

# Torture As a Form of Gendered Violence

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## Abstract

The right to personal integrity, including human dignity, takes on very particular and challenging meanings in relation to preventing violence against women and prosecuting those who perpetrate it. While a range of international instruments aim to prevent torture and cruel, inhuman or degrading treatment, most talk explicitly about preventing these forms of violence in the public sphere, especially in relation to institutions where persons are deprived of their liberty. However, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (the Convention of Belém do Pará) represents progress towards a more holistic view, looking at the continuum of violence against women in all areas of society, and addressing the fact that a social and cultural climate in which violence is common and, to a degree, accepted can only encourage violence by public as well as private actors. Although only a few cases have been brought before the bodies established by these instruments, and thus many of these provisions have yet to be effectively enforced within the international context, they provide for exciting possibilities.

## 1. Introduction

If there is a human right that has been subject of debate, analysis and protection – apart from the right to life – it is the right to personal integrity, which has been recognised in all constitutional legislations and international general human rights treaties. The core issue, and the primary value that must be protected when we speak about personal integrity as a human right, is ‘human dignity’. Specific treaties have been developed to prevent, protect against and condemn torture and inhuman and degrading treatment, one of the most serious ways in which human dignity can be violated. Torture and gross violations of personal integrity have been recognised and elevated to the status of international crimes (against humanity), including via the obligation to prosecute international crimes in all countries that are parties to the Statute of Rome, which established the International Criminal Court.<sup>1</sup> Article 7 of this international treaty incorporates both duties within the classification of crimes against humanity. With regard to personal integrity, the following acts are considered torture or inhuman treatment:

Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or

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<sup>1</sup> Rome Statute of the International Criminal Court (Statute of Rome), UN Doc. A/CONF.183/9, adopted 17 July 1998, entered into force 1 July 2002, Articles 5 and 7.

any other form of sexual violence of comparable gravity ... Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or mental or physical health.<sup>2</sup>

Torture and inhuman treatment of women have historically been used as systematic practices that go beyond denigrating women or obtaining information through confessions, including ‘ethnic whitening’ (i.e. forced pregnancies resulting from mass rape). These practices have the collateral effect of weakening the morale of husbands or partners, especially when this type of torture against women occurs in the context of armed conflict or political persecution of certain groups.<sup>3</sup> For instance, in *Miguel Castro Castro Prison v. Peru*, the Inter-American Court of Human Rights found that

Different Peruvian and international organizations have acknowledged that during the armed conflicts women face specific situations that breach their human rights, such as acts of sexual violence, which in many cases is used as “a symbolic means to humiliate the other party.”<sup>4</sup>

This paper attempts to explore how considering the right to humane treatment must entail a gendered perspective<sup>5</sup> and must take into account international doctrine and case law issued by criminal courts and human rights and other protection organs in the field, especially, in the context of the South and Central American region, the inter-American system of human rights.

## 2. Right to Personal Integrity in the Inter-American System

The first record of personal integrity protection in the inter-American regional system can be found in the American Declaration of the Rights and Duties of Man (1948) that states, in Article I, that ‘Every human being has the right to life, liberty and the security of his person’.<sup>6</sup> From that date until 1969, when the American Convention on Human Rights was adopted (it came into force in 1979),<sup>7</sup> the American Declaration of the Rights and Duties of Man was the main regional instrument aimed at preventing and combating torture during one of the worst times in

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<sup>2</sup> Statute of Rome, Article 7. See fn.1.

<sup>3</sup> In the Kosovan armed conflict, there was a systematic practice of raping women for ‘ethnic whitening’ or war ‘award’. The first case investigated by the International Criminal Court of the former Yugoslavia was the *Dragoljub Kunarac Case* for rapes and torture against Muslim Bosnian women. Available at <http://www.icty.org/index.php>. Last accessed 26 December 2008. *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, Case No IT-96-23, Judgement of 22 February 2001, Trial Chamber II of the International Criminal Court for Yugoslavia (ICTY). Available at <http://www.icty.org/index.php>. Last accessed 26 December 2008.

<sup>4</sup> *Miguel Castro Castro Prison v. Peru*, Judgment of 25 November 2006, Inter-American Court of Human Rights, Series C No160, para. 223. Available at <http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm>. Last accessed 17 January 2010.

<sup>5</sup> Gender is not just a matter of considering men and women as collective groups, but also as persons with particular social identities. Women face limitations because of cultural obstacles and discrimination. See Gilda Pacheco, ‘Gender focus in local or international litigation of gross violations of human rights cases’, *Attention and Protection to Victims of Torture Workshop*, Inter-American Institute of Human Rights, Caracas, Venezuela, 22-24 September 2008.

<sup>6</sup> Adopted by the Ninth International Conference of American States, Bogota, Colombia, April 1948. Available at [http://www.hrcr.org/docs/OAS\\_Declaration/oasrights.html](http://www.hrcr.org/docs/OAS_Declaration/oasrights.html). Last accessed 16 January 2010.

<sup>7</sup> Signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969, Organization of American States. Treaty Series No 36, 1144 UN Treaty Series 123 entered into force 18 July 1978.

modern history of gross violations of human rights in many countries, particularly those established by coups and ruled by non-democratic regimes on the American continent.

With the entry into force of the American Convention on Human Rights, the overall protection of human rights in the region and, consequently, the right to humane treatment, was strengthened; this was mainly because of the creation of the Inter-American Court of Human Rights, which can identify and condemn States for violating rights guaranteed and protected under the American Convention on Human Rights.

Article 5 (Right to Humane Treatment) of the American Convention on Human Rights, which refers to the protection of personal integrity (and guarantees protection against torture), substantially developed the definition and scope of protection provided by the American Declaration of the Rights and Duties of Man and the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment (UNCAT)<sup>8</sup>:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.<sup>9</sup>

Subsequently, due to the need for better international instruments and mechanisms to prevent, combat and eradicate torture, American States adopted the Inter-American Convention to Prevent and Punish Torture: a specific treaty containing the most extensive and comprehensive definition of torture (see Article 2) of all international instruments, including the UNCAT:

torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish[.]<sup>10</sup>

The development of the jurisprudence (case law) of the Inter-American Court of Human Rights, and precedents of the Inter-American Commission on Human Rights, shows that the situations in which torture and cruel, inhuman or degrading treatment occur are not uniform. The complexity lies in determining, in each case, whether a person is a victim of torture or of cruel, inhuman or degrading treatment. From the standpoint of the right to personal integrity, both events are violations of personal integrity (see Article 5 of the American Convention on Human Rights). However, from the perspective of the victim, this distinction takes on different meanings depending on the individual's history and psyche: is not the same for a victim who has been

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<sup>8</sup> American Convention on Human Rights, Article 5. See fn.8.

<sup>9</sup> UNCAT, adopted by the UN General Assembly, UN Doc. A/Res/39/46, 10 December 1984, entered into force 26 June 1987.

<sup>10</sup> Inter-American Convention on To Prevent and Punish Torture, Organization of American States Treaty Series No 67, entered into force 28 February 1987, Article 2. Available at <http://www1.umn.edu/humanrts/ooasinstr/zoas9tor.htm/>. Last accessed 16 January 2010.

tortured to resolve his/her case as a situation of cruel, inhuman or degrading treatment.<sup>11</sup>

Of all the elements required by the Convention's definition of torture, perhaps the most troublesome for the inter-American system is the need to demonstrate the necessary level of 'severity' to distinguish between torture and inhuman, cruel or degrading treatment. This factor must be analysed on a case by case basis. The same problem applies to the United Nations Declaration of 1975,<sup>12</sup> which refers to torture as an 'aggravated and deliberate form of treatment or cruel, inhuman or degrading treatment.'<sup>13</sup> The need for effective guidelines on differentiation based on severity was also addressed by the Inter-American Court in the *Loayza Tamayo Case*<sup>14</sup> in which, citing the European Court in *Ireland v. the United Kingdom*,<sup>15</sup> it stated that

The violation of the right to physical and psychological integrity of persons is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors which must be proven in each specific situation. The European Court of Human Rights has declared that, even in the absence of physical injuries, psychological and moral suffering, accompanied by psychic disturbance during questioning, may be deemed inhuman treatment. The degrading aspect is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance (cf. European Court of Human Rights, *Case of Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A No 25, para. 167).<sup>16</sup>

Nevertheless, it is not easy to determine, objectively, what constitutes torture versus cruel and inhuman treatment. The Inter-American Court and the Inter-American Commission apply different standards regarding the facts that may qualify a case as torture versus cruel or inhuman treatment. While, for the Inter-American Court, solitary confinement, public display, isolation (incommunicado detention), detention in a small cell, detention without ventilation or natural light, beatings and other abuses (such as water-boarding, intimidation by threats of other violence, and restrictions on visitation), are forms of cruel, inhuman or degrading treatment within the meaning of Article 5(2) of the American Convention on Human Rights, for the Inter-American Commission, such practices fall within the range of acts that constitute torture. The American Commission defined torture in a report on Colombia, listing a variety of situations and forms of abuse that constitute torture, including 'submersion in water', 'death threats to the prisoner, his family and friends', 'hanging by the hands', 'torture of other persons close to the cell so that their screams could be heard', 'application of electrical energy and shocks to

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<sup>11</sup> For an example of a victim of alleged torture obtaining a favourable judgement with regard to inhuman treatment, avoiding any reference to the word 'torture', see *Loayza Tamayo Case*, Judgement of 17 September 1997, Inter-American Court of Human Rights, Series C No 33.

<sup>12</sup> Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly, Resolution 3452 (XXX), 9 December 1975, Article 2(1).

<sup>13</sup> See R Gonzales (ed.), *El control internacional de la tortura y otros tratos o penas crueles, inhumanos o degradantes* (Universidad de Granada, 1998), pp 88-9.

<sup>14</sup> *Loayza Tamayo Case*. See fn.12.

<sup>15</sup> *Ireland v. the United Kingdom*, Judgment of 18 January 1978, European Court of Human Rights, Series A No 25.

<sup>16</sup> *Loayza Tamayo Case*, para. 57. See fn.12.

different parts of the body'.<sup>17</sup> Not only is the distinction between torture and cruel, inhuman or degrading treatment difficult to determine, an even more complex and urgent task is to delineate the different types of abuse involved when women are the victims.

Another new American treaty provides complementary protections against violence involving women: the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)<sup>18</sup> aims to prevent all possible scenarios in which violence against women, including torture and cruel, inhuman or degrading treatment, is likely to occur. There is no other regional treaty affording protections exclusively concerned with violence against women. This Convention defines violence against women (in Article 1) 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.'<sup>19</sup> This definition is extended in Article 2, which includes physical violence, sexual and psychological violence

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.<sup>20</sup>

Chapter 2 establishes the rights that are protected. Two important concepts must be emphasised: (i) Article 3 states that '[e]very woman has the right to be free from violence in both the public and private spheres'<sup>21</sup> and (ii) Article 5 recognises that violence against women prevents and nullifies the exercise of the (personal integrity-related) rights enshrined in Article 4:

- a) The right to have her life respected;
- b) The right to have her physical, mental and moral integrity respected;
- c) The right to personal liberty and security;
- d) The right not to be subjected to torture;
- e) The right to have the inherent dignity of her person respected and her family protected[.]<sup>22</sup>

The Convention of Belém do Pará broadens the responsibilities and obligations of American States in unique ways. There has been a gradual development from considering only violence perpetrated by agents of the state, to embracing situations in which violence is committed by

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<sup>17</sup> Inter-American Commission of Human Rights, Colombia Report 1981, Organization of American States Doc. OEA/Ser.L/V/II.53, Chapter IV, para 4. Available at <http://www.cidh.oas.org/countryrep/Colombia81eng/TOC.htm>. Last accessed 17 January 2010.

<sup>18</sup> 33 International Legal Materials 1534 (1994), entered into force 5 March 1995. Available at <http://www.oas.org/cim/english/convention%20violence%20against%20women.htm>. Last accessed 16 January 2010.

<sup>19</sup> Convention of Belém do Pará, Article 1. See fn.19.

<sup>20</sup> Convention of Belém do Pará, Article 2. See fn.19.

<sup>21</sup> Convention of Belém do Pará, Article 3. See fn.19.

<sup>22</sup> Convention of Belém do Pará, Article 4. See fn.19.

other actors, but with the acquiescence of the state. As such, previous international instruments have largely avoided dealing explicitly with violence committed in the private sphere. However, a social and cultural climate in which violence is common and, to a degree, accepted can only encourage violence by public as well as private actors. The Convention of Belém do Pará represents progress towards looking at the continuum of violence against women in all areas of society.

Regarding the preventive aspects of this Convention, Chapter 2 Articles 6 and 7 establish the State's obligation to prevent violence so that the right of every woman to live free from violence is protected; this ensures, *inter alia*, that the following rights should inform public policy: '[t]he right of women to be free from all forms of discrimination; and [t]he right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination'.<sup>23</sup> It also requires the State to 'adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property',<sup>24</sup> and to 'take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women'<sup>25</sup> and to 'establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies'.<sup>26</sup>

These obligations have different implications for different groups of women, especially indigenous women, migrant women, etc. Moreover, an individual victim may experience what is known as 'double' discrimination by virtue of belonging to more than one category. The possibility of double discrimination requires a holistic approach to prevention of torture in which the States must pay attention to modifying historic stereotypes. Education and cultural plans to improve the situation of women victims of social violence requires a clear consensus involving governmental institutions and civil society. For these reasons, the government must engage in interdisciplinary efforts to understand the main cultural, religious, traditional customary legal, and other structural causes of violence and discrimination against women. Society and culture must adapt so that women are not placed in multiple intersecting positions of inequality. The potential of the treaty to prevent such multiple discrimination is one of the most promising aspects of this regional instrument and requires more exploration.

States can and should be held responsible for omissions in preventing and combating violence against women as a generalised practice, including in relation to cases of domestic violence. This has been deemed an international responsibility of the State in a specific case against Brazil before the Inter-American Commission on Human Rights.<sup>27</sup>

### 3. A Gendered Perspective on Physical and Psychological Integrity

To build a legal basis for understanding the urgency of interpreting and implementing action to

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<sup>23</sup> Convention of Belém do Pará, Article 6. See fn.19.

<sup>24</sup> Convention of Belém do Pará, Article 7(d). See fn.19.

<sup>25</sup> Convention of Belém do Pará, Article 7(e). See fn.19.

<sup>26</sup> Convention of Belém do Pará, Article 7(g). See fn.19.

<sup>27</sup> *Maria da Penha v. Brazil*, Report on the Merits 54/01, Inter-American Court of Human Rights, 16 April 2001.

prevent and combat torture and cruel and inhuman treatment of women, it is necessary to first identify the facts and situations that affect the ways in which men and women suffer and deal with the consequences of violations of their physical and mental integrity. While male victims of torture may suffer in all sorts of physical and mental ways, women suffer equally, but also in ways that relate to the sexual aspect of many of the most common forms of torture and ill-treatment that they face: for instance, women face the risk of pregnancy as a result of sexual assault and, thus, of abortion. In addition to these consequences, and depending on their social and cultural context, women who have been victims of rape can be further victimised by their own partners, family and community.

In this regard, UN Special Rapporteurs specialising in gender and women's rights have spoken of the need to recognise the importance of addressing gender violence during armed conflict and of understanding the ways in which this violence is aggravated by womanhood itself.<sup>28</sup>

#### 4. Cases in the Inter-American System

While the Inter-American Court of Human Rights has had little opportunity to develop case law on gender violence, the Inter-American Commission on Human Rights has issued a number of reports about violence against women and, therefore, violations of personal integrity. The following section details the major cases of this type handled by the Inter-American Commission to date.

##### 4.1 *Cases of violation of personal integrity with a gender perspective*

*Ms X v Argentina* (15 October 1996) involved vaginal searches of women visiting persons deprived of their liberty. In this case against the Argentinian government, it was alleged that vaginal searches were conducted on all women who visited the prison to visit inmates. This case led to a change in regulations based on recommendations about the modification of the Argentinian prison system. The Court held that the State was responsible for violations of law with regard to personal integrity, protection of honour, and the dignity and rights of the family of X and Y.<sup>29</sup>

The case of *María Chávez v. Peru* (3 October 2000) was taken to the Court after the death of the victim, following forced sterilisation; before the surgery, she was harassed by the staff of the District Health Center of Encañada, who demanded that she undergo the operation. The State recognised its responsibility for the violations committed against Mary Mamérita regarding the rights protected in Articles 1(1), 4, 5, and 24 of the American Convention on Human Rights, and Article 7 of the Convention of Belém do Pará. The Commission issued a settlement report.<sup>30</sup>

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<sup>28</sup> UN Committee on the Elimination of Discrimination against Women, General Recommendation No 19 (1992) 'Violence against Women', UN Doc. HRI/GEN/1/Rev.1at84, para. 16. See also UN Commission on Human Rights, Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, UN Doc. E/CN.4/2001/73, 23 January 2001, para. 44.

<sup>29</sup> *Ms. X v. Argentina*, Case 10.506, Report No 38/96, Inter-American Court of Human Rights, Organization of American States Doc. OEA/Ser.L/V/II.95 Doc. 7 rev (1997).

<sup>30</sup> *María Chávez v. Peru*, Case 12.191, Report No 71/03, Inter-American Court of Human Rights, Organization of American States Doc. OEA/Ser.L/V/II.118 Doc. 70 rev. 2 (2003).

In *Ana, Beatriz y Celia Perez González v. México* (4 April 2001), the three young children, who were thought to be members of the Zapatista National Liberation Army, were subjected to an interrogation involving sexual violence. In this case, the final report of the Commission established State responsibility for violation of the right to humane treatment, personal liberty and judicial guarantees. The case was referred to the Inter-American Court.<sup>31</sup>

In *Maria da Penha Maia v. Brazil* (16 April 2001), the victim claimed that she became a paraplegic as a result of violence by her partner. Her lawyers made reference to the American Convention on Human rights, but also referred to the Convention of Belém do Pará, for the State's failure to adopt measures and policies to prevent, punish and eradicate violence against women. A settlement was reached, so the case was not submitted to the Court.<sup>32</sup>

Thus, the Inter-American Court has had little opportunity to develop specific case law on gender and violence. Two cases described below illustrate the contrasting approaches to gender adopted by the Court to date.

In *Loayza Tamayo v. Peru*, Professor Maria Elena Loayza Tamayo had been detained arbitrarily; she was tried and convicted, despite violations of due process. While in custody, she was held in incommunicado detention. She claimed that she was subjected to torture, including rape. The Inter-American Court found that there was no proof of the rape allegation, even though Professor Loayza Tamayo did not have access to justice or opportunities to denounce these acts while physical evidence was still available.<sup>33</sup>

The other case, *Miguel Castro Castro Prison v. Peru*,<sup>34</sup> involved a broader and more holistic approach to the rights of women prisoners. It is the first ruling in a case addressing gender analysis. The Court interpreted the American Convention on Human Rights in relation to a number of related instruments, including the Convention on Prevention, Punishment and Eradication of Violence against Women. The date of the judgement is symbolic because it coincided with the International Day for the Elimination of Violence against Women as designated by the United Nations in 1999 (i.e. 25 November).

The facts of the case were as follows: on 6 May 1992, the Government began a police operation to move around 133 female inmates who occupied cellblock 1A of the Miguel Castro Castro maximum security prison in Chorrillos, Peru, to another prison. An attack ensued in which the penitentiary police used excessive force. It was alleged that during the four-day attack, 42 inmates died, 175 were wounded and 322 were subjected to cruel, inhuman or degrading treatment. During the attack, the authorities used military weapons commonly employed in armed conflict.

In a ground-breaking judgment, the Inter-American Court described the facts of the case in terms

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<sup>31</sup> *Ana, Beatriz and Celia Gonzalez Perez v. Mexico*, Case 11.565, Report No 129/99, Inter-American Court of Human Rights, Organization of American States Doc. OEA/Ser.L/V/II.106 Doc. 3 rev (1999).

<sup>32</sup> *Maria da Penha v. Brazil*. See fn.29.

<sup>33</sup> *Loayza Tamayo Case*. Inter-American Court of Human Right, para. 58. See fn.8. This case has generated debate relating to application of judicial criteria and evaluation of evidence to demonstrate torture while in isolation (incommunicado detention) and illegal detention. The medical report made by María Elena Loayza demonstrated serious consequences of this torture on her physical integrity, especially as a result of rape (Psychosocial Report. Preliminary Report of 19 May 1998, issued by Dr Eliana Horvitz).

<sup>34</sup> *Miguel Castro Castro Prison v. Peru*. See fn.5.

of gender violence, finding that

When analyzing the facts and their consequences the Court will take into account that the women that were affected by the acts of violence differently than the men, that some acts of violence were directed specifically toward the women and others affected them in greater proportion than the men.<sup>35</sup>

The Inter-American Court also considered the aggravating factors concerning gender-based violence against pregnant women who, suffering attack, experienced an additional mental pain, due to their fear for their children, and some of whom were also physically injured.<sup>36</sup> Referring to the allegations, the Inter-American Court of Human Rights acknowledged that the fingerprint vaginal inspection that were also practised in the case (during and after the attack) constituted rape and torture, in contravention of Article 5(2) of the American Convention on Human Rights, and Articles 1(6) and 8 of the Inter-American Convention to Prevent and Punish Torture.<sup>37</sup>

This judgment was particularly important in that it represented the first time the inter-American Court ruled in favour of a rape victim in more than 25 years. Moreover, the judgement declared that a State is internationally responsible, within the jurisdiction of the Court, for sexual violations of women, which are considered to be as serious as rape.<sup>38</sup>

This judgement represents the Court's clear stance on the importance of protecting the personal integrity of women prisoners. It offers new possibilities for jurisprudence regarding the obligations of States to protect women against the many types of gendered violence they face, especially in institutions where women are deprived of their liberty and in situations involving armed conflict (particularly when this conflict is between ethnic groups).

In this regard, it is necessary to distinguish the particular conditions of violence against women during armed conflict in Latin-American countries. The Convention of Belém do Pará reflects a concern throughout the hemisphere about the seriousness of the problem of violence against women, its relationship with historical discrimination, and the need to adopt comprehensive strategies to prevent, punish and eradicate it.

## 5. Conclusion

Women face many particular expressions of violence within the domestic sphere, the local community and wider society, and especially in public institutions where persons are deprived of their liberty. Inter-American instruments are still in their infancy in terms of establishing jurisprudence and precedents with regard to States' responsibility to prevent, and protect women against, gender-based violence, and to prosecute perpetrators of such violence, whether these perpetrators are private individuals or agents of the State. However, these instruments provide for wide-ranging provisions to prevent gender-based violence and assist victims. Although only a few cases have been brought before the bodies established by these instruments, and thus many of these provisions have yet to be effectively enforced within the international context, they

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<sup>35</sup> *Miguel Castro Castro Prison v. Peru*, para. 223, 226, cf 224. See fn.5.

<sup>36</sup> *Miguel Castro Castro Prison v. Peru*, para. 292. See fn.5.

<sup>37</sup> *Miguel Castro Castro Prison v. Peru*, para. 262(x-z), 259, 262-266, 303-313. See fn.5.

<sup>38</sup> *Miguel Castro Castro Prison v. Peru*, para. 262(x-z), 310-312. See fn.5.

provide for exciting possibilities. The international human rights community will be looking to the findings and judgements of the Court and Commission to examine the practical implications of their wide-ranging remits, which cover domestic violence, ‘ethnic whitening’ and other crimes common in civil armed conflict. While most other instruments are restrictive in their remits, considering torture and inhuman and degrading treatment primarily in the context of deprivation of liberty, the Inter-American approach takes a more holistic view, seeking to explore the many intersecting ways in which women, as a result of their multiple positions of inequality, face complex and multiple forms of violence. As such, in the inter-American context, torture and inhuman or degrading treatment of women are viewed as part of a much larger continuum of violence against women.