consult judicial records and to obtain information on the progress of their pending judicial proceedings. Additionally, basic information related to ongoing judicial processes should be available in a language other than the official language of the State at issue and interpreters should be available. In addition, the IACHR reiterates that the provision of legal assistance services free of charge for the victims of discrimination and violence who require them is fundamental for women to know their rights and to exercise them before the justice system. The offer of free legal services can achieve a two-fold objective: it can serve to advance both the right to access to information and the right to justice for women victims of discrimination and violence.

1. Inter-American Jurisprudence on Access to Information related to the Prevention, Investigation, Prosecution, and Punishment of Violence against Women

*a. Inter-American Court: Case of González et al. (“Cotton Field”) v. Mexico*¹³⁸

121. In this case the Inter-American Court analyzed the State duty to duly investigate the acts of violence against women in relation to irregularities during the investigation into the disappearance and death of three young women in Ciudad Juárez, Mexico. Those irregularities refer to the custody of the crime scene, the collection and handling of evidence, preparation of the autopsies, and identification and handing over of the victims’ remains¹³⁹, as well as the unjustified delay in and failure of the investigations to make substantial progress, which resulted in impunity in the cases¹⁴⁰, and the denial of access to the record and delays or refusal to provide copies of it¹⁴¹, among other aspects.
122. In its analysis of the case the Court considered that the lack of information about progress in the investigations and the treatment accorded to the family members during the whole process of seeking the truth were factors that had caused a violation of the victims’ family members’ right to humane treatment.¹⁴² In this respect, the Court found the existence of “a pattern of state conduct towards the next of kin of women victims of violence in Ciudad Juárez, consisting in

¹³⁸ I/A Court HR. Case of *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205.

¹³⁹ I/A Court HR. Case of *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 296-333.

¹⁴⁰ I/A Court HR. Case of *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 347-378.

¹⁴¹ I/A Court HR. Case of *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paras. 379-387.

¹⁴² I/A Court HR. Case of *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 424.

derogatory, disrespectful and even aggressive treatment when they try to obtain information about the investigations. In most cases, this results in distrust and fear, so that they do not denounce the facts.”¹⁴³ Accordingly, among the reparations ordered by the Court consideration was given to the duty of the State to effectively conduct the criminal proceedings to identify, prosecute, and punish those responsible, and that in such proceedings one should “provide the victims’ next of kin with information on progress in the investigation regularly, and give them full access to the case files, and the investigation shall be carried out by officials who are highly trained in similar cases and in dealing with victims of discrimination and gender-based violence.”¹⁴⁴

b. Inter-American Court: Cases of Rosendo Cantú¹⁴⁵ and one other v. Mexico and Fernández Ortega et al. v. Mexico¹⁴⁶

123. The Inter-American Court had an opportunity to refer to the special obligations of States to respond to violence against indigenous women in the cases of Valentina Rosendo Cantú and Inés Fernández Ortega. Those cases refer to rape committed by members of the military to the detriment of Ms. Rosendo Cantú and Ms. Fernández Ortega, both from the Me’phaa indigenous community, as well as the failure to investigate and punish the persons responsible. With respect to both victims, the Court considered it proven that they did not have an interpreter provided by the State when they filed their initial complaints nor had they received information in their language concerning the actions that stemmed from their complaints¹⁴⁷. In the view of the Court, the impossibility of filing a complaint and receiving information in their language at the initial moments demonstrated that, in both cases, the justice system had failed to take into account the victims’ situation of vulnerability, based on their language and ethnicity; all factors which resulted in violations of their right to access justice.¹⁴⁸

¹⁴³ I/A Court HR. Case of *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 435.

¹⁴⁴ I/A Court HR. Case of *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 455.b.

¹⁴⁵ I/A Court HR. Case of *Rosendo Cantú and one other v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010 Series C No. 216.

¹⁴⁶ Case of *Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215.

¹⁴⁷ I/A Court HR. Case of *Rosendo Cantú and one other v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010 Series C No. 216, para. 185; I/A Court HR. Case of *Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215, para. 201.

¹⁴⁸ I/A Court HR. Case of *Rosendo Cantú and one other v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010 Series C No. 216, para. 185; I/A Court HR. Case of *Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2010 Series C No. 215, para. 201.

c. *IACHR: Jessica Lenahan (United States)*¹⁴⁹

124. In this case, Ms. Lenahan had a judicial protection order against her former husband, Mr. Gonzales, which also protected their daughters. In violation of that protection order, Mr. Gonzales picked up the girls and took them with him, without the mother's knowledge and outside the terms of visitation. Jessica Lenahan called the police department several times to report what had happened and to try to get the police to enforce the protection order, with no results. Hours later, the girls were found dead in their father's vehicle. In its report on the merits in this case, the IACHR found that the authorities had not adequately investigated the facts and that impunity had persisted for 11 years, which constituted a breach of the duty to act with due diligence to prevent and investigate domestic violence under the terms of the American Declaration.¹⁵⁰
125. The Commission noted its concern in relation to both the conduct of the police in response to the calls of Ms. Lenahan and in the investigation after her daughters were found dead. When she called the police to report her daughters missing, the IACHR observed with particular concern the "insensitive nature" of the police dispatcher's comments to Ms. Lenahan. Rather than offering help and assistance to a woman calling out of concern for the well-being of her daughters, the police dispatcher dismissed her concerns as ridiculous. The IACHR reiterates that this kind of mistreatment undermines access to justice because it "results in a mistrust that the State structure can really protect women and girls from harm, which reproduces the social tolerance towards these acts," and that police authorities have an internationally-recognized obligation to "respect and protect human dignity and maintain and uphold the human rights of all persons in the performance of their duties."¹⁵¹
126. In particular, the IACHR referred to the failure to clarify the circumstances surrounding the deaths of the three girls – a situation that the State was under an obligation to investigate – and its relationship to the right to access information. In this regard, the Commission held:

A critical component of the right to access information is the right of the victim, her family members and society as a whole to be informed of all happenings related to a serious human rights violation. The inter-American system has established that this right - the right to truth - is not only a private right for relatives of the victims, affording them a form of reparation, but also a collective right that ensures that society has access to information essential for the workings of democratic systems.

¹⁴⁹ IACHR, Report No. 80/11, Merits, Case of 12,626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011.

¹⁵⁰ IACHR, Report No. 80/11, Merits, Case of 12,626, *Jessica Lenahan (Gonzales) et al.* (United State), July 21, 2011, para. 160.

¹⁵¹ IACHR, Report No. 80/11, Merits, Case of 12,626, *Jessica Lenahan (Gonzales) et al.* (United State), July 21, 2011, para. 167.

Eleven years have passed since the murders of Leslie, Katheryn and Rebecca Gonzales, and the State has not fully clarified the cause, time and place of their deaths. The State has not duly communicated this information to their family. The petitioners have presented information highlighting the challenges that Jessica Lenahan and her family members have faced to obtain basic information surrounding the circumstances of Leslie, Katheryn and Rebecca Gonzales' deaths.¹⁵²

2. National Stories Illustrating Challenges to Access Information relevant to the Prevention, Investigation, Prosecution and Punishment of Violence against Women

127. During its visit to Colombia on September of 2014, the Commission received a significant number of personal accounts of barriers allegedly faced by women, in particular from afro-descendent women, in obtaining basic information from the State which is needed to exercise their human rights. In most of the stories shared with the delegation, it was evident that having or not having access to information managed by the State had a specific impact on the exercise of the rights of the women affected. In this section, the Commission discusses some of the stories shared with the delegation to exemplify the scope of the roadblocks which need to be addressed by all States in their public interventions concerning public information, violence, and discrimination against women.
128. The IACHR received information on the case of L.L., whose partner and son were allegedly murdered, and whose adolescent daughter has reportedly gone missing in the context of the armed conflict in Colombia. According to the testimony of L.L., all of these events have remained in impunity. L.L. is also reportedly facing death threats from armed groups and has not been able to report these threats to the authorities for fear of reprisals. A similar case is that of M.M., whose husband was allegedly killed by armed actors in 2003, after which she claims she was forcibly displaced, along with her children. M.M. allegedly reported these events to the pertinent authorities and began to investigate, on her own, the motives behind the murder, as a result of which she has received a death threat. To date, M.M. reports that her husband's death has not been clarified.
129. These accounts, as well as many other similar ones, exemplify the impunity which can affect all cases of violence in the context of an armed conflict, and how this impunity can reproduce and perpetuate human rights violations. The IACHR takes advantage of this opportunity also to underscore that the family members of victims of human rights violations also have the right to truth, which involves the proper access to information about ongoing investigations, the eventual sanction of those responsible, and the grant of the relevant reparations. Moreover, the administration of justice authorities should be trained on the

¹⁵² IACHR, Report No. 80/11, Merits, Case of 12.626, *Jessica Lenahan (Gonzales) et al.* (United States), July 21, 2011, paras. 193-194.

different challenges that women and their family members can face in different contexts to seek information from the judicial authorities about ongoing investigations, such as armed conflicts, and to afford them the needed protection in order to participate in the judicial process at issue.

130. Also in the context of its visit to Colombia, the IACHR received information about a case reportedly involving a group of approximately 24 women from San Miguel, a rural municipality, who allegedly made the decision to come forward to testify about situations of sexual abuse perpetrated by paramilitaries. According to the information shared with the delegation, it has been cumbersome for the complainants to go before the authorities to follow up on their cases, due to the distance and the lack of economic resources required for traveling. In addition, the complainants do have the services of an attorney who is providing free legal assistance in Bogotá but they claim that in practice, it is difficult for them to reach her. They have also stated that, after giving their statements, many of them reportedly received threats and ended up abandoning their claims, given the alleged lack of an institutional response.
131. The Commission considers that the facts alleged pertinent to the San Miguel case also illustrate the connection between the respect and guarantee of the rights of access to information and access to justice. The women from San Miguel claim they have faced a number of barriers to effectively see justice fulfilled in their cases of sexual abuse, including their distance from the attorney that represents them and the tribunals at issue, and the threats they have received in their pursuit of justice. This situation reflects a series of institutional shortcomings in carrying out the obligations arising from the right of access to information and from the right of access to justice, among which special mention can be made of the obligation to disseminate complete information on the women's rights and how to uphold them, and the obligation to ensure protection of the victims from human rights violations in the face of threats stemming from the search for justice.

CHAPTER 4
STATE EFFORTS IN RELATION TO
ACCESS TO INFORMATION IN
CASES OF DISCRIMINATION AND
VIOLENCE AGAINST WOMEN

STATE EFFORTS IN RELATION TO ACCESS TO INFORMATION IN CASES OF DISCRIMINATION AND VIOLENCE AGAINST WOMEN

132. Next the IACHR will discuss information it has received from the States on efforts being made with a view to strengthen respect for and guarantees of the right of access to information for women victims of discrimination and violence. The initiatives highlighted in this section describe measures adopted by the States of the region to establish a culture of transparency in the public institutional framework and to advance towards the full realization of women's right to live free from all forms of discrimination and violence.
133. The information discussed in this section was received by the IACHR by means of responses to the questionnaires circulated as part of the preparation of this thematic report. In several specific cases, information is included that was provided by both the States and civil society.

A. Statutory and Constitutional Recognition of the Right of Access to Information

134. As mentioned earlier, one of the obligations imposed on the State by the right of access to information is to bring its domestic legal order into line with the demands of this right. As the Office of the Special Rapporteur for Freedom of Expression has stated, this implies "(a) implementing an adequate legal framework; (b) removing legal or administrative obstacles that impede access to information; (c) promoting the right of access within all of the State's entities and authorities, through the adoption and enforcement of rules and procedures and through the training of public officials on the custody, administration, filing and provision of information; and (d) in general terms, adopting public policy that is favorable to the full exercise of this right."¹⁵³
135. Based on the information provided by the States in their responses to the questionnaire on access to information from a gender perspective in the

¹⁵³ IACHR, *The Inter-American Legal Framework regarding the Right to Access to Information*, Second edition, Office of the Special Rapporteur for Freedom of Expression, March 7, 2011, para. 43.

Americas, the IACHR notes a widespread effort in the region to reflect access to information as a human right in the Constitutions, and to adopt specific laws to regulate the exercise of that right.

136. In terms of including the right of access to information in the constitutions, the States of Argentina¹⁵⁴, Bolivia¹⁵⁵, Colombia¹⁵⁶, Mexico¹⁵⁷, and Peru¹⁵⁸ informed the IACHR that this right is guaranteed in their constitutions. Ecuador¹⁵⁹, Guatemala¹⁶⁰, and Guyana¹⁶¹ did include information on the recognition of the right in their constitutions, but did indicate that they have laws on access to public information.

B. Establishment of Mechanisms for Compiling, Producing, and Disseminating Information on Cases of Violence and Discrimination against Women

137. As was established at the beginning of this report, a key obligation that emerges for States as a consequence of the right of access to information is the duty to compile information and produce complete statistics that are duly disaggregated and updated. In the area of violence and discrimination against women, it is fundamental that unified mechanisms for compiling information be implemented. Doing so requires a coordinated effort among the various governmental entities with competence in that area.
138. The information in the hands of the IACHR indicates that this is one of the areas that poses the greatest challenges, for in the vast majority of countries of the region effective and unified mechanisms for compiling, systematizing, and disseminating statistical information about violence and discrimination against

¹⁵⁴ IACHR, Argentina's Response to the questionnaire on access to information from a gender perspective in the Americas, August 19, 2014.

¹⁵⁵ IACHR, Response of the State of Bolivia to the questionnaire on access to information from a gender perspective in the Americas, July 2, 2014.

¹⁵⁶ IACHR, Response of the Ministry of Foreign Affairs of Colombia to the questionnaire on access to information from a gender perspective in the Americas, May 14, 2014. The State of Colombia reported that Article 74 of the Constitution enshrines the fundamental right of all persons to access public documents, and that this right is closely associated with the right to petition provided for in Article 23 of the Constitution.

¹⁵⁷ IACHR, Mexico's Response to the questionnaire on access to information from a gender perspective in the Americas, July 25, 2014.

¹⁵⁸ IACHR, Response of the State of Peru to the questionnaire on access to information from a gender perspective in the Americas, April 2014.

¹⁵⁹ IACHR, Response of the State of Ecuador to the questionnaire on protection and prevention from violence and discrimination against women, July 30, 2014.

¹⁶⁰ IACHR, Response by the State of Guatemala to the questionnaire on access to information from a gender perspective in the Americas, August 18, 2014.

¹⁶¹ IACHR, Response of the State of Guyana to the questionnaire on access to information from a gender perspective in the Americas, July 21, 2014.

women have not been implemented. In particular, one area in which these mechanisms are especially absent is the administration of justice.

139. In this regard, the IACHR highlights the efforts undertaken by Peru to make progress in this area. According to the information provided by the State to the Commission¹⁶², the National Program against Family and Sexual Violence (PNCVFS) of the Ministry of Women and Vulnerable Populations (MIMP) has a Unit for Generating Information and Knowledge Management, which is in charge of compiling and producing information on family and sexual violence to be used in decision-making and devising public policies for prevention and attention. The information produced by this mechanism is updated and is available on the Internet.¹⁶³
140. Along similar lines, the IACHR also received information on the efforts undertaken by Paraguay to make progress in this area. According to the information provided by the State to the Commission in its response to the questionnaire,¹⁶⁴ Article 9, subsection D of Law 1600/00 establishes a registry of information on domestic violence collected periodically from Judges of the Peace throughout the country. The judges are required to use the “Form for Compiling Statistical Information” in all districts pursuant to Supreme Court Agreements No. 454 of 2007 and No. 705. The information collected under this law is updated and available on the internet.¹⁶⁵
141. The Commission encourages States to continue adopting appropriate measures for progressing in constructing mechanisms for compiling and producing information on violence and discrimination against women that complies with the relevant international standards. As has been indicated, these standards include the existence of unified mechanisms that produce comprehensive and duly disaggregated statistics on the causes, consequences, and frequency of violence and discrimination against women, on their treatment by all organs of the state (i.e., police, courts, public ministry, public defenders’ offices, offices of legal assistance to victims, and all others that may exist in each country) and regarding the effectiveness of state action. The information produced through these mechanisms should be useful for guiding the design, adaptation, and evaluation of public policies and state programs to address violence and discrimination.

¹⁶² IACHR, Response of the State of Peru to the questionnaire on access to information from a gender perspective in the Americas, April 2014.

¹⁶³ Available at the web page of the Ministry of Women and Vulnerable Peoples: <http://www.mimp.gob.pe/>

¹⁶⁴ IACHR, Response of the State of Paraguay to questionnaire on access to information from a gender perspective in the Americas, June 30, 2014.

¹⁶⁵ Available at the web page of the Ministry of the Interior: [http://www.mdi.gov.py; http://www.ministeriopublico.gov.py/documentos/informes/informe12/05_estadisticas.pdf](http://www.mdi.gov.py;http://www.ministeriopublico.gov.py/documentos/informes/informe12/05_estadisticas.pdf).

C. Initiatives to Promote Access to Information in the Administration of Justice

142. The IACHR reiterates that access to information that is under the control of the administration of justice is fundamental for women victims of discrimination and violence if they are to be able to have access to justice, obtain punishment for the acts, and secure reparation for the damages suffered.
143. In this regard, the IACHR has observed three areas in which State efforts should be focused on in order to effectively guarantee the right to access information for women victims of violence and discrimination: victims' access to the judicial records of their cases that are ongoing, the availability of free legal services for women who require them, and the production of judicial statistics.
144. As regards expeditiously offering women and their family members information about their cases pending before the courts, the IACHR notes that some States, such as Argentina, Chile, and Colombia, have systems for consulting the status of judicial proceedings by Internet, which can facilitate access to judicial information for those women who have access to the Internet.
145. As to the availability of programs providing free legal counsel, the IACHR notes the information sent by the Argentine State to the effect that in 2012 the Public Ministry inaugurated a service to provide free legal counsel to victims of gender violence for those cases that fall under the jurisdiction of the federal courts of the Autonomous City of Buenos Aires. This mechanism seeks to ensure free access to justice in cases of violence, independent of one's economic condition.¹⁶⁶
146. Along the same lines, the National Women's Service (SERNAM) of Chile has Women's Centers, made up of interdisciplinary teams that offer specialized care nationwide to those experiencing family violence, whose general objective is to contribute locally to reducing violence against women. The professional team is multidisciplinary and is made up of a woman social worker, a woman psychologist, an attorney (man or woman), and three community monitors (women).¹⁶⁷
147. In relation to the production of judicial statistics, according to Red Pro Bono¹⁶⁸, the judiciary of the Republic of Panama produces up-to-date judicial statistics accessible by Internet on the composition and organization of the courts, and the functioning of the civil, family, child and adolescent, and criminal jurisdictions,

¹⁶⁶ IACHR, Argentina's response to the questionnaire on access to information from a gender perspective in the Americas, August 19, 2014.

¹⁶⁷ IACHR, Responses compiled by the Red Pro Bono International to the questionnaire on access to information from a gender perspective in the Americas: Chile, September 22, 2014.

¹⁶⁸ IACHR, Responses compiled by the Red Pro Bono International to the questionnaire on access to information from a gender perspective in the Americas: Panama, September 22, 2014.

among others. The available information includes the gender composition of the judicial branch. In addition, the State of Argentina reported that the Judicial Information Center of the Supreme Court of Justice of the Nation¹⁶⁹ has been implemented; it has a search engine for judicial decisions¹⁷⁰.

148. Recalling the instrumental nature of access to information for attaining women's right of access to justice, the IACHR considers that the initiatives noted in the previous paragraphs contribute to promoting a culture of transparency in the judicial realm, enabling women to have the information needed for effective and timely access to justice in the face of situations of discrimination and violence. As a result, the Commission hopes that other States will imitate these examples, adapting them to their national reality, and thereby advance towards effectively guaranteeing the right of access to information in the administration of justice.

¹⁶⁹ Available in: <http://www.cij.gov.ar/inicio.html>

¹⁷⁰ IACHR, Argentina's response to the questionnaire on access to information from a gender perspective in the Americas, August 19, 2014.

CHAPTER 5
RECOMMENDATIONS
TO THE STATES

RECOMMENDATIONS TO THE STATES

149. This report has outlined the aspects that should be given priority when it comes to the guarantee of women's effective access to information in the areas of violence and discrimination. The Commission considers that adapting the legal systems and state practices to the inter-American standards in this area, as well as implementing such provisions, is a process already under way in the region. Therefore, the Commission hopes that its recommendations will contribute to the ongoing efforts of States to overcome the challenges identified, and to improve the initiatives that they have begun to implement in this area.

Recommendations

1. Bring the domestic legal order concerning access to information, violence against women, and discrimination into line with the inter-American and international standards that the States have undertaken to observe.
2. Step up efforts to move towards the effective implementation of comprehensive systems for compiling information on discrimination and violence against women that incorporate information from all State organs with authority in this area, especially the judicial systems.
3. Related to the previous point, produce, based on the information collected, complete statistics on violence and discrimination against women, as well as other kinds of quantitative and qualitative information in this respect. Those statistics should be updated periodically and should include information that is disaggregated at least by sex, gender identity, age, race, ethnicity, sexual orientation, socioeconomic status, and situation of disability so as to make it possible to construct an accurate image of the specific forms in which violence and discrimination affect the women in most vulnerable situations.
4. Proactively publish and disseminate the statistical information produced.
5. Incorporate the information compiled as per the foregoing points in the design of the new state policies and programs on violence and discrimination against women.
6. Perform periodic evaluations of the effectiveness of the existing policies and programs in the area of discrimination and violence against women, and adapt those programs as necessary in keeping with the information available.

7. Create spaces for non-State actors to be able to participate in the compilation and production of information and in the design and evaluation of the effectiveness of state policies and programs in relation to discrimination and violence, ensuring that those spaces include the participation of civil society organizations that represent the interests of those groups of women that have historically been marginalized, such as Afro-descendent and indigenous women.
8. Adopt appropriate measures for ensuring access to interpreters in all stages of the prosecution of cases of violence and discrimination for women who require them, from the initial police actions to the handing down of the judgment.
9. Ensure, by the means necessary, access for women victims of violence to the judicial records of their cases pending before the administration of justice, during all stages of the process and without restrictions.
10. Establish systematic policies for the education and training of state officials, in particular judicial officers, on international standards in relation to access to information and violence and discrimination against women. In addition, train the civil society organizations in the use of the mechanisms available to make requests of information to the state.
11. Promote the widespread dissemination of information on the human rights of women and how to uphold them, the mechanisms of protection available to women at potential risk of suffering violence and how to access them, the programs for free legal assistance available to women victims of violence and discrimination, and all other mechanisms for addressing these issues.

ANNEX

ANNEX

QUESTIONNAIRE

Access to Information in the Americas from a gender perspective

The present questionnaire has been prepared as part of the work plan of the Rapporteurship on the Rights of Women,¹ with the goal of collecting information regarding the main challenges that women face in obtaining access to information managed by the State in the fields of violence and discrimination. This initiative will include the publication of a report, identifying challenges, best practices, and a set of recommendations for States on how to improve their compliance with existing human rights standards relevant to the issue of access to information. It will primarily focus on the administration of justice and areas related to this sector, such as legislation, public policies, and services.

Information available to the Commission - in the form of petitions received; the findings of regional initiatives; data provided in thematic hearings by State and non-State actors; and communications with different women's rights organizations - indicates that violence and discrimination are still widespread and alarming issues in the Americas and require consistent attention from the Rapporteurship. Most of the petitions received by the Inter-American Commission on Human Rights in the realm of women's rights are still centered on the issues of violence and discrimination.

The Commission has adopted a number of regional reports focused on the issues of access to justice, violence against women, and discrimination, but has just began to look closely at access to information from a gender perspective.² It has underscored that access to information is closely linked to the attainment of other key human rights of women, such as their right to personal integrity, to privacy, to protection of the family, and to live free from violence and discrimination.³ Therefore, a failure to respect and

¹ The Latin America and Caribbean component of this initiative is being executed thanks to the support of the Swedish International Development Cooperation Agency – ASDI-SIDA – in the framework of the project *Freedom of Expression in the Americas*.

² IACHR, *Access to Justice for Women Victims of Violence in the Americas* (2007); IACHR, *Access to Maternal Health Services from a Human Rights Perspective* (2010); IACHR, *The Work, Education, and Resources of Women, The Road to Equality in Guaranteeing Economic, Social and Cultural Rights* (2011); IACHR, *Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application* (2011); IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective* (2011); IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica* (2011); IACHR, *Access to Justice for Women Victims of Sexual Violence: Health and Education* (2012).

³ IACHR, *Access to information on Reproductive Health from a Human Rights Perspective*. 2011, para. 1.

guarantee this right for women can lead to the infringement of their civil, political, economic, social, and cultural rights.

Within the framework of this initiative, the Rapporteurship will examine the main roadblocks faced by women in obtaining basic information managed by State entities in relation to various areas, among others:

- The processing by the justice⁴ system of cases of violence and discrimination against women; the functioning of the legal process in general; and ways to avail themselves of basic guarantees and protections provided by law;
- Existing legislation, services, and programs designed to prevent and mitigate the effects of violence and discrimination against women;
- Measures available to victims or potential victims of violence such as the existence of protection and/or restraining orders; shelters; and other social services;
- The quality of statistics available on the issue of violence against women and the lack of disaggregation of such statistics on the basis of race, ethnicity, age, and other grounds;
- The availability of public spaces for women, victims, and the organizations that represent them to access information about the development of current legislation and public policies pertaining to the issues of violence and discrimination, and to have a voice in the design of interventions.

The Commission invites respondents to submit quantitative and qualitative information related to the areas referred-to above. The information submitted can include analysis, graphs, statistics and budgetary data, as well as other documentation and/or material. It is requested that the information includes insight into the situation at the national, local, urban, and rural levels. In federal states, information is needed for all states and provinces. Information is welcomed concerning the specific situation of women particularly affected by barriers in access to information, including girls, indigenous and afro-descendent women, and women who are socio-economically disadvantaged, among others, in the terms indicated in Article 9 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará).

⁴ In this questionnaire, the administration of justice is defined broadly, including the ordinary judicial branch (all of its instances, tribunals, and administrative divisions), and the police and forensic medicine services, in urban and/or rural zones, with national and/or local competency.

QUESTIONNAIRE

General: Protection and prevention of violence and discrimination against women

1. Specify whether the State collects data and figures related to the issue of violence against women. If so, please identify which government agencies and instances collect this information.

2. In regards to any data or figures managed by the State in the realm of violence against women:
 - a. Which are the actual figures of all types of violence against women at the national and local levels?
 - b. What types of statistics are actually available for the different types of cases, including intra-family, sexual and psychological violence, among others?
 - c. Is there a uniform State system to collect information on violence against women?
 - d. How can persons access information about the figures managed by the State?
 - e. Is there a mechanism in place to control the quality and integrity of the information available? To periodically update the information available?
 - f. Explain in detail any measures adopted by the State to disaggregate the public information available on the basis of sex, age, race, and ethnicity, among other factors, in the terms described under Article 9 of the Convention of Belém do Pará.
 - g. Describe any measures adopted to ensure that women receive information in their own language and in a way that respects their culture.

3. Describe the existing legal framework regulating the access to information managed by the State in the fields of violence and discrimination against women. Regarding this framework, please provide the following details:
 - a. Procedures which must be followed in order to request public information.
 - b. Limitations in the access to certain kinds of information prescribed in the law.
 - c. The scope and coverage of these laws to the different branches of the State – legislative, executive, and judicial.
 - d. Government organ/organs which are responsible for monitoring compliance with these laws, and the quality and integrity of the information provided.
 - e. Legal avenues which are available in the following cases:
 - i. In order to obtain review decisions adopted by public officials denying the information requested.
 - ii. In order to report the non-compliance with the existing legislative framework.
 - iii. In order to report the distortion and lack of quality in the information received.

- iv. In order to report silence after the information has not been provided within the specific time period provided for in the law.
 - f. Specify whether this framework is applicable to information managed by the administration of justice system.
 - g. Describe any training programs in place for public officials in order to promote the proper compliance with the legislative framework referred to.
- 4. Which are the existing legal norms to prevent and sanction violence against women of national and/or local application? In regards to the mentioned laws, please provide the following information:
 - a. Which types of violence are included in these norms?
 - b. Do these laws contemplate protection measures against imminent acts of violence? Are there any mechanisms in place for women to access information related to restraining orders, shelters and other services?
 - c. Are there national and/or local programs to prevent, sanction, and/or eradicate violence against women?
 - d. Do existing laws related to violence against women address the situation and specific needs of indigenous women?
 - e. Which types of advances have been made in the past 5 years in the reform of the content of laws to prevent, eradicate and sanction violence against women?
 - f. Which mechanisms are in place for women to access information relevant to the enforcement of these laws and legal developments?
 - g. Are there any training programs offered to public officials on existing laws and changes related to these in the realm of violence against women?
 - h. Do public libraries carry information related to existing legislation focused on violence against women?
- 5. If the State has ratified the Convention of Belém do Pará, has the State created any mechanisms to provide information related to the dispositions and implementation of the mentioned Convention?
- 6. Specify whether any public spaces have been created involving the participation of State agencies and women’s rights organizations with any of the following objectives:
 - a. Incorporate their role and voice in decision-making related to access to information; and
 - b. Collaborate in the production of information and statistics related to violence, discrimination, and other gender equality issues.
- 7. Is there any information available on budgets allocated to different sectors working on issues pertaining to violence against women?
- 8. Are there mechanisms in place to access information about existing sexual and reproductive health services?

Administration of Justice: Investigation, Prosecutions, Monitoring and Accountability

1. Describe procedures in place to offer victims and their family members information related to their cases of violence and discrimination against women being processed in the civil and criminal systems. Specify whether these programs contain measures to impart information in different languages.
2. Are there public legal assistance programs? Are these programs free? In what measure are these programs used in cases of discrimination or violence against women? Is there a specific procedure designed for victims and family members to obtain information regarding these programs?
3. Can it be identified how many complaints have been received in the last 5 years of violations of the rights of women, above all in cases of discrimination and violence? How many of these cases have reached the sentencing stage?
4. Do women who do not speak the official language have access to any interpretation services when they are presenting their complaints?
5. In regards to ongoing investigations, are there mechanisms in place to access information about the progress of these investigations? Is there any information available to the victims and their family members about protocols applicable to cases of violence against women?
6. Are there programs that systematize or review case law by theme, either public or private? Do these programs include case law related to discrimination and violence against women? Is this information available to the public?
7. Is there any data publically available related to the operation of the justice sector. Please specify whether there is any data available related to the following aspects:
 - a. Arrests, prosecutions, and convictions.
 - b. Restraining orders granted.
 - c. Judgments and decisions.
 - d. Time taken in the adjudication of cases.
 - e. Gender composition of judiciary.
 - f. Any internal monitoring and accountability mechanism.
8. Has there been any evaluation of the judicial system response to cases related to violence and discrimination?