



General Recommendation of the
Committee of Experts of the MESECVI (No. 2)

MISSING WOMEN AND GIRLS IN THE HEMISPHERE



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General Recommendation of the Committee of Experts of the MESECVI (No.2)
Missing Women and Girls in the Hemisphere

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1. Introduction

The Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women, also known as the Belem do Para Convention, was adopted in 1994. As the first international treaty on violence against women, the Convention declares violence against women to be a violation of human rights that partially or totally limits the recognition, enjoyment, and exercise of women's human rights. The Convention defines violence against women as any act or behavior that causes the death, injury or physical, sexual or psychological suffering in both in the private and public spheres, and is committed based on the gender of the victim. It additionally affirms that any physical, sexual, and psychological violence that takes place within a family, domestic unit, or other interpersonal relationship, that occurs within the community, and is perpetrated by any person, including rape, sexual abuse, human trafficking, forced prostitution, and kidnapping is defined as violence against women. The Convention also explicitly notes that this violence can be committed by the State or its agents.

The Committee of Experts of the Follow-up Mechanism of the Belem do Para Convention (MESECVI), also known by its Spanish acronym the CEVI, is the technical body of the Mechanism and is responsible for the analysis and evaluation of the implementation process of the Convention among the States party. And it's this process that has brought the issue of missing women and girls in the Americas to the attention of the Committee. The CEVI has noted the high number of missing women and girls in some countries in the region, although as

with many other forms of violence against women, the data are unreliable and the actual number of cases appears to be underreported. The Committee has also noticed the distinct lack of information and specific investigation on missing women and girls in the hemisphere. Since this is clearly a form of violence against women, and is connected to other forms of violence such as femicide, trafficking of women and girls, and sexual violence that are addressed in the Convention, the Committee is issuing this document as a vehicle to include the issue of missing women and girls within the framework of the convention, and in doing so, outline the obligations of the States Party to prevent, investigate, punish and eradicate this form of violence against women and girls. The recommendation will analyze the issue of missing women and girls in the hemisphere, the causes for their disappearance, the relationship between forced disappearance and missing women, the obligations of the States Party within the framework of the Convention, and finally, will present conclusions and recommendations.

A. The situation of missing Women and girls in the Americas

The disappearance of women and girls is a problem that has been identified in several countries in the hemisphere. In spite of the lack of official statistics, civil society organizations, as well as agencies belonging to some of the States Party, have gathered data on the issue. In mid 2011, there were 176 missing persons, of which 111 were women and girls¹. In Honduras, 91 women were reported as missing in 2008, and 347 in 2013². This same year, Argentina had 6040 persons reported as missing, and more than half were women, female adolescents, and girls³. In November 2011, elected officials in the Mexican state of Veracruz condemned the disappearance of approximately 50 women that took place over a three-night period⁴; In 2017, United Nations Women and the UN High Commissioner for Human Rights declared a state of emergency for the situation of missing women in the Mexican state of Puebla, where the number of disappearances reached

1 Public Defender of the People, Plurinational State of Bolivia, Defensorial Report on the departure of children and adolescents at the borders of Villazón, Berjemo, Yacuiba, 2011, available in Spanish at: <http://www.investigacionesfopea.com/trata-personas-jujuy/trata-trafficoinforme-defensorial.pdf>

2 Inter-American Commission on Human Rights, Situation of Human Rights in Honduras (2015), paragraph 114, available at: <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf>

3 Procurator on Trafficking and Exploitation of Persons and Coordinated Actions Against Trafficking, , "Búsquedas en Democracia: Diagnostico sobre la búsqueda de personas entre 1990 y 2013", available in Spanish <http://www.mpf.gov.ar/protex/files/2015/02/B%C3%9ASQUEDAS-EN-DEMOCRACIA.pdf>

4 http://sil.gobernacion.gob.mx/Archivos/Documentos/2017/12/asun_3654642_20171224_1513792470.pdf

824 known disappearances for the year⁵. In 2016, women made up 25.5% of the missing persons under local jurisdiction and 16.5% of missing persons under federal jurisdiction⁶. In other areas, 1561 women were reported missing in Colombia, and 1369 in 2017⁷. In Guatemala, the government recognized the crisis by enacting legislation addressing the issue⁸. At the same time, between 2013 and 2018 more than 150 girls and female adolescents were reported as missing in El Salvador⁹; in 2016, the Attorney General of the Country claimed that 3,859 persons disappeared that year, without providing any additional demographic details on the statistic¹⁰.

However, in many Latin American countries, there are no official disaggregated records, investigations or statistics of these disappearances to permit an analysis of the situation¹¹. Many governments keep no records of missing women and girls, or if they exist, they are not available to the public. In addition, some of the disappearances reported appear to be forced disappearances which limits the ability to evaluate the scope of the problem since forced disappearances are not categorized as such, as are

5 UN Women and the Office in Mexico of the UN High Commissioner for Human Rights condemn the feminicide of Mara Castilla, 2017, available in Spanish at: https://hchr.org.mx/images/Comunicados/2017/20170918_ComPrensa_Mara.pdf

6 National Registry of Data of Missing or Disappeared Persons, Annual Report 2016, available at: http://www.senado.gob.mx/sgsp/gaceta/63/3/2017-09-12-1/assets/documentos/Informe_Anuar_RNPED_2016_FINAL.pdf

7 National Registry of Missing Persons, for public viewing: Missing Persons and cadavers, available in Spanish at <http://190.26.211.139:8080/consultasPublicas/>

8 See Decree number 9-2016 Law on Immediate Search for Missing Women, available in Spanish at: <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/americas/guat92016%20ley%20mujeres%20desaparecidas.pdf>

9 Attorney General of the Republic of El Salvador, Missing Angel Alert, active cases available in Spanish at <http://alertaangeldesaparecido.fgr.gob.sv/casos-activos/>

10 El Mundo, Attorney General says that 3,859 persons went missing in 2016, March 21, 2017, available in Spanish at <http://elmundo.sv/fiscal-dice-3859-personas-desaparecieron-en-2016/>

11 Systemic sexual violence against women, Two convergent phenomena: Feminicide, forced disappearance and women trafficking for sexual exploitation (Mexico, Honduras and Ecuador), Group of Women Parliamentarians, May 9-10, 2012 available at: <http://www.parlamericas.org/uploads/documents/Panel2%20-%20Pavel%20Uranga%20-%20ENG.pdf>

not those presumably committed by an individual(s). An analysis of other registries reveals that the context of the disappearances are not clearly marked, nor whether the registries also include women reported as run aways or as missing persons. Several isolated studies analyzed by the Committee lack a gender perspective, and as a result, the data are not clear with respect to the impact on women and girls.

B. Causes for the disappearance of women and girls

The United Nations High Commissioner for Human Rights and UN Women note “frequently, the disappearance of women is connected to other forms of gender-based violence, including sexual violence, human trafficking, or femicide¹²”, and in some countries, to organized groups, “maras” and gangs, as in Honduras, which registers some of the highest homicide rates of the world and unprecedented levels of crime in general, largely as a result of the activities of the gangs¹³.

The Committee considers that some patterns have been identified in which the disappearance of women has specific characteristics that distinguish it from the disappearances of men. It is a dynamic that can precede and be part of the trafficking of women and girls for the purposes of sexual exploitation, femicide and sexual violence. Along these same lines, there is an established connection between femicide and missing women - the Inter-American Court of Human Rights has conducted several analyses of missing women and girls in cases of femicide. In some countries in the region, “disappearance precedes the majority of murders of women¹⁴”.

Many women go missing when they become victims of human

12 UN Women and the United Nations High Commissioner for Human Rights condemn the femicide of Mara Castilla, 2017, available in Spanish at: https://hchr.org.mx/images/Comunicados/2017/20170918_ComPrensa_Mara.pdf

13 Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Honduras. 2015

14 Ibero-American University Puebla, Missing women in Puebla, Maria de Lourdes Pérez Oseguera and Anahí Espíndola Pérez, 2009, available in Spanish at <https://www.iberopuebla.mx/ovsg/sites/default/files/citas/documents/mujeresdesaparecidas.pdf>

sexual trafficking¹⁵; evertheless, there are no reliable and comprehensive records, which impedes effective analysis and visibility of the actual situation¹⁶.

The Committee has identified patterns with specific characteristics that differentiate the disappearance of women from the disappearance of men. In the disappearances of women and girls, there is a dynamic that can precede and be a part of human trafficking for sexual exploitation, feminicide, and sexual violence. However, the disappearance of women and girls is, in and of itself, a form of violence against them that transcends their family considering that impedes to close any cycle, as this violation of rights attacks much more than just the right to a life free from violence, but when the perpetrator(s) takes the life of the missing women, this has a direct impact on the fundamental rights enshrined in the Convention, including the elemental right to life, as will be analyzed below.

In addition, the CEVI highlights that some characteristics of women, including indigenous origin, African descent, disability, religion, ethnic origin, gender identity, migrant, among others can also be factor in their being victims of different forms of violence. The Committee therefore recognizes that the causes that lead to the disappearance of women and girls must be analyzed intersectionally. In Canada, for example, there are records of the systematic disappearances of indigenous women, to the extent that the Inter-American Commission on Human Rights has made the connection between how the historic

15 Systemic sexual violence against women, Two convergent phenomena: Feminicide, forced disappearance and women trafficking for sexual exploitation (Mexico, Honduras and Ecuador), Group of Women Parliamentarians, May 9-10, 2012 available at: <http://www.parlamericas.org/uploads/documents/Panel2%20-%20Pavel%20Uranga%20-%20ENG.pdf>

16 Systemic sexual violence against women, Two convergent phenomena: Feminicide, forced disappearance and women trafficking for sexual exploitation (Mexico, Honduras and Ecuador), Group of Women Parliamentarians, May 9-10, 2012 available at: <http://www.parlamericas.org/uploads/documents/Panel2%20-%20Pavel%20Uranga%20-%20ENG.pdf>

discrimination suffered by indigenous women serves to exacerbate their risk of this form of violence¹⁷. The United Nations Special Rapporteur for the Human Rights of Indigenous Peoples has also mentioned this situation¹⁸.

¹⁷ Missing and murdered indigenous women in British Columbia, Canada, Inter-American Commission on Human Rights, available at: <https://www.oas.org/en/iachr/reports/pdfs/indigenous-women-bc-canada-en.pdf>, paragraph 8

¹⁸ The situation of indigenous peoples in Canada, Special Rapporteur on the rights of indigenous peoples, United Nations, 2014, available at: http://www.ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.27.52.Add.2-MissionCanada_AUV.pdf

C. Forced disappearances and the disappearances of women and girls

The Working Group on Forced or Involuntary Disappearances has stated that if a woman is the victim of forced disappearance because of reasons associated with her gender, she is a victim of gender-based violence. In addition, they consider that the impact of forced disappearance on women can be aggravated due to sexual violence and unwanted pregnancy, among other forms of violence¹⁹.

In the Inter-American Convention on the Forced Disappearance of Persons, The Inter-American System of Human Rights defines forced disappearance as the “forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person²⁰”. The Inter-American Court of Human Rights has addressed this concept extensively in its jurisprudence. It has noted the “special seriousness of finding that a State Party to the Convention has carried out or has tolerated a practice of

19 The Rome Statute also defines the forced disappearance of persons as a crime against humanity when committed as part of a generalized or systematic attack against a civilian population. See the Working Group on Forced or Involuntary Disappearances, 2012 available at: http://www.ohchr.org/Documents/Issues/Disappearances/GC/A-HRC-WGEID-98-2_sp.pdf, paragraph 19

20 Inter-American Convention on the Forced Disappearance of Persons, available at: <http://www.oas.org/juridico/english/treaties/a-60.html>

disappearances in its territory²¹” and that, “forced or involuntary disappearance is one of the most serious and cruel human rights violations²²”. However, the Court also noted that the “the disappearance of a person because their whereabouts are not known is not the same as a forced disappearance²³”, although when there is reason to suspect that a forced disappearance has occurred, a criminal investigation must be initiated²⁴.

It is worth remembering that the Belem do Para Convention declares that women have a right to a life free from violence in both the public and private spheres. It goes on to state that women have the right to have their lives; physical, psychological, and moral integrity; liberty and personal safety; and dignity respected. They have the right to not be tortured and the right to straightforward and timely legal remedy in the courts, as well as to equal protection of and under the law. The disappearance of women and girls, forced or not, constitutes a clear violation of those rights and States have an obligation to refrain from any violent acts or practices. They must take all necessary steps to prevent, investigate and punish violence against women, as well as guaranteeing the adoption of the necessary measures, legislation, mechanisms and procedures to guarantee the right of women to live a life free from violence, and ensure access to justice.

The Committee points out that the disappearance of women and girls is not limited to armed conflict or within the context of a dictatorship, as defined for legal purposes in the Inter-American

21 Inter-American Court of Human Rights, *Godínez Cruz v. Honduras*. Merits. Judgment of January 20, 1989, paragraph párr. 135

22 Inter-American Court of Human Rights, *Blake v. Guatemala*. Merits. Judgment of January 24, 1989, paragraph 66.

23 Inter-American Court of Human Rights, *Gutiérrez Hernández et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24, 2017. Series C, No. 339, paragraph 123.

24 Inter-American Court of Human Rights, *Gutiérrez Hernández et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24, 2017. Series C, No. 339, paragraph 186

System of Human Rights. Rather, the phenomenon of missing women and girls is rooted in the historical imbalance of power in relationships between men and women that is the cause and consequence of the gender-based violence suffered by women. As a result, the Committee has identified various patterns within violence against women that are unrelated to armed conflict and dictatorship, and that include disappearance as a component, most particularly in human trafficking, femicide, and sexual violence. The Convention defines violence against women as any gender-based act or conduct that causes the death, or physical, sexual or psychological injury to a woman, both in the public and private spheres. Disappearance of women on its own clearly meets the criteria for violence against women as defined. In other words, the disappearance of women violates the Convention due to its close association with the forms of violence explicitly prohibited by the Convention, but also on its own as a form of violence within the framework of the Convention.

The Committee recognizes that there is a difference between forced disappearances of women and girls committed by the State, and forced disappearances that occur by omission. That is, the State actively and knowingly participating in the forced disappearance of a woman and girls is different from a disappearance caused by an individual, even when the State is subject to legal consequences which will be detailed in the recommendations at the end of the document. However, the Committee emphasizes the importance of understanding the context in the analysis of violence against women, as defined by the COIDH por la COIDH²⁵. When there is a generalized context of violence against women, from the standards of the Courts to an

25 See Inter-American Court of Human Rights. González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205; also see Velásquez Paiz et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 19, 2015. Series C No. 307; Veliz Franco et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 19, 2014. Serie C No. 277.

ongoing pattern²⁶ of missing women, then the State is complicit by active omission. This really means that these disappearances are tolerated and/or approved by the State, and therefore qualify as forced disappearances of women. It is not enough for each State not to execute unequivocal and deliberate acts linked to the disappearance of women in their territories, but also to establish their responsibility for omission by not preventing individual non-state agents or organized groups in conflict with the law, to perform such acts, fomenting them by the permissiveness and passivity of the States in terms of the defense of free movement and personal integrity and the right to life of women.

At the same time, the Committee maintains that when an individual causes the disappearance of a woman and/or young girl, an act of violence against women has occurred, which the State has a special obligation to prevent.²⁷ Within the framework of the Convention, a State could decide to not comply with the duty to act with all due diligence in cases of missing women. Although, while the acts described of the case will eventually be attributed to an individual perpetrator, the State becomes an

26 See "State responsibility in cases of gender-based violence: comments on the Cotton Field case before the Inter-American Court of Human Rights", Víctor Abramovich, 2013, pp. 10 and 11, available in Spanish at: <http://www.corteidh.or.cr/tablas/r31644.pdf>. Abramovich notes that in risk theory and the States understanding of it, "States have the duty imposed by the Convention, other treaties and internal regulations, to produce information on and address the violence suffered by some social groups and sectors of the population (e.g., violence against women, internal displacements, racist practices) in order to eliminate the ability to claim ignorance of the situations as an excuse [...] there are predictable risks associated with the scope of the problema and the extended timeline, since they follow practices or systemic patterns that make it impossible for the State to be unaware of the existence of the problem." Abramovich goes on to maintain that in spite of the differences between the doctrine of risk and doctrine of complicity, there are "grey areas" which include those cases where, "the State did not directly create the risky situation, but rather decisively contributed to its creation or is guilty of maintaining it through its neglect of its duties to protect and guaranteed imposed by international human rights law, which is not the same as the objective creation of the risk, but does in some way define the State's participation in the configuration of the social and institutional factors that produce the risk, due to noncompliance with the Convention's duty to act with all due diligence."

27 MESECVI, 2017, Third Hemispheric Report, paragraph 85 "The general prevention of violence against women and girls requires the adoption of a variety of comprehensive measures intended to reduce risk factors and eliminate the possible causes"; paragraph 467 "special protection includes the factors associated with the complaint, investigation and documentation phases of cases, the official proceedings (police, prosecutor, and judiciary), the prosecution and punishment of the perpetrators, as well as the reparation to the victims".

accessory when international responsibility attaches,²⁸ and can have consequences and damages similar to those imposed for forced disappearance. In other words, it will be defined as an ongoing, continuous, multi-offense violation of human rights²⁹, due to the inability to locate the missing women.

In addition, the failure to act with all due diligence in these cases only serves to increase the number of disappearances and sends a clear message that impunity is the rule in cases of violence against women, leading to the repetition of the acts³⁰. When a woman or girl disappears, the authorities, “should presume that ... she has been deprived of her freedom and is still alive, until there remains no doubt about what happened to her³¹”, and that she could be hidden or deprived of her freedom by an individual, an act which, itself, requires State action. Therefore, this Committee considers that when the disappearance of a women, a girl or a group of women and girls, when perpetrated by an individual or a group of individuals because of their gender, and whose outcome (be it sexual violence, human trafficking, or femicide and torture) does not require proof since disappearance on its own qualifies as an act of violence against women, then the State is obligated to fulfill its international responsibility.

In addition, the Committee finds that, in general, women are considered to be missing when the whereabouts of a woman or girls or a group of women and/or girls cannot be determined by their family and friends, and due to their gender, it can be

28 Inter-American Court of Human Rights. *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205, paragraph 291

29 Inter-American Court of Human Rights, *Caso Radilla Pacheco v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 23, 2009, paragraph 140

30 Inter-American Court of Human Rights. *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205, paragraph 289

31 Inter-American Court of Human Rights, *Caso Velásquez Paiz et al. v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 19, 2015. Series C No. 307, paragraph 122

assumed that their disappearance is related to an act of violence, as it prevents the exercise of the right to live a life free from violence, among other fundamental rights enumerated in the Convention and other international instruments protect them.

D. The obligations of the States with respect to missing women and girls within the framework of the Belem do Para Convention

i. General Prevention

The Committee has established that prevention is essential to guarantee to the right of women to live a life free from violence and to meet the goal of eradication violence against them³², The States Party to the Convention, in articles 7 and 8, “agreed to adopt a series of policies and measures, by all means necessary and without delay, aimed at the prevention, punishment, and eradication of violence against women³³” s well as the progressive adoption of “specific measures, including programs to guarantee the human rights of women and prevent all forms of violence against women³⁴”, including disappearance, whether forced or perpetrated by an individual(s).

The Committee has highlighted, “the existing link between the obligation to prevent and the duty to take effective preventative

³² Committee of Experts of the MESECVI, Third Hemispheric Report, Prevention of Violence Against Women in the Americas, Paths to Follow, paragraph 52.

³³ Committee of Experts of the MESECVI, Third Hemispheric Report, Prevention of Violence Against Women in the Americas, Paths to Follow, paragraph 51

³⁴ Committee of Experts of the MESECVI, Third Hemispheric Report, Prevention of Violence Against Women in the Americas, Paths to Follow, paragraph 51

measures and the consequences resulting from the absence of these measures, defining it in terms of the international responsibility of the State³⁵. “It is essential that States not only refrain from violating the human right of women by agents of the States, but also that they commit to preventing violence with the adoption of a variety of positive measures³⁶ that guarantee the cultural transformation necessary to eliminate the root causes of unequal power relationships³⁷”. This is particularly important in the case of missing women, as in accordance with the jurisprudence of the COIDH, the duty of the State attaches at two points: prior to the disappearance of the women victims, and after the disappearance has been reported. The first point does not automatically carry the responsibility of the State *per se*³⁸.

It is nevertheless clear that the States Party, in addition to the duty of special prevention, also have an obligation to implement general prevention measures in these cases³⁹, and the policies directed at the prevention of violence against women and girls should indicate as much. While a State cannot be held internationally responsible for every violation of human rights that takes place within its jurisdiction, the Convention does include a list of reinforced obligations in cases of violence against women, including their disappearance. States have the duty to mobilize all State resources to prevent the disappearance of women, whether forced or perpetrated by individual(s). Efforts to prevent disappearances should be comprehensive, anticipating

35 Committee of Experts of the MESECVI, Third Hemispheric Report, Prevention of Violence Against Women in the Americas, Paths to Follow, paragraph 57

36 See Inter-American Court of Human Rights. González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205, paragraph 243

37 Committee of Experts of the MESECVI, Third Hemispheric Report, Prevention of Violence Against Women in the Americas, Paths to Follow, paragraph 61

38 Committee of Experts of the MESECVI, Third Hemispheric Report, Prevention of Violence Against Women in the Americas, Paths to Follow, paragraph 282

39 Committee of Experts of the MESECVI, Third Hemispheric Report, Prevention of Violence Against Women in the Americas, Paths to Follow, paragraph 84

risk factors and strengthening the state institutions to ensure appropriate response⁴⁰. Moreover, the State's obligations in this regard are even stronger when there is a generalized context of violence against women.

ii. Special prevention: Access to justice and the duty to apply a gender perspective in the search and investigation

This Committee, in alignment with the jurisprudence of the COIDH, has stated that there exists an obligation for special prevention when the State is aware of a specific risk to a girl, a woman or a group of women, when they have been reported as missing or when there is a high risk they could go missing. The duty to act with all due diligence as detailed in the Convention, "requires the completion of an exhaustive search⁴¹". In order to carry this out, States should have in place an adequate and effectively applied legal framework, in addition to policies of prevention and practices that ensure their agents take effective action as soon as reports of violence against women, including cases of forced disappearance committed by individual(s), are received⁴². The Committee also maintains that States should adopt measures to protect and treat women victims of trafficking and their family members⁴³, and adopt measures to prevent and punish femicide, removing obstacles to justice for the family members of the victims⁴⁴. Police

40 Inter-American Court of Human Rights. González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205, paragraph 258. See also Velásquez Paiz et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 19, 2015. Series C No. 307, paragraph 108

41 Inter-American Court of Human Rights. González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205, paragraph 283

42 Inter-American Court of Human Rights. González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205, paragraph 258

43 Committee of Experts of the MESECVI, Second Hemispheric Report on the Implementation of the Belem do para Convention, Recommendation No. 2

44 Committee of Experts of the MESECVI, Second Hemispheric Report on the Implementation of the Belem do para Convention, Recommendation No.6

officers, public prosecutors and officers of the court must act swiftly and with a minimum of delay⁴⁵.

As soon as a State is aware of a real and imminent risk of sexual aggression against women, abuse or assassination, there is a duty to act with all due diligence with an exhaustive search during the first days and hours following a report of their disappearance⁴⁶. The obligation of the state to launch an immediate investigation ex officio when made aware of a violation of human rights must be maintained even when the act can be attributed to an individual⁴⁷. In addition, this Committee believes that the search and lines of investigation must take into account the gender of the victims, and apply a gender perspective to all actions taken by agents of the State. Similarly, the duty to conduct an effective investigation “has broader implications” when the women is killed, abused or deprived of her liberty within a generalized context of violence against women⁴⁸.

The Committee finds the common use of gender stereotypes in the reporting of disappearances of the women and girls troubling. This gender stereotyping is prevalent among government officials, and is also manifested in the negligence of the State to launch an investigation, leading to, “the repetition of violence which the attempt to attacks, regardless if it, on its

45 Inter-American Court of Human Rights, *Velásquez Paiz et al. v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 19, 2015. Series C No. 307, paragraph 122

46 Inter-American Court of Human Rights. *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205, paragraph 283

47 Inter-American Court of Human Rights. *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205, paragraph 291

48 Inter-American Court of Human Rights. *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205, paragraph 293. *Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, paragraph 185. *Velásquez Paiz et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 19, 2015. Series C No. 307, paragraph 146

own, constitutes discrimination in access to justice⁴⁹”, and the impunity that is the norm in these cases, “sends the message that violence against women is tolerated⁵⁰”. The use of stereotypes can also have an impact on the investigation of cases and evaluation of the evidence as any evidence associated with the sexual history of the victim is generally inadmissible⁵¹. In addition, the criminal investigation of the death, abuse or impact on the freedom of a woman should incorporate a gender perspective and be conducted by officials with expertise in similar cases⁵². The Committee believes that States should establish ongoing training plans for the legal authorities, agents of the criminal justice system, and police and military forces, with particular focus on the disappearance of women, both forced and committed by individual(s).

The Committee believes it is essential to include the participation and opinions of the victim’s family members and friends during the investigation and search, to the extent possible. Their safety must also be guaranteed, and all necessary protective measures must be at their disposal.

The duty to investigate must be seen even in a collaborative and extensive way, not limited to the country where the woman is originally from, but also consider cases of trafficking of women and girls as well as disappearances in the journey and/or transit migration.

49 Inter-American Court of Human Rights. González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205, paragraph 400

50 Inter-American Court of Human Rights. González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C, No. 205, paragraph 400

51 Inter-American Court of Human Rights, Gutiérrez Hernández et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 24, 2017. Series C No. 339, paragraph 170

52 Inter-American Court of Human Rights. Velásquez Paiz et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 19, 2015. Series C No. 307, paragraph 146

iii. Obligations associated with the discovery of remains of women and girls reported as missing/Obligations associated with the discovery of a woman reported as missing and found alive

The Inter-American Court has found that the authorities have the obligation to investigate, ex officio, “possible gender-based discriminatory connotations of an act of violence perpetrated against a woman, especially when there are specific indications of sexual violence or some type of evidence of cruelty towards the body of the woman (for example, mutilations), or when such an act takes place in a context of violence against women in a specific country or region⁵³”. Similarly, when there is reason to suspect femicide, due diligence must include the duty to routinely order tests and medical experts to determine if the motive for the death was sexual or if any sexual violence occurred. The Court opined that, “the investigation into a suspected gender-based homicide should not be limited to the death of the victim, but rather should address other specific acts that violate the victim’s physical integrity, such as torture and acts of sexual violence⁵⁴”. The Committee highlights the need to conduct expert test to identify evidence of sexual violence on the remains of women and girls found in common graves, despite the fact that, due to the context of their deaths, the responsible government officials did not consider these deaths to be feminicides⁵⁵.

53 Inter-American Court of Human Rights. Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, paragraph 187

54 Inter-American Court of Human Rights. Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, paragraph 147

55 The United Nations High Commissioner for Human Rights and UN Women. Latin-American Model Protocol for the investigation of gender-related killings of women notes that a femicide could be behind the death of every women, even though in theory, there is no reason to suspect criminal behavior. Available at: https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Women/WRGS/LatinAmericanProtocolForInvestigationOfFemicide.pdf&action=default&DefaultItemOpen=1. Particularly when there is a general context of violence against women, the retrieval of the remains of women from common graves should not automatically lead to the the authorities assuming the deaths were not feminicides.

On the other hand, there is a pattern that emerges that indicates that women and girls who are reported as missing are often the victims of human trafficking networks or have been the victims of other types of sexual violence. They are sometimes found alive, as are those women whose lives were in danger of ending in a femicide when deprived of freedom, but were rescued prior to the murder. In this instance, the State has a series of obligations with respect to the rights of the women victims and their access to justice. When a woman has been reported as missing and found alive, her family member must be notified with her prior informed consent⁵⁶. Further, the State must act to ensure her access to justice, guaranteeing her access to specialized personnel to accompany her at every step of the legal process; ensure her privacy in police stations, courts and healthcare facilities; provide free legal services; provide interpretation services in indigenous languages, sign language or any other language needed; and guarantee confidentiality and protection for the victim and witnesses⁵⁷. The Committee recommends that any protective measures have to be expedited and apply to all cases of violence against women, and be implemented in a way that effectively meets the specific circumstances of each case⁵⁸. To this end, the Committee has recommended that protocols be established for the police, entities that receive reports of violence, public prosecutors, etc. for the way they interact with

56 It should be mentioned that women do leave their homes as a way to escape a violent relationship and save their own lives and the lives of their children. Therefore, prior to notifying family members or friends that a woman reported missing has been found alive, the authorities must obtain her prior, informed consent and ensure they are not putting her life at risk. See Universidad Iberoamericana Puebla, *Mujeres desaparecidas en Puebla*, María de Lourdes Pérez Oseguera y Anahí Espíndola Pérez, 2009, available in Spanish at: <https://www.iberopuebla.mx/ovsg/sites/default/files/citas/documents/mujeresdesaparecidas.pdf>. This is not applicable in cases of trafficking or other traumatic events that could result in the victim being in shock.

57 Committee of Experts of the MESECVI, Second Hemispheric Report on the Implementation of the Belem do para Convention, Recommendation No. 23.

58 Committee of Experts of the MESECVI, Second Hemispheric Report on the Implementation of the Belem do para Convention, Recommendation Nos. 25 and 26

women victims of violence⁵⁹. States should also make no-cost specialized services available to women victims, including shelters, no cost legal advice, comprehensive healthcare, psychological counseling, etc⁶⁰.

iv. Obligation to compile statistical information on missing women

Article 8, sub point h of the Belem do Para Convention lists the obligation of the States Party to adopt progressive methods for the research and collection of statistics and information on the causes, consequences and incidence of violence against women, in order to effectively evaluate the steps take to combat the issue, and make any necessary adjustments. The Committee has recommended that States conduct surveys on violence against women, establish registries in entities that receive reports, courts, public prosecutors, and healthcare facilities, as well as make the information, filtered by sex, age, civil status and numbers of women victims of violence by geographical location available to the public.

As previously mentioned, there is a notable lack of statistical information on the number of women reported as missing in the region. Despite the fact that a few States have national registries of missing persons, these registries are often not broken down by sex, which makes is difficult to determine the number of missing women, whether a result of forced disappearance or committed by individual(s). As the disappearance of women is closely linked to forms of violence described in the Convention and the Committee considers disappearance of women to be a form of violence against women, we recommend that the States Party collect statistics on the women reported as missing,

59 Committee of Experts of the MESECVI, Second Hemispheric Report on the Implementation of the Belem do para Convention, Recommendation No. 27

60 Committee of Experts of the MESECVI, Second Hemispheric Report on the Implementation of the Belem do para Convention, Recommendation No. 30

or run aways and establish the data as part of State institutional systems. This information will not only allow the Committee to get insight into the situation in the hemisphere, but will also provide fact based evidence with a focus on women's human rights, to assist the States in identifying patterns of human trafficking of women and sexual violence.

E. Conclusions and Recommendations

The Committee recognizes that some States in the region have taken important steps toward the prevention, investigation, punishment and eradication of disappearance of women and girls, and have adopted promising practices to address the issue. Some, like Guatemala, have issued regulations that specifically address the issue, while others have moved to include a gender perspective in legislation that addresses disappearances of women, like Mexico. Other States have created specialized search teams and/or established registries of missing and vanished persons. The Committee commends these efforts that are undeniably steps in the right direction toward the elimination of violence against women.

Nevertheless, the Committee, as noted throughout this document, observes that many States do not collect and maintain statistics on missing women and girls, nor do they conduct research or take specific action on the issue. The Committee points out that this is one obligation of the State, since the disappearance of women, whether forced or committed by individual(s) is a form of violence against women, and a violation of their human rights as protected in the Convention. As such, the Committee proposes the following recommendations to be applied within the framework of the Convention.

Recommendations:

1. Adopt all necessary measures to prevent the disappearance of women and girls, to investigate, punish and eradicate this form of violence, whether forced and committed by individual(s); remove legal obstacles that prevent women, their family members or friends from obtaining justice, and include them, to whatever extent possible, in the investigation and search, taking into account their desires and opinions.
2. Take into account any possible additional vulnerabilities of indigenous women, women of African descent, disabled women, as well as vulnerabilities associated with sexual orientation or gender identity, as well as other factors related to the intersectionality and diversity of women in the creation and adoption of preventative measures and follow-up of lines of investigation in cases of missing women.
3. Include the issue of missing women and girls as a form of violence to prevent, punish and eradicate in relevant national and intersectoral plans and as a specific crime in legislation.
4. When the forced disappearance of women is suspected, take all necessary steps to conduct an exhaustive search and investigation with a gender perspective, considering the possible effects and forms of gender-based violence that can occur in cases of forced disappearance, as well as the possibility that the victim disappeared because she is a woman.
5. Include the issue of missing women and girls as a form of violence to prevent, punish and eradicate in ongoing training plans on violence against women, and on women's rights within the framework of the Convention, especially those course directed at judges, agents of the criminal justice system police and military forces, centers specializing in

violence, public prosecutors, and healthcare workers, among others.

6. Ensure access to justice for the family members and friends of women and girls reported as missing, guaranteeing access to personnel with expertise and awareness of the issue at all procedural stages of each case; free legal services; interpretation services for indigenous languages; confidentiality and protection of their personal data; and adoption and implementation of protective services when necessary.
7. Take all necessary measures to avoid the revictimization of the victim's family members resulting from institutional tolerance of violence against women and gender stereotypes when reports are received or during the search and investigation in cases of missing women.
8. Ensure Access to justice for women reported as missing who are found alive, and launch a criminal investigation, in accordance with national legislation, into all crimes that could have been committed during her disappearance, ensuring specialized personnel during all phases of the process; provide privacy at the police station, courthouse, and healthcare facilities; free legal services with expertise in violence against women provided by the State at the federal level; interpretation services for indigenous languages for victims who access the legal system; confidentiality and protection of personal data of the victim, family members, and witnesses; ensure the ordering and implementation of any protective measures that benefit the women. Provide free expert services for the women, including shelters and comprehensive treatment centers, legal assistance, psychological counseling, among others.

9. Adopt and implement immediate search protocols for missing women and girls, available in indigenous languages, in the police or within organizations that receive reports, and within the public prosecutors office. Protocols should include international standards for human rights, including those that specifically address the fight against violence against women.
10. Guarantee the immediate opening of an investigation as soon as there is knowledge of the disappearance of a woman and/or girl, a group of women and/or girls, including the immediate launch of an effective and exhaustive search, and including a gender perspective on behalf of each State activity.
11. Conduct expert testing for the identification and investigation of sexual violence, torture and mutilation of the remains of women and girls found in common graves, in order to identify feminicides.
12. Establish procedures when women reported as missing are found alive, for the notification of family members and/or friends including consent for the notification by the women victim(s).
13. Make collected information publicly accessible, breaking down the data by sex, age, civil status, and geographical location of the women and girls reported as missing, run away, or kidnapped. Establish databases in the police, public prosecutors office, and judicial power at the federal level, and ensure efficient collaboration between and among the different government agencies for the adequate, clear and transparent compilation of the data. These efforts should be institutionalize, ideally through the creation of national registries of missing women.

14. Institutionalize the participation of civil society in the design, execution, monitoring and evaluation of the legislation, public policies and other measures to prevent, investigate, and punish and eradication the disappearance of women, especially with the family members or friends of women reported missing.
15. Make the necessary efforts to establish DNA databases funded with sufficient budget and human resources to maintain the genetic information necessary to conduct the analyses necessary to identify remains or found women previously reported as missing. Sufficiently fund existing databases.
16. Approve sufficient budgetary appropriations to support the implementation of public policies and prevention plans, treatment, punishment and eradication of the phenomenon of missing women. Establish mechanisms to enable transparency into the percentage of the budget appropriated to these issues.





General Recommendation of the
Committee of Experts of the MESECVI (No. 2)

MISSING WOMEN AND GIRLS IN THE HEMISPHERE



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