

EXECUTIVE SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter the "IACHR" or the "Commission") has repeatedly made the case that *de jure* and *de facto* access to adequate and effective judicial remedies is essential to eradicating the problem of violence against women, as is the States' compliance with their obligation to practice due diligence in prosecuting such acts. And yet the work of the IACHR and of its Rapporteurship on the Rights of Women (hereinafter the "Rapporteurship" or the "Women's Rapporteurship") reveals that all too often prompt and effective recourse to judicial remedies eludes women victims of violence, even after they report the crimes committed against them. As a consequence, the vast majority of these offenses are never punished and neither the victimized women nor their rights are protected.

2. It is for this reason that the IACHR has prepared this report on the situation of women victims of violence. It examines the major obstacles that women encounter when they seek effective judicial protection to redress acts of violence. In the report, the IACHR draws conclusions and makes recommendations about what States need to do to act with the due diligence necessary to offer an effective and prompt judicial recourse when these incidents occur. The report's analysis is based on findings drawn from the data compiled from a variety of sources, including the administration of justice systems, civil servants and government representatives, civil society, academia and women of differing races, ethnic backgrounds and socio-economic circumstances. The Rapporteurship has been preparing this report for the last two years, with financial support from the Government of Finland. The information compiled has been coupled with the work of the IACHR: its case decisions, the thematic hearings held at headquarters, its thematic reports, the country reports' chapters on women's rights, and *in loco* visits organized by the IACHR and the Rapporteurship.

3. The regional and international human rights protection systems have identified the right of women to live free from violence and discrimination as a priority challenge. The international instruments adopted to protect women's right to live free from violence reflect a consensus among States and their acknowledgement of the discriminatory treatment that women have traditionally received in their respective societies, which has exposed them to various forms of violence: sexual, psychological and physical violence, an abusive treatment of their bodies. Those instruments also reflect the commitment that the States have undertaken to adopt measures to ensure the prevention, investigation, punishment and redress of such acts of violence. The fact that the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter the "Convention of Belém do Pará") has been ratified by more States than any other instrument of the inter-American system and that most States of this hemisphere have also ratified the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter the "CEDAW") and its optional protocol, signals a regional consensus to the effect that gender-based violence is an open and widespread problem requiring State action to ensure its prevention, investigation, punishment and redress.

4. The inter-American human rights system is based on the premise that access to adequate and effective judicial remedies is the first line of defense in protecting basic rights. The binding instruments for the protection of human rights, such as the American Convention on Human Rights (hereinafter the "American Convention"), the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration") and the Convention of Belém do Pará uphold the right of women to access adequate judicial protection against acts of violence, with all proper guarantees. Within that framework,

States have an obligation to act with due diligence to prevent, investigate, punish and redress these acts. The States' duty to provide effective judicial recourse is not served merely by their formal existence; that recourse must also be adequate and effective in remedying the human rights violations denounced.

5. During preparation of this report, the IACHR received information from the States, administration of justice officials, the civil society, international organizations and academia, about public efforts targeted at eradicating gender-based violence. In the past, the Commission has observed that the adoption of international human rights instruments like the Convention of Belém do Pará and the CEDAW has triggered, in both civil- and common-law countries, a series of public efforts in the spheres of justice, legislation and government programs, all calculated to eradicate violence against women.

6. The Commission finds, however, that despite the States' formal and legal recognition that violence against women is a priority challenge, the quality of the judicial response to the problem falls well short of its incidence and severity. While the Commission recognizes the States' efforts to adopt a juridical and political framework to address the problem of gender-based violence, there is a significant gap between the formal availability of certain remedies and their effective application. Most cases of violence against women are never formally investigated, prosecuted and punished by the administration of justice systems in the hemisphere. In some countries, the Commission has observed a pattern of systematic impunity, resulting from the fact that so few of these cases are ever investigated, much less taken to trial. The Commission is particularly troubled by the fact that female victims of violence are disinclined to turn to the justice system. Victims and their families are often mistreated when attempting to avail themselves of judicial remedies, and have no confidence in the ability of the justice system to right the wrongs committed. This combination of factors leaves the victims with a sense of insecurity, defenselessness and mistrust in the administration of justice. The impunity that attends these crimes merely perpetuates violence against women as an accepted practice in American societies, in contempt of women's human rights.

7. In the specific area of the administration of justice, the Commission finds that States lack a sweeping vision or a comprehensive institutionalized policy for preventing, prosecuting and punishing acts of violence against women and providing redress. The Commission has found that investigations into cases of violence against women are riddled with serious problems: unwarranted delays on the part of the investigative authorities in conducting the necessary procedures and proceedings; failings and irregularities in the proceedings *per se* that may ultimately prevent the prosecution of cases and punishment of guilty parties. Compounding these two variables is the shortage of the economic and human resources needed to conduct effective investigations, prosecute the cases and punish those responsible. This problem is particularly acute in rural and marginalized areas.

8. Apart from the problems observed in the investigative phase, the IACHR is deeply troubled by the inefficacy of the justice systems in prosecuting and punishing the perpetrators of acts of violence committed against women. While the failure to process cases involving violence against women quickly and effectively is often attributable to structural, economic and personnel-related factors, the failure to investigate the facts reported and the inefficacy of the justice systems in prosecuting and punishing cases of violence against women is also attributable to discriminatory socio-cultural patterns that influence the behavior of officials at all levels of the judicial branch of government. The latter do not regard such incidents of violence as priorities, do not take female victims seriously, disregard evidence critical to identifying the guilty parties, attach exclusive emphasis to physical evidence and testimony, give scant credence to the women victims'

claims, and are disrespectful of the victims and their next of kin when they try to cooperate in the investigation. With so many systemic failings, the number of trials and convictions is still very small by comparison to the many complaints filed and the prevalence of the problem.

9. In many cases, women end up becoming the victims of fatal assaults even after having sought preventive protection from the State; all too often protective measures may be ordered on a woman's behalf only to be improperly implemented or monitored. On the matter of prevention and protection, the Commission has found that State authorities - the police in particular- fail to fulfill their duty to protect women victims of violence against imminent threats. Enforcement and supervision of restraining orders and other court-ordered protective measures are seriously flawed, which can have particularly disastrous consequences in cases of intrafamily violence. The inaction on the part of the State authorities is partially attributable to an inherent tendency to be suspicious of the allegations made by women victims of violence and the perception that such matters are private and low priority.

10. The IACHR has also pinpointed a number of structural problems within the justice systems that are detrimental to the prosecution of cases involving violence against women and other human rights violations. Among these are the following: the institutions necessary for the administration of justice in rural, poor and marginalized areas are often lacking; all too frequently no court-appointed attorneys or public defenders are available for victims of violence who are without economic means; and the public prosecutors' offices and police investigating the crimes often do not have the resources they require or specialized units with the technical expertise needed to deal with gender-based violence. Rudimentary and uncoordinated data systems make it difficult to obtain the statistics on incidents and cases of violence against women. These statistics are essential to an examination of its causes and trends.

11. The IACHR has established that violence and discrimination against women are still condoned in American societies, as evidenced by the manner in which officials in the justice system and the police respond to and treat cases of violence against women. The States must, therefore, design and strengthen programs to educate officials and personnel in the justice system and the police about the problem of violence against women as a serious violation of human rights and about their obligation to treat women victims in a respectful and humane fashion when they turn to the police and the courts for protection. Although the number of training programs for justice and police personnel has increased, the impact of those programs has been uneven; many have not been institutionalized and do not feature the accountability mechanisms needed to effect permanent change.

12. A variety of considerations challenge the filing of complaints by victims. They include the secondary victimization that women victims experience when they attempt to report the violence perpetrated against them; the lack of judicial protections and guarantees to safeguard the dignity and safety of victims and witnesses during prosecution of cases; the economic cost of judicial proceedings, and the geographic location of the judicial bodies where such complaints have to be filed.

13. The Commission is troubled by the fact that victims and their next of kin often have no information about the steps they must take to seek court protection, about how to file and prosecute cases, and what they can do to assist with the investigation and prosecution of their cases. With increasing frequency relatives of women victims of violence endeavor to obtain information and cooperate in the investigation of their cases, only to be met with disrespectful and callous treatment. The Commission has observed that

uniform national statistics on cases of violence against women are difficult to obtain; the effect is to render the problem of violence against women invisible, which makes it difficult if not impossible to shape public policies in the judicial area that match the severity and scale of the problem.

14. The Commission has also observed that certain groups of women have special needs when they are victims of violence seeking judicial protection. The Convention of Belém do Pará recognizes that some women are more vulnerable than others to the problems of violence and discrimination because little or no importance is attached to their rights. Violence, discrimination and access to justice are particularly problematic for indigenous and Afro-descendant women. In their case, racism figures prominently as one of the underlying causes of the contempt for their rights. The obstacles these women encounter in trying to avail themselves of adequate and effective remedies that will redress the violations they have suffered may be particularly critical, as these women are victims of multiple forms of discrimination: gender-based discrimination, discrimination based on ethnic origin or race, and discrimination based on socio-economic status. Therefore, programs need to be undertaken to compile information -statistics, research and studies- that accurately depict the special needs that these women have, with a view to guaranteeing their rights within the justice system and enabling them to exercise those rights.

15. The civil and criminal laws now in force on the subject of violence against women are beset by two different types of problems that impair effective punishment of these acts and redress. The first type of problem is one of language and content and is about defects, gaps, a lack of uniformity, and inherently discriminatory concepts that are detrimental to women and work to their disadvantage. Outdated laws remain in force, as do discriminatory provisions based on stereotypes of the role of women in society and values such as the victim's honor, decency and chastity. Some countries still have laws that grant a rapist relief from punishment if he agrees to marry his victim. On the whole, even today the law focuses basically on domestic and intrafamily violence, to the exclusion of other forms of violence perpetrated against women and the contexts in which such events occur outside of and apart from home and family.

16. In some American countries the problem of discriminatory laws is compounded by a host of other factors that do much to explain why the authorities do not properly enforce the law. The following are among the most critical: a lack of clear regulations and procedures; a lack of training programs that instruct public officials in the proper interpretation and application of the law when prosecuting cases of violence against women; overburdened law-enforcement agencies; and the general public's unfamiliarity with the law and how to interpret it. A real commitment is required of the States -backed up by sufficient financial and human resources- if the existing laws are to be correctly applied and enforced.

17. The Commission has received reports about existing government programs whose purpose is to provide support services to women victims of violence and to help protect their rights within the justice system. However, many well-intentioned government programs instituted to provide multidisciplinary services to women victims of violence have difficulty in their day-to-day operations. A lack of coordination and cooperation among programs figures prominently among such problems. Then, too, the interdisciplinary services that the victims require and that the programs try to offer are often inadequate. The resources needed to keep these programs running are frequently lacking. Their geographic coverage is somewhat limited which means that the programs tend not to reach women living in marginal, rural and poor areas. Some of these practical problems could be

helped if the work of nongovernmental organizations that provide interdisciplinary services to women victims of violence were to be legitimized, protected and supported with funding and through public policy. They play a particularly vital role in providing information on how to file complaints of acts of violence against women and how to seek effective judicial protection.

18. Especially troubling to the Commission is the fact that most acts of violence against women go unpunished, thereby perpetuating the social acceptance of this problem. The Commission therefore reiterates that in order to be in full compliance with their due diligence obligation, States must do more to prosecute and punish acts of violence against women. From the information compiled by the Commission it is clear that the next step in the fight to protect the rights of women victims of violence and discrimination and to ensure their access to justice, is to move from *de jure* recognition of their rights to *de facto* exercise of those rights.

19. The recommendations contained in this report are intended to help the States devise projects and measures that enable them to guarantee a proper judicial response to acts of violence against women, one that is immediate, timely, exhaustive, serious and impartial. The recommendations have three specific objectives: first, for States to devise a comprehensive and properly resourced policy to ensure that women victims of violence will have adequate access to justice and that acts of violence will be prevented, investigated, punished and adequately redressed; second, to urge the States to create the necessary conditions so that women are able to avail themselves of the justice system to remedy the acts of violence perpetrated against them and so that public officials will treat women victims respectfully when they turn to the various judicial bodies for protection; third, to encourage States to adopt public measures that serve to redefine the traditional concept of women's role in society, and that help undo the discriminatory socio-cultural patterns that stand in the way of women's full access to justice.

20. The Inter-American Commission remains steadfast in its commitment to cooperate with the American States in seeking solutions to the problems identified. Some measures taken to deal with this situation signal an understanding and acknowledgment of the seriousness of the existing problem and the commitment of State and non-State actors to effectively address the many barriers that women encounter when reporting acts of violence and discrimination, so that they may receive proper redress.