

Inter-American case law on femicide: Obscuring intersections?

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Lorena P. A. Sosa

Instituto Interdisciplinario de Estudios de Género, Universidad de Buenos Aires, Argentina, (Group on Social History and Gender); Netherlands Institute of Human Rights (SIM), Utrecht University, the Netherlands

Abstract

The Inter-American Human Rights System has broken new ground in the field of violence against women (VAW) by delineating the concept of femicide, the principle of due diligence, clarifying the obligations of the States regarding violence and adopting a gender perspective on reparations. In recent years, ‘intersectionality’, the study of the interconnections of race, ethnicity, religion, age, class, sexual orientation and other categories of difference in relation to inequality, has been promoted in human rights law for tackling VAW. This approach poses new challenges for the interpretation of cases. This article examines to what extent the Inter-American Court of Human Rights and the Inter-American Commission have incorporated an intersectional view of violence against women into cases of femicide and discusses the potential of doing so in the future.

Keywords

violence against women, femicide, Inter-American Court, Inter-American Commission, intersectionality

Introduction

The 2009 judgment of the Inter-American Court of Human Rights (‘the Court’) in the case of *González v. Mexico* (‘Cotton Field’)¹ represented ‘a beginning and a crucial point of departure for adjudicating cases of violence and discrimination against women’.² The judgment became a point of reference for many judicial and quasi-judicial bodies dealing with cases of violence

1. *González et al* (‘Cotton Field’) *v Mexico*, Series C 205 (16 November 2009).

2. Rosa Celorio, ‘Introductory Note To Gonzalez (‘Cotton Field’) *v Mexico* (IACtHR)’ (2010) 49 *International Legal Materials* 637.

Corresponding author:

Lorena P. A. Sosa, Instituto Interdisciplinario de Estudios de Género, Universidad de Buenos Aires, Argentina, (Group on Social History and Gender); Netherlands Institute of Human Rights (SIM), Utrecht University, the Netherlands.

E-mail: l.p.a.sosa@me.com

against women (VAW). It elaborated on the relation between discrimination and VAW, and the scope of State obligations.³ Since then, the Court has continued to elaborate key concepts for VAW, often building on the work of the Inter-American Commission of Human Rights ('the Commission').

In recent times, new perspectives have been gaining ground in the field of VAW. A number of developments at international and regional levels suggest that States need to pay particular attention to the situation of women facing human rights violations on the basis of multiple factors, such as their age, ethnicity, disability, sexual orientation, gender identity, migrant status, marital or family status and their poverty and literacy levels.⁴ Moreover, international human rights documents increasingly point to 'intersectionality', which emphasises 'the interaction between gender, race, and other social categories of distinction in individual lives, social practices, institutional arrangements, and cultural ideologies and the outcomes of these interactions in terms of power,'⁵ as the best lens for addressing discrimination and violence against women.⁶

This article discusses the adoption of an intersectional perspective in the Inter-American Court and the Inter-American Commission of Human Rights' decisions on *femicide*, that is, the killing of women because of their gender, and the benefits of adopting such an approach in the future.⁷ Section 2 describes the origin and main theoretical principles underlying intersectionality and its potential to effectively address the structural causes of violence affecting women. It also outlines the elements that will guide the analysis of the cases. Section 3 explores to what extent the Inter-American normative framework applicable to VAW promotes an intersectional approach. Section 4 is dedicated to the analysis of the cases. Section 5 provides concluding observations, discussing the potential benefits of adopting an intersectional approach in future cases.

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3. See *ibid*; Rosa Celorio, 'The rights of women in the Inter-American System of Human Rights: current opportunities and challenges in standard-setting' (2011) 65 *University of Miami Law Review* 3, 819–66; Victor Abramovich, 'Responsabilidad estatal por violencia de género: comentarios sobre el caso 'Campo Algodonero' en la Corte Interamericana de Derechos Humanos' (2010) 6 *Anuario de Derechos Humanos* 167–82; Katrin Tiroch, 'Violence against women by private actors: the Inter-American Court's judgment in the case of Gonzalez et al ('Cotton Field') v Mexico' (2010) 14 *Max Planck Yearbook of United Nations Law* 371–408; Susana Chiarotti Boero, 'Women's Citizen Security' (2011) 65 *University of Miami Law Review* 797; Ruth Rubio-Marín and Clara Sandoval, 'Engendering the reparations jurisprudence of the Inter-American Court of Human Rights: the promise of the Cotton Field Judgment' (2011) 33 *Human Rights Quarterly* 4, 1062–91.
 4. eg Committee on the Elimination of Discrimination Against Women, General Recommendation no 19 'Violence Against Women' (1992); General Recommendation no 26 'Women Migrant Workers' (2009); General Recommendation no 27 'Older Women and Protection of Their Human Rights' (2010); General Recommendation no 30 'Women in Conflict Prevention, Conflict and Post-Conflict Situations' (2013).
 5. Kathy Davis, 'Intersectionality as buzzword: a sociology of science perspective on what makes a feminist theory successful' (2008) 9 *Feminist Theory* 1, 67–85.
 6. eg Committee on the Elimination of Discrimination Against Women, General Recommendation no 25 'Temporary Special Measures' (2004); General Recommendation no 28 'Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (2010).
 7. According to the Oxford English Dictionary, *femicide* entails the killing of a woman or girl, in particular by a man and on account of her gender. Very recently, the word 'femicidio' (femicide) was incorporated into the 23rd edition of the Spanish Dictionary by the Spanish Royal Academy, the most authoritative source in the Spanish language, promoted by the Mexican anthropologist Marcela Lagarde and celebrated as an important achievement by the feminist movement in Ibero-America.

Intersectionality

Early feminist studies promoted the idea that women formed a homogenous category, sharing common, inherent attributes and experiences regardless of differences based on race, class or sexual orientation. This generalising approach, although politically useful for promoting attention to women's issues, became increasingly contested in the 1980s by Black, Chicana and Lesbian feminists, since it was incapable of reflecting the experience of women belonging to marginalised social groups such as racial or sexual minorities, projecting the position of 'privileged women', namely white, middle or upper class, heterosexual women.⁸

In the early 1990s, the complex influence that race had on the forms of violence that women suffered and the way they experienced such violence started gaining more attention. The importance of addressing categories other than gender, such as ethnicity, class, migrant status, age, religion, sexual orientation, and so on, became increasingly acknowledged. Among the various elaborations on the diversity of women and the complexity of inequality,⁹ Crenshaw coined the term 'intersectionality' referring to the intersecting inequality affecting African American women due to the convergence of race and gender.¹⁰ Moreover, the notion highlights the way categories of distinction (such as gender, race and class) are used and created and emphasises the interconnection between different systems of oppression, an aspect limitedly explored by mainstream feminist theories.¹¹

By introducing different dimensions of analysis, intersectionality addresses the layered nature of oppression and the complexity of inequality, leaving traditional one-dimensional understandings behind. Intersectionality's capacity to address (multiple) discrimination is highly relevant for the VAW project. The complex view of inequality that intersectionality promotes, acknowledging the interconnection of systems of oppression operating through multiple categories of distinction,

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8. eg Combahee River Collective, 'The Combahee River Collective Statement' in *Home Girls: A Black Feminist Anthology* (Rutgers University Press 1983); Cherrie Moraga and Gloria E. Anzaldúa, *This bridge called my back: writings by radical women of color* (Kitchen Table/Women of Color Press 1981); Flora Anthias and Mira Yuval-Davis, 'Contextualizing feminism: gender, ethnic and class divisions' (1983) 15 *Feminist Review* 62–75; Bonnie T. Dill, 'Race, class, and gender: prospects for an all-inclusive sisterhood' (1983) 9 *Feminist Studies* 1, 131–50; Gloria E. Anzaldúa, *Borderlands: La frontera* (Aunt Lute Books 1987); Patricia Hill Collins, 'Knowledge, consciousness, and the politics of empowerment' [1990] *Black Feminist Thought* 132; Angela Davis, 'Rape, racism and the capitalist setting' (1981) 12 *Black Scholar* 6, 39–45; Joan Scott, 'Gender: a useful category of historical analysis' (1986) 91 *American Historical Review* 5, 1053–75; Audre Lorde, *Sister Outsider: essays and speeches* (Crossing Press 1984).
 9. eg Linda M Perkins and bell hooks, 'Ain't I a woman: black women and feminism' (1983) 98 *Political Science Quarterly* 1, 145; bell hooks, 'Choosing the margin as a space of radical openness' [1989] *Yearnings: Race, Gender and Cultural Politics* 203–9; Beth E Richie, 'A black feminist reflection on the antiviolenence movement' (2000) 25 *Signs* 1133–37; Vallei Kanei Kanuha, 'Women of color in battering relationships' in *Women of color: integrating ethnic and gender identities in psychotherapy* (The Guilford Press 1994) 428–54; Maxine Baca Zinn and Bonnie T Dill, 'Theorizing difference from multiracial feminism' (1996) 22 *Feminist Studies* 2, 321–32; Patricia Hill Collins, 'It's all in the family: intersections of gender, race, and nation' (1998) 13 *Hypatia* 3, 62–82; Bernice McNair Barnett, 'Invisible southern black women leaders in the civil rights movement: the triple constraints of gender, race, and class' (1993) 7 *Gender & Society* 2, 162–82; Flora Anthias and Mira Yuval-Davis (n 9).
 10. Kimberlé Williams Crenshaw, 'Demarginalizing the intersection of race and sex: a black feminist critique of antidiscrimination doctrine, feminist theory and antiracist policies' (1989) 1 *The University of Chicago Legal Forum* 139–67.
 11. Although Marxist feminists had explored the interconnections between the economic capital system and gender subordination, emphasis has always remained on the former, seen patriarchy as nestled in capitalism (eg Hartman, Kelly).

challenges traditional legal approaches to discrimination and inequality in two ways. First, it questions the use of lists of prohibited grounds of discrimination that focus on a single ground at the time, and second, it introduces a structural analysis to inequality, moving away from the formal 'equal treatment' approach towards a substantial view of inequality, promoting change in social constructions. These positive aspects of adopting an intersectional approach to discrimination and violence explain its current appeal for human rights advocates. Thus, intersectionality appears as a theoretical and an analytical approach that encourages an interdisciplinary examination of VAW and human rights violations by incorporating attention to gender, race, class and other social categories of distinction.¹² In the subsection below, the theoretical construction of intersectionality and the implications for cases of VAW is discussed.

Theoretical principles and potential for cases of violence against women

The attention paid by the intersectional approach to the individual, social and institutional dimensions of inequality makes it a comprehensive analytical tool for cases of violence. In fact, Crenshaw suggests that intersectionality is not only a useful analytical tool but 'a template for intervention' that 'traverses the fields of thinking and acting'.¹³ Deploying intersectionality in the analysis of cases could have long lasting transformative effects.¹⁴ This section clarifies the main theoretical notions underlying intersectionality that should inform the analysis of the Belem do Para Convention and the selected cases on VAW.

Drawing from existing literature, this article suggests that intersectionality can be deconstructed into one overarching notion and three main propositions. The overarching notion promoted by intersectionality is that individuals (and groups) are affected by multiple forms of subordination based on multiple grounds of distinction, rather than by discrimination based on one ground at a time. Therefore, the analysis of a case cannot be based on only one category of difference while precluding others because those categories intersect and interlock in multiple systems of oppression that collectively affect an individual's life.¹⁵ This notion is very helpful for revealing how different intersecting categories of difference shape inequalities women face and the complexity of the violence they suffer. A useful example is the case of domestic workers in Peru, whose vulnerability is increased by intersecting grounds.¹⁶ While low socioeconomic class and lack of education are common characteristics of women employed in this type of labour, Parra explains that domestic workers are also often migrants with limited social networks to rely on. Ethnic

12. Inspired by Ange-Marie Hancock, 'When multiplication doesn't equal quick addition: examining intersectionality as a research paradigm' (2007) 5 *Perspectives on Politics* 1:63-79, 64 and Margaret Satterthwaite, 'Crossing borders, claiming rights: using human rights law to empower women migrant workers' (2005) 1 *Yale Human Rights and Development Law Journal* 18, 71.

13. Kimberlé Williams Crenshaw, 'Postscript' in Lutz, Herrera Vivar and Supik (eds), *Framing Intersectionality: Debates on a multi-faceted concept in Gender Studies* (Ashgate Publishing 2011) 232.

14. However, this is not a suggestion that intersectionality can be, or should be, translated into a 'prescribed set of analytical moves' (Crenshaw 2011, *ibid*). In fact, multiple and different 'intersectional approaches' could be deployed in analysis of cases since, as intersectionality suggests, the structural arrangement and the relationship between categories of difference can only be revealed in relation to a specific context.

15. Natalie J Sokoloff, 'Expanding the intersectional paradigm to better understand domestic violence in immigrant communities' (2008) *Critical Criminology* 16, 229.

16. Teresa Parra, 'Las trabajadoras domésticas víctimas de violencia sexual en Lima, Perú [Domestic workers victims of sexual violence in Lima, Peru]' (2007) *Development Connections*.

belonging and deficient command of the language may also contribute to their complex positioning. Each of these aspects in isolation could never reveal the complexity and the different dimensions of the violence at stake.

Moving to the underlying propositions, intersectionality predicates the socio-structural nature of inequality. The unequal positioning of individuals and groups relates to categories used to distinguish and differentiate them from others. These categories of difference, such as gender, race, class, and so on, are shaped by social and cultural norms. For example, social interaction within the family contributes to the construction of gender identity.¹⁷ What is 'gender appropriate' is explicitly and implicitly established, for instance, by promoting certain behaviour or adopting gender roles. Yet social interaction in other spaces, such as school, the workplace, community, and so on, also contribute to the construction of gender. For instance, the work environment reconfigures gender identity to fit a particular profession. Similarly, social interaction influences the construction of identity as a member of a race, ethnicity and religion.¹⁸

Nevertheless, it should be noted that the construction of the social categories transcends the level of (personal) identity to that of the structural. They are shaped by the particular dynamics within each social, economic and political system. Continuing with the example of the construction of gender identity, one could consider how the 'feminine' or 'masculine' character of a profession is socially, and often also institutionally, supported. Interlocking social, economic, cultural and institutional structures form a complex system that often creates (and perpetuates) inequality. Such structural inequality is systematic and can be compared to the wires of a birdcage.¹⁹ The interconnection between those different 'wires' is crucial. A socio-structural approach concentrates on the dynamics and processes that create categories of difference leading to subordination.

The second proposition of intersectionality is that the (hierarchical) relation among multiple categories of difference cannot be determined a priori.²⁰ In other words, while recognising that gender, race and class intersect, one cannot assume that gender is per se predominant over race, class or whatever other category, and vice versa. This idea questions the assumption of gender as the main source of discrimination affecting *all* women, often found in documents on VAW.

Third, and finally, each category of difference contains diversity within. Within a given category, contrasting characteristics might correspond to certain segments, bringing tensions within the whole category. This makes it impossible to refer to any category of difference, or groups of individuals, as homogeneous. Tensions amongst feminist views in relation to the diversity within the category of gender, voiced by black and other racialized women, have been instrumental in the development of intersectionality.²¹ The famous criticism of bell hooks that 'all women are white and all Blacks are men' illustrated how characteristics, needs and desires of white middle-class

17. Nancy J Chodorow, *The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender* (University of California Press 1978).

18. Flora Anthias and Mira Yuval-Davis, *Racialized Boundaries: Race, Nation, Gender, Colour and Class and the Anti-Racist Struggle* (Routledge 1992); Patricia Hill Collins (n 9).

19. Marilyn Frye, 'Some reflections on separatism and power' (1983) *The Politics of Reality* 95–109, cited in Michelle Madden Dempsey, 'Toward a feminist state: what does 'effective' prosecution of domestic violence mean?' (2007) 70 *The Modern Law Review* 6, 908–35.

20. Hancock (n 12).

21. Nira Yuval-Davis, 'Beyond the Recognition and Re-distribution Dichotomy: Intersectionality and Stratification' in *Framing Intersectionality: Debates on a multi-faceted concept in Gender Studies* (Ashgate Publishing, Ltd, 2011).

heterosexual women have often been taken as representative of all women, while characteristics, needs and desires of black men have been often taken as representative of all African Americans.²²

These core propositions of intersectionality suggest that VAW is, first, the result of ‘multiple forms of oppression’, or in legal terms, the result of multiple discrimination or inequalities. Second, they suggest that the violence is connected to structural (institutional and social) inequality. Third, VAW takes place in multiple policy domains (family, workplace, educational institutions, and so on). Finally, there are certain groups of women located at the intersection of two or more social categories of difference who are more vulnerable to (specific types of) violence and/or that face specific difficulties. In this article, those four “basic”, or “general” propositions of intersectionality described in the previous paragraph will guide the analysis of the Inter-American Court’s decisions on *femicide*.

Before entering the analysis of the cases, the next section describes a few developments taking place in the Inter-American system that suggest an approximation to an intersectional approach towards VAW.

Intersectionality in Inter-American norms on violence against women

In recent years, the approach towards VAW has shown some changes and shifts, particularly within the UN. There has been a broadening of the initial focus on gender and patriarchy as the sole explanation for violence, to include other factors that influence the vulnerability of some groups of women, and more recently, recognising that ‘multiple’ or ‘intersectional’ discrimination affect women. The Inter-American human rights system replicated those developments, and sometimes went even farther. This section briefly outlines implicit and explicit references to intersectionality found at the Inter-American level.

The Organization of American States (OAS) adopted a dedicated legally binding convention, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention).²³ This Convention is applied to cases of VAW, often in combination with the American Convention on Human Rights (ACHR).²⁴ Both instruments are overseen by the system of individual petitions before the Inter-American Court of Human Rights. In addition, the OAS has created the Inter-American Commission of Women (IACW) and the Rapporteur on the Rights of Women (RRW),²⁵ specifically dealing with women’s human rights and engaged in the assessment of State compliance with the Conventions.

The norms applicable to VAW make no explicit references to intersectionality. Although the American Convention emphasises the principle of non-discrimination based on ‘race, colour, sex, language, religion, political or another opinion, national or social origin, economic status, birth, or any other social condition,’²⁶ it has no references to ‘multiple’, ‘intersecting’ or ‘compounded’

22. bell hooks (n 9).

23. Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (‘Convention of Belem do Para’) 33 ILM 1534 (1994).

24. Celorio (2001) refers to the relation between the two documents as ‘symbiotic’. See (n 3) at 853.

25. These specialised bodies have similar tasks to their counterparts in the UN. As such, the IACW, established in 1928, formulates policy on women’s rights and gender equality, while the RRW has published studies on particular issues, helping to develop new jurisprudence on this subject and supporting research on various issues that affect the rights of women in specific countries of the region.

26. American Convention on Human Rights, ‘Pact of San Jose’ (1969) OAS Treaty Series no 36, art 1; 1144 UNTS 123; 9 ILM 99.

forms of discrimination. This traditional approach to equality, with a non-discrimination clause and pre-enumerated grounds, shows limitations. It often focuses on a 'single ground' as the basis of legal claims, for instance race or sex. Thus, in cases where the applicant cannot categorise him/herself under only one ground, the claim of discrimination may be dropped, or the analysis of the case may be incomplete, leading to ineffective remedies and ultimately failing to provide justice. Additionally, the use of lists of enumerated grounds makes it difficult to discover new grounds of discrimination by focusing all attention on the existing ones.²⁷

The American Convention highlights some groups deserving special attention. Children are entitled to special protection under Article 19, thus when adjudicating cases relating to children, the Court examines violations to Article 19 in combination with a comprehensive *corpus juris* granting protection to children, which includes, inter alia, the Convention on the Rights of the Child (CRC) and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

The OAS instrument addressing women specifically, the Belém do Pará Convention, positions VAW as a violation of human rights and confirms the patriarchal root of VAW, similarly to General Recommendation (GR) 19 of the CEDAW Committee²⁸ and the Declaration on the Elimination of Violence against Women (DEVAW).²⁹ The Convention defines VAW 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.'³⁰ The 'gender based' nature of the violence is often perceived in the disproportional number of cases affecting women, or the type and amount of violence used against them. The Court sees the overrepresentation of women victims as a strong indication of gender discrimination.³¹ Consistent gathering of gender-disaggregated data on crimes can thus greatly contribute to proving the gender-based nature of the violence.

Similar to the American Convention, there are no explicit references to 'multiple' or 'intersectional' discrimination or to 'intersectionality' in the text of Belém do Pará either, yet Article 9 addresses the special vulnerability of some women to violence:

With respect to the adoption of the measures, States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.³²

27. Although enumeration of grounds are often merely illustrative and non-exhaustive, grounds not explicitly included must fall under the category of 'analogous grounds' or 'other status'.

28. CEDAW, General Recommendation no 19, while pointing to gender discrimination and the asymmetry between men and women as interconnected to VAW, highlighted the disadvantage of particular groups of women, such as rural women or minority women, and indicated the relevance of structural factors such as poverty or armed conflicts.

29. Declaration on the Elimination of Violence against Women (DEVAW) UNGA Res (1993) A/RES/48/104. It referred to groups of vulnerable women who have to be taken into special consideration when designing policies, such as minority women, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict (see 4.1).

30. Belém do Pará Convention, art 1 (n 23).

31. For instance, see the discussion on the number of victims in the *Cotton Field* case (n 2), paras 114 and ss, and later the discussion of disproportionality at paras 395 -397.

32. Belém do Pará Convention, art 9 (n 23).

This reference to the status of women, particular groups and structural elements pointing to the ‘special vulnerability of women’, bears some resemblance to intersectionality. However, although calling on States to adopt measures in relation to such vulnerability, this article is not justiciable since only the obligations included in Article 7, requiring ‘immediate implementation’, can be the object of a contentious claim before the Court. Regardless, recent jurisprudence suggests that Article 9 should guide the interpretation of the Conventions.

Regarding the Inter-American Commission, its recent thematic reports have highlighted the obligation of the States to adopt measures of protection for groups of women at particular risk of violation of their human rights ‘based on more than one factor combined with their sex’, including girls, Afro-descendent girls and women, indigenous girls and women, migrant girls and women, and women human rights defenders, among other groups.³³ Similarly, the RRW held that:

The Commission has also begun to highlight in its standards 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 as their age, race, ethnicity, and economic position, among others. The principle of intersectionality has been established in Article 9 of the Convention of Belem do Para, 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.³⁴

The importance of adopting an intersectional approach has also been highlighted by the IACHR in the report on 2015 Access to information, VAW and the administration of justice, which states:

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.³⁵

Similarly, the Commission adopts a clear intersectional perspective in relation to violence against lesbian, bisexual, gay, transgender and intersex (LGBTI) individuals.³⁶ These developments suggest that intersectionality is gaining *theoretical* attention within the Inter-American system, particularly within the Commission, encouraged by Article 9 of the Belém do Pará. The section below explores to what extent this tendency is also found in the adjudication of cases.

33. Inter-American Commission of Human Rights, ‘Report on the Situation of Human Rights Defenders in the Americas’ OEA/SER.L/V/II.124 Doc 5 rev 1 (2006).

34. Inter-American Commission of Human Rights, ‘Report on Legal Standards related to Gender Equality and Women’s Rights in the Inter-American Human Rights System: Development and Application’ OEA/Ser.L/V/II 143 (2015) para 28.

35. Inter-American Commission of Human Rights, ‘Report on Access to information, violence against women and administration of justice’ OAS/Ser.L/V/II.154 Doc 19 (2015) para 9.

36. Inter-American Commission of Human Rights, ‘Report on violence against LGBTI individuals in the Americas’ OAS/Ser.L/V/II.rev 1 Doc 36 (2015).

Cases of femicide and intersectionality

This section explores whether in cases of gender-based murder of women, the Inter-American system of human rights has adopted an intersectional approach to VAW either by explicitly referring to it or by adopting views that resemble the theoretical propositions of intersectionality. In doing so, the different approach taken by the Commission and the Court is highlighted. The analysis is structured around three crucial aspects: the social context in which the violence takes place, the gender-based nature of the murders, and the special vulnerability of the victims.

Four cases of *femicide* are discussed here.³⁷ The most emblematic case among them, and also the most broadly discussed, is *González et al v. Mexico* ('*Cotton Field*').³⁸ In this case, three bodies were found in a cotton field in Ciudad Juárez, where, previously, hundreds of women and girls had been found murdered. The Inter-American Court elaborated on basic notions on VAW for the first time, such as the scope of *femicide*, the obligations of States in relation to violence by private actors and adopted a gender perspective to reparations. This case establishes basic principles, further confirmed or challenged in more recent ones.

Then, the case of *Escobar Ledezma et al v. Mexico*,³⁹ brought before the Inter-American Commission of Human Rights, is analysed. It relates to the disappearance and subsequent death of Paloma Angélica Escobar, who was a high school student employed at the '*maquila*' (manufacturing and/or assembly plants giving preference to hiring women) in the city of Chihuahua. The Commission introduced some changes of perspective, yet consolidated some of the definitions established in *Gonzalez*. In addition, *Veliz Franco et al v. Guatemala*⁴⁰ and *Velásquez Paiz et al v. Guatemala*,⁴¹ both cases addressing the disappearance and subsequent death of young girls, illustrate the most recent views of the Court on the issue.

The analysis of the cases is strictly limited to the use of an intersectional approach as described above. More general aspects, such as the obligations of States to prevent, protect and punish cases of VAW, the principle of due diligence and the scope of reparations have been largely examined in the literature.⁴²

The social context and gender inequality

The Court has derived the responsibility of the State for preventing VAW from the risk of violence that women face. Such risk is revealed by the concrete facts of the case and the characteristics of the social context where the violence takes place.⁴³ The Court has pointed out the importance of examining such contexts:

37. Although not dealing with *femicide*, two recent cases (*González Lhuy et al v. Ecuador*, Series C no 298 (1 September 2015) following a negligent infection with HIV; and *I.V. v. Bolivia*, Series C no 329 (30 December 2016) on forced sterilization) explicitly address 'the intersection of multiple factors of vulnerability', namely the victims' condition as a girl, a woman, situation of poverty and, in the case of *Gonzalez Lhuy*, her condition as HIV positive.

38. *Cotton Field* case (n 2).

39. Case 1175-03, *Paloma Angélica Escobar Ledezma et al v. Mexico*, Report 32/06 (14 March 2006).

40. *Veliz Franco et al v. Guatemala*, IACtHR Series C 277 (19 May 2014).

41. *Velásquez Paiz et al v. Guatemala*, IACtHR Series C 307 (19 November 2015).

42. See (n 3).

43. *Veliz Franco et al v. Guatemala* (n 40) para 65; *Velásquez Paiz et al v. Guatemala* (n 41) para 47.

The Court has examined diverse political, social and historical contexts, which allowed identifying alleged facts as in violation to the American Convention in view of the specific circumstances in which they took place. In some cases, the context made possible to characterize certain facts as parts of a systematic pattern of human rights violations, a practice applied or tolerated by the State, or as part of massive and systematic or generalized attacks against one sector of the population. Similarly, the context has been taken into account for the determination of the international responsibility of the State, the assessment of evidence, the need of reparation measures, and the standards regarding the obligation to investigate such cases.⁴⁴

Contextual elements can thus show specific patterns and fuel human rights violations, revealing the discriminatory nature of the violence that takes place. Examining the facts of a case and the victims' characteristics through a contextual lens encourages a socio-structural perspective to violence, transcending the individual victim, and offers a great opportunity for adopting an intersectional approach. Yet, this contextual view of the violence requires broadening the scope of analysis of the evidence that is introduced to the case, which is guided by legal and Court assumptions.

Two questions arise if one is interested in conducting an intersectional analysis of the context where violence takes place. First, are there any contextual elements that show a pattern of discrimination, yet *prima facie* do not appear to be directly connected (or perceived as connected) to gender discrimination? Second, is the State conducting consistent and disaggregated registration of cases based on other elements besides gender, such as class and race? Although such approach is in line with the recommendation of the Commission in its 2015 report on Access to Justice, it does not appear to have been yet adopted in the analysis of cases.

In the case of *González et al vs. Mexico*, the Court addressed the systematic murder of women in Ciudad Juarez. The case has great 'intersectionality' potential, considering the particular context of the crimes and the characteristics of the women targeted. Ciudad Juarez is located in the north of Mexico, on the border with Texas, United States. It is an industrial city where the *maquila* industry had created numerous job opportunities and turned the city into a place of transit for migrants. Numerous reports mention the convergence between social inequalities and the proximity of the international border as conducive to the development of different types of organised crime, high rate of school desertion and the presence of sexual predators and military officials. These elements raised the levels of violence in the city and the disappearances and murders of women and girls since 1993, calling the attention of the international community.⁴⁵

Regarding the characteristics of the women that were murdered in Juarez, different reports indicated that they were, above all, young women, including girls, of working class – often employed in the *maquila* – who were underprivileged, students or migrants.⁴⁶ The description of the murders in Juarez fits that of the three victims in the *Cotton field* case. Laura Ramos was 17

44. *Velásquez Paiz et al v. Guatemala* (n 41) para 43. Similarly, *Veliz Franco et al v. Guatemala* (n 40) para 50.

45. *Cotton Field* case (n 1) para 116. Among others, the Mexican National Human Rights Commission; the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions; the United Nations Special Rapporteur on the independence of judges and lawyers; the Inter-American Commission and its Special Rapporteur on the Rights of Women; the Commission of International Experts of the United Nations Office on Drugs and Crime; the CEDAW Committee, the United Nations Special Rapporteur on violence against women and the European Parliament.

46. *Ibid* para 123.

years old and a high school student, Claudia González was 20 years old and worked in the *maquila* and Esmeralda Herrera was 15 years old and a domestic worker.

Similarly, in the case of *Escobar Ledezma et al v. Mexico*, the victims' representatives argued that VAW in Chihuahua, along with what was happening in Ciudad Juárez, was a persistent problem. They held that the murder and disappearances of women and girls in these cities was 'a class problem since the women most affected are young and poor women who have to travel by bus to go to work and to move about normally.'⁴⁷ The representatives considered the case to be inscribed in the same social context of gender discrimination evidenced by the lack of and deficiencies in the response of the authorities that characterised the murders in Ciudad Juárez.⁴⁸ In the case of *Veliz Franco et al v. Guatemala*, the victim was a high school student, temporarily working in a shop during the holiday period. She was living with her mother, brothers and grandparents.

The contextual elements in these cases certainly point to a situation of gender inequality, yet there are also indicators of a situation of inequality based on class. When the Court analysed the context of violence in Juárez, it emphasised that several 'risk factors need to be taken into account in prevention strategy.'⁴⁹ It referred to 'high-risk' areas requiring special surveillance.⁵⁰ In relation to Guatemala, based on reports by Amnesty International and the UN Special Rapporteur on VAW, the Court noticed that:

It has been established that in urban areas, such as the City of Guatemala and Escuintla, are the places where most of the cases took place, and that in general, the victims lived in low-class neighborhoods and were employed in non-qualified labor or were students.⁵¹

Miss Velásquez Paiz was a 19-year-old law student at the University of San Carlos. The day of her disappearance, she left for university early in the morning and attended a party that evening. Miss Velásquez Paiz seemed to have a different social status than the victims in *González et al and Veliz Franco et al* - she was a full-time college student- possibly resulting in a different lifestyle.

The Court held that these cases revealed an ineffective institutional response to VAW. Such irregularities encouraged impunity, facilitated the repetition of acts of violence, and confirmed the generalised patriarchal attitudes and the authorities' strong tendency to gender stereotyping.⁵² When looking at these cases, however, it can be argued that, in spite of the indications that specific groups of women seem in greater danger due to their class,⁵³ the Court basically tried to establish whether there was a disproportional number of murders of women, without really entering in the analysis of whether particular groups of women were over-represented. In establishing the disproportionality, systematic registration of the murders is essential, and the Court has recommended States improve this. Yet disaggregation of data to include other elements besides gender, which may reveal other patterns of discrimination, has not been recommended by the Court so far. In addition, the impunity of cases due to lack of or deficient investigation, and the discriminatory treatment by the authorities based on stereotypes also focuses on gender discrimination alone.

47. *Escobar Ledezma v. Mexico* (n 39) para 23.

48. *ibid* paras 27-31.

49. *Cotton Field* case (n 1) para 258.

50. *ibid* para 504.

51. *Veliz Franco et al v. Guatemala* (n 40) para 78.

52. *Cotton Field* case (n 2) paras 401- 402; *Veliz Franco et al v. Guatemala* (n 40) paras 45-50, 90; *Velásquez Paiz et al v. Guatemala* (n 41) paras 180.

53. See for instance *Velásquez Paiz et al v. Guatemala*, (n 41), para 81.

The section below discusses the construction of gender in detail, both in relation to the general context of gender discrimination in each location and in relation to the cases.

Making sense of gender discrimination

There are some preliminary considerations to be clarified before entering the view of gender developed by the Court and the Commission. There are three basic presumptions derived from the Belém do Pará Convention that guide the interpretation of cases of VAW. First, VAW is a violation of human rights. Second, patriarchy is a constitutive element of VAW, since it is considered as ‘a manifestation of the historically unequal power relations between women and men.’ Finally, VAW is cross-sectional, pervading every sector of society, regardless of class, race, or ethnic group, income, culture, the level of education, age or religion, and strikes at its very foundation. The second presumption confirms the social construction of sex difference. Indeed, the view of gender appearing in the *Cotton Field* judgment also points to its socially constructed nature (‘a social context facilitating’) and also recognises the relevance of multiple factors (cultural, economic and political) in such construction.

The *Cotton Field* case introduced for the first time the notion of *femicide* to the language of the Court. The Commission and the representatives had held that the issue of gender was the common denominator of the violence in Ciudad Juarez.⁵⁴ They alleged that the violence suffered by the victims constituted femicide, that is, an extreme form of VAW merely because of their gender in a society that subordinates them.⁵⁵ Their definition of femicide included cultural, economic and political elements as constitutive of gender subordination, and as such, gender appears as socially constructed. This interpretation is very much in line with the understanding of categories of inequality suggested by the intersectional approach.

Furthermore, observing that several pieces of evidence pointed at discriminatory attitudes by the authorities, the Court defined gender stereotyping:

Gender stereotyping refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women. Bearing in mind the statements made by the State, the subordination of women can be associated with practices based on persistent socially-dominant gender stereotypes, a situation that is exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the judicial police authorities, as in this case. The creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women.⁵⁶

Gender stereotypes were evidenced in *Veliz Franco* by references made by the authorities to the way of dressing of the victim, her social life (having boyfriends, possibly from street gangs), her religious beliefs and the (limited) control of the family over the girl’s activities.⁵⁷ Her appearance, her involvement with boys and her general independence lead to her characterisation as a ‘prostitute’ and a ‘slut.’⁵⁸

54. *Cotton Field* case (n 1) para 128.

55. *ibid* para 138.

56. *ibid* para 401.

57. *Veliz Franco et al v. Guatemala*, (n 40), para 212.

58. *ibid* paras 118 and 212.

Gender stereotypes were also identified in the *Velázquez Paiz* case, yet class stereotypes seemed overlooked. The Commission held in the *Velázquez* case that ‘Miss Velásquez was a victim of stereotypes because of being young, *because her body was found in a poor area*, because of what she was wearing, and because she had a ring in her belly. As a result, the violence was considered as justified and not duly investigated’⁵⁹ Similarly, the representatives held that the police held ‘wrong assumptions’ about the victim due to what she was wearing. The Court noted that there was a trend to blame the victim due to her social activities (drinking alcohol, going out with friends and not being exclusively dedicated to her studies and family life).⁶⁰ The Court then pointed out that the authorities tended to ‘discredit and blame the victims based on their way of dressing and lifestyle, and questioning their personal and sexual relations.’⁶¹

In the analysis of stereotypes, the Court focused on gender, and in this regard, it paid attention to references to sexuality made by the authorities. Asking about the sexual history as part of the investigation showed the prejudiced and stereotyping attitude of the authorities. However, adding a class dimension could dig deeper in the meaning attributed to finding the body in a ‘poor area’. Are women from that area considered as ‘prostitutes’? Is it common or accepted to find bodies of raped women in this area? Does this suggest that the lives of those women are ‘less valued’ than other women in Ciudad de Guatemala? These are questions that require a discussion beyond the strict construction of gender stereotypes towards the construction of the socioeconomic class. This will be discussed in more detail in the next section.

There are, however, some limitations in the gender construction by the Court. Although the Court examined the institutional construction of gender, the different dimensions being analysed were limited. While the institutional dimension tends to be analysed in detail, highlighting the irregularities in the investigation by the police and the criminal justice system, the social dimension is often analysed superficially. For instance, the consequences of changing gender roles due to women doing paid work outside the home were not considered with respect to the victims.

In relation to the analysis of equality before the law, the focus lays exclusively on gender inequality. For instance, the victims’ representative in *Veliz et al* argued that the State should have conducted the investigations with ‘a gender perspective,’ which included the investigation of sexual violence specifically. Such analysis required investigating the violence in the specific case in connection to the ‘patterns of the region’.⁶² The Court also relies on the sexual violence, in addition to signs of severe violence and mutilation, as indication of the gender-based nature of the violence.⁶³

In addition, the influence of the socio-structural context on gender discrimination is also noted in relation to the obligation to integral reparation of the victims:

Bearing in mind the context of structural discrimination in which the facts of this case occurred, [...], the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification.⁶⁴

59. *ibid* para 137.

60. cf the forensic psychological report in case of *Veliz Franco et al v. Guatemala*, paras 189 and 190.

61. *Velásquez Paiz et al v. Guatemala* (n 41) paras 190, 196 and 200.

62. *Velásquez Paiz et al v. Guatemala* (n 41) para 167.

63. *Veliz Franco et al v. Guatemala* (n 40) paras 207-211.

64. *Cotton Field* case (n 1) para 450.

The purpose of ‘rectification’ connects reparation measures with the State obligation to take a comprehensive prevention policy. Consequently, the Court has recommended adopting measures that would allow women and girls enjoy their human rights, rectifying the social context of violence and preventing gender-based violence.

The exclusive focus on gender, however, may obscure other inequalities that might be at stake in the cases. Including measures that target discrimination based on race or class could enhance the transformative effect of the reparations.

Special vulnerability of women

Before embarking on the analysis of this section, it should be recalled that one important element potentially revealing the ‘intersectional’ nature of the discrimination and oppression affecting the victims is the letter of Article 9 of the Belém do Pará Convention, considered by the Commission as promoting ‘intersectionality’. In that regard, although the Court had declared the lack of jurisdiction to declare violations of Article 9 of the Belém do Pará Convention, it stated that all articles of the Convention, particularly Article 9, and other relevant instruments guide the interpretation of the Court. This section looks into the ‘special vulnerabilities’ discussed in the cases.

The invisibility of class. As commented in relation to the general context of violence and the use of (gender) stereotypes by the authorities, different elements introduced by different parties indicate the relevance of class as a contributing factor to the ‘special vulnerability’ of the victims.

In *Gonzalez et al*, the Court gave very limited consideration to multiple or intersecting discrimination, even though multiple categories of discrimination seemed to affect the victims. They were young women of ‘humble origin’, two of them working as domestic workers and in the *maquila*. The analysis, however, focused on gender discrimination as the main type of inequality affecting women in Juarez in general, and the three victims of this case in particular. Moreover, the influence of Article 9 is not perceived, and there were no references to the ‘special vulnerability’ of the victims due to their age and class.

Despite recognising that the type of labour indicated the socio-economical status of the victims, the implications were not considered. Neither the economic dimension of gender construction nor class were understood by the Court in *Gonzalez et al* as factors increasing the vulnerability of women. Moreover, the lack of analysis of the economic structure left the social changes of recent years unexplored.

Having said that, a more ‘intersectional-like’ perspective appeared in *Gonzalez et al* in connection with the obligation not to discriminate. The representatives held that ‘over and above gender-based violence, the girls and women of Ciudad Juarez suffer double discrimination, because the humble origins of Claudia, Laura and Esmeralda, and of the other girls and women who have been murdered or reported missing, and of their mothers and their next of kin, also generates discrimination against a social class’.⁶⁵ Moreover, the Court itself recalled that the European Court of Human Rights had found in *Opuz v. Turkey* that the great majority of victims had a common origin and faced problems when they reported the violence.⁶⁶

65. *ibid* para 391.

66. *ibid* para 398.

Despite this recognition, the Court concluded in *Gonzalez et al* that discrimination was based on gender, without elaborating on the alleged ‘second ground’ of class suggested by the representatives. Gender was ‘the’ common and most important ground of vulnerability. A possible reason for the Court’s lack of attention to ‘intersectional’ or ‘multiple’ discrimination may derive from the assumption that violence against women is a form of ‘gender-based discrimination’, which guides the interpretation of cases as explained above. The Court, thus, immediately moved to the discussion of gender discrimination, without analysing socio-economic disadvantage.

Socioeconomic class was not introduced as an element contributing to the vulnerability of women in *Veliz Franco* or *Escobar Ledezma* in relation to the specific cases. It was only mentioned in the discussion of the general context of increased violence against women. This is in spite of the fact that the victims were employed in non-qualified jobs while still in high school. Interestingly, the socio-economic dimension emerged in *Velásquez Paiz*, who was not characterised as belonging to a low socio-economic class. In fact, references regarding the place where the body was found seem to indicate the opposite. In this case, the representatives argued that due to the prejudices associated to what the victim was wearing and the place where the body was found, the investigation was deficient. There was, they say, ‘a presumption regarding her *origin and condition*,’ classifying her as a ‘slut’.⁶⁷ Similarly, the expert witnesses pointed out that the authorities considered the victim’s profile like those of ‘gangs and prostitutes’. Christine Chinkin, one of the experts, pointed out that some of the factors contributing to the victim’s perception as a prostitute was due to the fact that she had disappeared in the evening, at a party, her clothing, the smell of alcohol, the place where she was found, and that she was a woman.⁶⁸ The class aspect is clearly suggested by the national Human Rights Committee, which stated:

The lack of control over the prosecution results in the lack of a real interest in conducting an appropriate investigation, becoming a pattern in relation to homicides, particularly if it is believed that victim is seen as marginal.⁶⁹

The references to ‘origin’ and ‘marginality’ suggest that ‘class’ is indeed a relevant element in cases of VAW. The Court, however, understood these references exclusively as gender stereotyping,⁷⁰ emphasising the negative effects of the characterization of murders of women as ‘crime of passion’.⁷¹ This suggests that although socioeconomic class is an element contributing to inequality, it becomes invisible in the analysis of the concrete cases.

Age vs. Children. As commented, in *Cotton Field*, *Escobar Ledezma v. Mexico*, *Veliz Franco et al v. Guatemala* and *Velásquez Paiz v. Guatemala*, the victims were under the age of 18, and consequently, the Commission and the representatives claimed violations to their rights as children. In line with this, there are several references in the judgements to the young age of the victims as an element increasing their vulnerability to violence. Three aspects for discussion emerge from such recognition. Firstly, how do the different parties to the cases construct the special vulnerability of children, and moreover, is it in line with intersectionality? Secondly, what are the consequences of

67. *Velásquez Paiz et al v. Guatemala* (n 41) para 177.

68. *ibid* para 181.

69. *ibid* para 185.

70. *ibid* paras 183 and 190.

71. *ibid* para 187.

promoting a ‘vulnerable group’ approach focusing on girls rather than a ‘social category’ approach? And finally, it makes it possible to distinguish if, in relation to VAW, the Court bases its reasoning on article 19 of the American Convention, protecting children, or whether it also recalls the scope of article 9 of Belém do Pará on special vulnerability, supposed to ‘guide the interpretation’ of the Convention.

The position of the Commission regarding the nature of children’s vulnerability seems to still be in the shaping. In *Cotton Field*, it argued that the State had an ‘enhanced duty’ to protect the human rights of children due to ‘their condition as minors, and the obligation to adopt special measures of protection, prevention and guarantee.’⁷² Similarly, in *Veliz Franco*, the Commission recalled the ‘extra duty’ of the State regarding the protection of children, and particularly, the girl child. This duty was ‘reinforced’ by the special vulnerability of some groups of women, including girls, recognised in the Convention of Belém do Pará.⁷³ These statements suggest that vulnerability is taken as ‘outcome’, without entering too much into the discussion of how it is constructed.

Nevertheless, in *Escobar Ledezma et al v. Mexico*, the Commission noted it had received information indicating ‘being a teenager is one of the selection criteria used by the killers and for this reason the appropriate authorities should devise specific prevention strategies to improve the protection of that vulnerable group.’⁷⁴ It pointed to Article 19 of the American Convention and also the Belém do Pará Convention, which stipulates that the State should pay special attention to ‘the particular exposure to violence and discriminatory acts that a woman may suffer because of being of minor age, among other conditions that expose them to a greater risk of their rights being violated.’⁷⁵ The Commission explained the greater exposure to risk due ‘to the fact that discrimination, in its different expressions, does not always affect all women equally: there are women who are exposed to an even greater extent to the violation of their rights and to acts of violence and discrimination.’⁷⁶

The Commission’s understanding of the vulnerability of girls to violence in *Escobar Ledezma* suggests a shift towards an intersectional approach to age and gender. However, it is not a fully intersectional approach yet, resembling more a ‘double discrimination’ approach based on gender and age, excluding other relevant categories also influencing girls’ vulnerability, such as class. In all the cases under review, girls worked in low qualified jobs, and it was in these circumstances that they disappeared. Moreover, rather than looking at ‘age’, as a socially constructed category of difference, the Commission discusses the ‘girl child’, as a vulnerable group. This bears some consequences that will be discussed below in connection with the Court’s approach as well.

The position of the Court regarding children has resulted in a significant body of jurisprudence that suggest a socio-structural view, rather than a mere ‘embodied vulnerability’ approach. FERIA TINTA notes that the jurisprudence of the Court increasingly deals with the rights of the child in connection with the protection of indigenous peoples, displaced people and marginalised communities.⁷⁷ For instance, the Court has clarified the rights of children belonging to particularly

72. *Cotton Field* case (n 2) para 403.

73. *Veliz Franco et al v. Guatemala* (n 41) paras 123-125.

74. *Escobar Ledezma v. Mexico* (n 39) para 140.

75. *ibid* para 135.

76. *ibid*.

77. Mónica FERIA TINTA, ‘The Landmark Rulings of the Inter-American Court of Human Rights on the Right of the Child’ (Martinus Nijhoff Publishers 2008) 11.

disadvantaged sectors of society, such as migrants, displaced people and refugees.⁷⁸ In the case of *Street Children v. Guatemala*, the Court addressed the ‘disadvantaged background’ of the children due to low education, early entry into labour, homeless status and drug and alcohol consumption.⁷⁹ Moreover, the indigenous belonging of children is regarded as placing them in a ‘flagrantly vulnerable position’ and ‘condemned to social exclusion and chronic poverty’.⁸⁰ This suggests that the vulnerability approach generally adopted towards children by the Court is not limited to an ‘embodied’ or biological approach, but favours a more socio-structural view when ‘intersecting’ categories are included.

Such approach to young age is not so clear in relation to gender-based violence. The Court confirmed in the *Cotton Field* case that the status as a child ‘requires special protection that must be understood as an additional right that complements all the other rights that the Convention,’ and that ‘the State must pay special attention to the needs and rights of the alleged victims owing to their condition as girls who, as women, belong to a vulnerable group.’⁸¹ In *Veliz*, the Court confirmed that, based on Article 19, the State has a special duty to protect children, considering them as a vulnerable group *due to their level of development*. This duty to protect is enhanced in relation to VAW since the child’s inherent vulnerability ‘may be framed within and enhanced by the condition as woman’.⁸² This first approach, referring to the ‘level of development’ and the ‘condition’ of being a woman seems to indicate biological explanations, rather than the social construction of age and gender as contributing to girls’ vulnerability. As a result, there is a special focus on the girl-child as specific ‘vulnerable group’.⁸³ The Court stated:

Girls are ‘particularly vulnerable to violence’. The special intensity is translated into the duty of the State to act with greater and stricter due diligence to protect and ensure the exercise and enjoyment of the rights of girls against their possible violation, resulting in violence due to their gender.⁸⁴

The Court does not elaborate whether girls are more vulnerable because of biological reasons or whether this is the result of a social construction preferring young women, mystifying and sexualizing girls’ bodies. It used ‘vulnerability’ rather than ‘intersecting discrimination’ as the theoretical notion for capturing the connection between age and gender. This vulnerability approach emphasises a more formal (‘equal treatment’) approach, rather than a structural view of discrimination and inequality, as promoted by intersectionality. Unlike the Commission, the Court refers to Article 19 of the American Convention rather than Article 9 of Belém do Pará when elaborating on the vulnerability of girls to gender-based violence. The fact that unlike Article 9 of Belém do Pará, violations of Article 19 can form the basis of a contentious claim, seems to make a real difference in the analysis of the Court. The wording of Article 19 may also partially explain why the Court never refers to ‘age’, but to ‘the child’. This, in a way, shows a distinction with a truly intersectional perspective. In spite of discussing the relevance of age,

78. *Yean and Bosico Children v. The Dominican Republic*, IACrHR (8 September 2005).

79. *Villagran-Morales et al ('Street Children') v. Guatemala*, IACrHR (19 November 1999).

80. Case 0322/2001, *Sawhoyamaya Indigenous Community of the Enxet People v Paraguay*, Report no 12/03, Inter-Am. C.H.R., OEA/Ser.L/V/II.118 Doc 70 rev 2 (2003) 378.

81. *Cotton Field* case (n 2) at para 408.

82. *Veliz Franco et al v. Guatemala* (n 40) paras 133-136.

83. This has also been held in other Court cases. See, *ia*, the case of *Río Negro Massacres v. Guatemala*, IACrHR (4 September 2012) para 184 and *'Las Dos Erres' Massacre v. Guatemala*, IACrHR (24 November 2009) para 120.

84. *Veliz Franco et al v. Guatemala* (n 40) para 134 (translated by the author).

neither the Commission nor the State was capable of capturing the social construction of age, equally affecting children and the elderly.

Nevertheless, the Court has noted that children might face multiple-discrimination, focusing in the interconnection between their young age and gender in this case. It did so by recalling the independent expert for the United Nations study on violence against children who held that '[v]iolence against children takes a variety of forms and is influenced by a wide range of factors, from the personal characteristics of the victim and perpetrator to their cultural and physical environments.'⁸⁵ It further argued, 'economic development, social status, age, sex and gender are among the many factors associated with the risk of lethal violence.'⁸⁶ While this approach is more visible in relation to cases of violence against children cited supra, it is yet to inform the Court's reasoning on femicide affecting girls.

Concluding observations

This article explored to what extent cases on *femicide* discussed in the Inter-American system have adopted an intersectional approach to VAW. The Commission has shown more inclination than the Court towards the adoption of an intersectional approach, particularly in recent reports. However, this tendency has not yet been fully reflected in the analysis of cases or the Commission's argumentation before the Court. In fact, despite detailed elaboration on important aspects such as the social construction of gender, the importance of gender stereotypes and the structural nature of VAW, the Court and Commission failed to discover the interconnections between gender, age, and class, which is the first aim of an intersectional approach. The exclusive focus of attention was gender discrimination and the special vulnerability of the girl child.

The Court and the Commission had several opportunities in the cases under review to address the intersecting nature of the discrimination contributing to the vulnerability of violence against the victims. The first opportunity was in the discussion of the context of the cases. A contextual analysis, necessary for establishing the gender-based nature of the crimes, can contribute to an intersectional analysis of the cases. However, even when different parties suggested the relevance of elements other than gender, the Court solely focused on the latter.

The second opportunity for adopting a more intersectional view was the discussion of the gender-based nature of the violence in the specific cases. Although the Court has provided detailed and extremely relevant definitions for gender-based violence, including *femicide* and gender stereotyping, it is yet to elaborate on how socioeconomic class has influenced the victims' vulnerability to violence and the authorities prejudiced responses. This aspect is particularly relevant if one considers that, from a gender perspective, reparations aim for a 'transformative effect'. Adopting an intersectional perspective could enhance such transformative scope of reparations.

The Court could have also addressed the intersectionality of gender, class and age in relation to equality before the law. In *Cotton Field*, the representatives referred to the 'double discrimination' the victims faced due to their gender and 'humble origin'. Yet, the Court focused exclusively on gender discrimination, without exploring the gendered patterns of labour arrangements in Juarez and the implications that working in the *maquila* or as domestic workers had for the victims. In all of these opportunities, the Court could have relied on Article 9 of Belém do Pará Convention for

85. *Cotton Field* case (n 1) para 407.

86. *ibid.*

the ‘interpretation’ of compliance with Article 7. We are yet to see whether Article 9 is indeed ‘encouraging intersectionality’, as argued by the Commission, or if at least it can provide a ‘multiple vulnerability’ approach.

In discussing the similarity between vulnerability and the intersectional perspective, we must recall the emphasis put by intersectionality on the structural nature of inequality. Indeed, a crucial aspect of intersectionality is its emphasis on the social construction of categories of difference and their consequent dynamic character. In a given context, these categories might become grounds of discrimination, vulnerability or subordination. In the cases, this was only done in relation to gender, since the importance of the institutions in the reproduction of gender inequality is discussed throughout the decision, paying particular attention to stereotypes and prejudices.

The vulnerability of children, particularly of the girl child, is the only aspect of ‘diversity’ among women so far recognised by the Court in these cases of femicide, yet not reflecting the same comprehensive and intersectional view of children that it has adopted in cases regarding other types of violence. This begs the question whether the understanding of ‘gender’ as the root of violence is in need of a theoretical expansion.

What are the implications of these findings? First, identifying the intersections between the social categories affecting the victims could have contributed to a more comprehensive response, and to an exploration of the dynamics within Ciudad Juarez and Guatemala. Moreover, it would have allowed for a discussion of discrimination from broader perspective, beyond gender. Another area where the intersectional approach can be beneficial is that of reparations, considering that the ‘rectification’ of the situations leading to discrimination is needed. In this regard, recognising the importance of class in the cases could have led to more comprehensive preventive measures. Simple measures, such as identifying groups at intersections, areas of residence, daily occupation, and so on, could expose some of the risks women face. Recommending the implementation of policies to tackle those risks could represent a great step forward in the prevention of VAW.

To conclude, in line with Celorio, this article confirms that despite important developments in the field of VAW, both the Court and the Commission still need to develop ‘concrete standards in the realm of intersectionality, as well as the multiple forms of discrimination a woman can face on the basis of several factors’.⁸⁷ The analysis of the cases with a specific intersectional lens revealed some shortcomings and highlighted areas of attention. This will hopefully inspire future case assessment on similar lines.

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87. Celorio 2011 (n 3) 858.