



FOLLOW-UP MECHANISM
BELÉM DO PARÁ CONVENTION(MESECVI)

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GENERAL RECOMMENDATION OF THE COMMITTEE OF EXPERTS OF THE MESECVI (NO. 6): ON THE USE OF STEREOTYPES THAT COMPROMISE THE INTEGRITY OF JUSTICE SYSTEMS

I. GENERAL CONTEXT FOR GENERAL RECOMMENDATION 6

1. In 1994, the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belém do Pará) was established as a regional instrument that, for the first time, proposed the development of mechanisms for the protection and defense of women's rights in the fight to eliminate gender-based violence against women.
2. Article 1 of the Convention defines violence against women as "any action or conduct, based on their gender, that causes death, harm, or physical, sexual, or psychological suffering, both in the public and private spheres." ¹. In addition, it establishes the obligation of the States Parties to create public policies and adopt measures that contribute to the elimination of violence against women.
3. Subsequently, in 2004, the Follow-up Mechanism of the Belém do Pará Convention (MESECVI) was established as a multilateral and systematic evaluation methodology whose objective is to accompany the States Parties in the implementation of the Convention. This mechanism has two bodies: the Conference of States Parties and the MESECVI Committee of Experts (CEVI), which is the technical body responsible for analyzing and evaluating compliance with the Belém do Pará Convention.

¹OAS. *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém Do Pará)* , article 1. Available at: <https://www.oas.org/juridico/english/treaties/a-61.html>

4. The CEVI has produced thematic reports, declarations and recommendations, among others, to analyze both the various contexts of inequality and structural violence against women for reasons of gender, as well as, the progress and challenges in the implementation of the Convention of Belém do Pará, with a view to providing the States parties with tools that help on their way to achieving substantive equality and access for women, adolescents, and girls to a life free of violence.
5. One of the issues that this Committee of Experts has referred to most frequently in its various developments is that of gender stereotypes, since they impact all the areas in which women and girls develop their lives and, among others, they stand as an obstacle that seems invincible for their access to justice and to eradicate the violence and structural discrimination they face throughout every region of the world.
6. The purpose of General Recommendation No. 6 of the Committee of Experts of the Follow-up Mechanism of the Belém do Pará Convention (MESECVI) is to create an analytical framework through which the progress and challenges made by the States Parties in relation to the use of stereotypes in the administration of justice can be evaluated. This recommendation is necessary because such stereotypes have been identified as generators of inequality since they perpetuate social beliefs that are discriminatory to women, thus generating various obstacles that impede women's effective access to justice.
7. This Committee of Experts, based on the results obtained in the Third Evaluation Round, agreed at its Sixteenth Meeting on the commitment to carry out this general recommendation whose specific purpose is to make gender stereotypes visible in the field of access to justice. It is intended that this general recommendation can be used by States as a tool to create and strengthen policies for the eradication of gender stereotypes, since these are the most prevalent obstacle women must overcome to trust state institutions, access justice and a life free of violence.
8. Article 5 (section a) of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) addresses the matter of stereotypes and enjoins states to take all appropriate measures to modify "the social and cultural patterns of conduct of men and women (...) with a view to achieving the elimination of prejudices and customary

and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”².

9. For its part, the Belém do Pará Convention, in its article 6.b, establishes “the 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”³.
10. Thus, this recommendation analyzes the conceptualization of gender stereotypes in the context of violence, their daily use in the judicial systems, recognizes and explores their embedded nature in social systems and the ways in which they, inevitably, impact women's access to justice.

II. THE ROLE OF STEREOTYPES IN THE CONTEXT OF VAW

11. This first section of the recommendation provides a general study of the scope of violence against women in the LAC region and the role that gender stereotypes play in it. It outlines the various definitions of stereotypes according to international standards and notes, in general, the ways in which these perpetuate discriminatory social and cultural beliefs that generate violence.

A. SCOPE OF GENDER-BASED VAW IN LATIN AMERICA & THE CARIBBEAN

12. The determination of the scope of violence against women in the LAC Region will be guided by the definition provided in Article 1 of the Belém do Para Convention previously referenced, which states that:

*For the purposes of this Convention, violence against women shall be understood 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. (p.1.)*⁴

(a) *Sexual Violence & Adolescent Birth Rates*

²UN. *Convention on the Elimination of All Forms of Discrimination against Women* . (CEDAW), article 5. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

³ OAS. *Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belém Do Pará)* , article 6.b. Available at: <https://www.oas.org/juridico/english/treaties/a-61.html>

⁴ OAS. *Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belém Do Pará)*. Available at: <https://www.oas.org/juridico/english/treaties/a-61.html>

13. Data on sexual violence and Adolescent Birth Rates were extracted from the World Bank Gender Portal.⁵ In the dataset, women who have ever experienced any form of sexual violence is defined as the percentage of women (ages 15-49) who have ever experienced sexual violence, irrespective of marital status and perpetrator.
14. A review of data on Sexual Violence for 2020 from the World Bank Gender Portal of Member States of the Organisation of American States (OAS) who are party to the Belém do Pará Convention, reveals that data on sexual violence were only available for three of the eighteen Member States included in the data set, viz: Dominican Republic 10%; Guatemala 98.4% and Peru 4.5%.
15. Although no direct link was established between sexual violence in the 15-49 age group, it could be assumed that these incidents contribute to adolescent pregnancies, and in some cases, subsequently to teenage pregnancies, which are also presented in Table 1. The rates range from a low of 26 per 1000 life births in the Bahamas to a high of 87 per 1000 in Nicaragua.

Table 1: Data on Sexual and Intimate Partner Violence &, Adolescent Birth Rates in MESECVI Member States, 2020

COUNTRY	VARIABLE	
	Any form of Sexual and Intimate Partner Violence (15-49 y.o)	Adolescent Birth Rate (15-19 y.o) per 1000
Argentina	2020 - Sexual – n/a IPV – 27%	2020 – 40 per 1000
Bahamas	2020 - Sexual – n/a IPV – n/a	2000 – n/a 2020 – 36 of 1000
Barbados	2020 – Sexual – n/a	
Brazil	2020 - Sexual – n/a IPV 23%	2020 – 46 per 1000
Belize	2020 - Sexual n/a IPV – 24%	2000 – 57 per 1000
Dominica	2020 - Sexual – n/a IPV – n/a	2020 – 39 per 1000
Dominican Republic	2013 - Sexual – 10% IPV – 19%	2020 – 68 per 1000

⁵ World Bank Gender Portal. <https://genderdata.worldbank.org/>



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El Salvador	2020 - Sexual – n/a IPV - 31%	2020 – 68 of 1000
Guatemala	2015 - Sexual – 8.4% IPV – 21%	2020 – 67 per 1000
Guyana	2020 - Sexual -n/a IPV – 31%	2021 – 67 per 1000
Jamaica	2020 - Sexual – n/a IPV 24%	2020 – 33 per 1000
Nicaragua	2020 - Sexual -n/a IPV – 23%	2020 – 87 per 1000
Peru	2020 - Sexual – 6.5% IPV – 38%	2020 – 58 per 1000
St. Kitts & Nevis	2020 - Sexual – n/a IPV – n/a	2020 – 39 per 1000
St. Vincent & the Grenadines	2020 - Sexual – n/a IPV – n/a	2020 – 48 per 1000
Suriname	2020 - Sexual – n/a IPV – n/a	2020 – 26 per 1000
Trinidad & Tobago	2020 - Sexual – n/a IPV – 28%	2020 – 39 in 2020, same since 2010

Table 2: Intimate Partner Violence - Proportion of Women Subjected to Physical and/or Sexual Violence in Last 12 Months as % of Ever-Partnered Women 15-49, 2018

Country	Percentage	Country	Percentage
Antigua & Barbuda	N/A	Guyana	31%
Argentina	27%	Haiti	12%
Bahamas	N/A	Honduras	7%
Barbados	N/A	Jamaica	24%
Belize	24%	Mexico	24%
Bolivia	42%	Nicaragua	6%
Brazil	23%	Panama	16%
Chile	21%	Peru	38%
Colombia	12%	St. Kitts & Nevis	N/A
Costa Rica	27%	St. Lucia	N/A
Dominica	N/A	St. Vincent & Grenadines	N/A
El Salvador	21%	Suriname	28%
Grenada	28%	Trinidad & Tobago	28%
Guatemala	21%	Uruguay	18%

16. Intimate partner violence is, by far, the most prevalent form of violence against women, globally, and is defined as the percentage of ever-partnered women (ages 15-49) who have ever experienced physical or sexual violence committed by their husband or partner. Data on IPV in situations of ever-partnered women derived from the World Bank Gender Portal for 2020 are shown in Table 2.

17. Finally, and to show that this problem is not isolated, but systemic, and that it is therefore present in all spheres of women's lives, we observe how stereotypes are also present in women's private lives, whether in their families or in their relationships. All this generates an environment of violence that violates women's human rights. Common stereotypes surrounding women and their behavior that often factor into how they are treated and experience violence in the private sphere include the assumption that women are more nurturing than men and should be responsible for housework and caregiving. Women are also expected to be chaste; submit to men in the men's role as heads of households; treat with their careers as secondary to mothering and care; forego equal

pay to men in the public domain because they are less deserving and are likely to abdicate the work role in favor of the role of mother.

18. Often, the violence women experience in the private sphere is connected to their rejection or challenge of these stereotypical roles and behaviors.

B. ENACTMENT OF LEGISLATION ON VAW

19. Reviewing existing legislation to eliminate stereotypical language and/or enacting new laws with enforceable provisions to protect women and adolescent girls from violence in various settings, is essential to guarantee their right to a life free of violence. In this regard, the home and the workplace are two sites that are very essential locations for incidents of gender-based violence against women and girls. Data were therefore collected in relation to Legislation on Domestic Violence as well as that on Sexual Harassment in Employment.
20. In the case of **Domestic Violence legislation**, data for 2020 on the World Bank Gender Portal, indicated that all Member States had enacted such legislation. The extent to which the legislation is adequate and covers the protections related to the Violence against women that includes physical, sexual and psychological violence that occurs within the family or domestic unit whether or not the perpetrator shares or has shared the same residence with the woman, as is described in the Belém do Pará Convention article 2.a, as well as, whether it is free of biases that reflect stereotypical positions, can only be determined by an analysis of the articles that incorporate the legislation.
21. According to the World Bank Gender Database, in 2020, legislation on **Sexual Harassment in Employment** had been enacted in all Member States except for Antigua and Barbuda, Dominica, Guatemala, Haiti, St. Kitts, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago and Uruguay. As before, the effectiveness of such legislation can only be determined by an examination of its articles and the provisions it contains.
22. However, it is important to note that violence against women while most prominently recognized in intimate partner violence, is made manifest in various acts including, but not limited to physical, psychological sexual, economic or patrimonial, obstetric, symbolic and media.⁶ These acts of violence occur, not only in the private sphere, but

⁶ UNDP and UN Women.(2017) From Commitment to Action: Policies to End Violence Against Women in Latin America and the Caribbean. Available at

also, in the public domain as is established by article 2.b of the Convention: in the streets, transportation system, educational and recreational spaces, *inter alia*⁷.

23. “Second generation laws” that protect women’s rights from violence against them, have been more comprehensive in their approach and have widened the scope of manifestations to include those identified in paragraph 22. These laws have applied an intersectional approach and have taken into account age, sexual and ethnic diversity among women; emphasized comprehensive care and establish measures for protection in cases on non-compliance; recognized a clear state responsibility by commission or omission⁸. Among these “second generation” provisions are the following important facts:

- i. Sixteen states have criminalized femicide/feminicide.
- ii. Argentina Congress adopted a law that aims to ensure that training and sensitization in respect of gender and violence against women is provided to all officials and workers in all three branches of government (executive, legislature and judiciary).
- iii. Bolivia adopted a law in 2012 that protected women from political violence,
- iv. Venezuela, Argentina and Brazil and several states in Mexico have legislation protecting women from obstetric violence.
- v. Argentina and the (Bolivarian Republic of) Venezuela have legally classified aggravated homicide for gender reasons.⁹

24. As has been asserted previously, the effectiveness of these “second generation laws” has to be determined by an examination of the constituent articles and provisions.

III. DEFINITIONS OF STEREOTYPES

25. This Committee of Experts has defined a gender stereotype as " an opinion or a general prejudice on the attributes or characteristics that women and men have or should have on the social functions that either perform or should perform" ¹⁰, and has established that, “[a] gender stereotype is harmful when [as a consequence of] it denies a right,

:https://oig.cepal.org/sites/default/files/from_commitment_to_action_policies_to_end_vaw_in_latin_america_and_the_caribbean.pdf

⁷ Idem.

⁸ Idem.

⁹ IACHR. (2019) Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean. Available at: <https://www.oas.org/en/iachr/reports/pdfs/violencewomengirls.pdf>

¹⁰OEA/CIM/MESECVI. *Inter-American Model Law to Prevent, Punish and Eradicate Violence against Women in Political Life* , article 4. Available at: <https://www.oas.org/en/mesecvi/docs/LeyModeloViolenciaPolitica-EN.pdf>

imposes a burden, limits women's autonomy, decision-making over their lives and their life projects or their personal development and professional growth" ¹¹.

26. Stereotypes represent, at their core, a generalized, impersonal view or pre-conception of an attribute or attributes of a social group that may not necessarily apply to all members of the group based on the influence of intersecting variables such as age, location, ability/disability, etc. A classic and almost universal example is the entrenched belief that 'motherhood is a natural role and destiny for women. For purposes of defining the stereotype it does not matter that an individual woman may not wish, for whatever reason, to become a mother. As a result of this ingrained and widely accepted social norm, there is a widespread view that all women should be mothers, regardless of their distinct reproductive health capacity and their physical and emotional circumstances or individual priorities (p.11)¹².

27. This view of the world and the role of women in it, also ignores the fact men can be willing and very able to engage in caregiving roles. Stereotypes, therefore, can be defined as social-constructs associated with a particular social group – men, all women, some women - black women, white women, lesbians, elderly women, rural women etc. etc. – indicating the complexity of gender stereotypes given that they also emerge from the intersection of a number of axes of inequality and differentiation.

28. Of greater importance is the fact that:

To the extent that stereotypes ignore particular needs, wishes, abilities of and circumstances of individuals, they significantly impact their ability to create and shape their individual identities according to their own values and wishes (p. 11).

Rather than exerting agency to resist entrenched traditional cultural norms, most individuals conform to these social expectations and their passive acceptance means that the stereotype is reproduced rather than challenged, thereby significantly contributing to the prevalence of continued gender-based discrimination.

29. Gender stereotypes that affect women's rights are based on patriarchal norms and power structures and on what it means to be feminine and masculine and are, therefore, linked to discrimination against women and underpin it in the concomitant erosion and denial of their human rights. Of significance is the fact that discriminatory practices are not

¹¹Idem.

¹² Cusack S. & Cook R.J. (2009) Stereotyping Women in the Health Sector: Lessons from CEDAW. *Washington and Lee Journal of Civil Rights and Social Justice*. (16)1.

only exercised at the individual level but are particularly harmful to women because Eradication of gender they are codified in law, policy and programs, which create an invisible and non-tangible web of symbolic violence embedded in national systems, structures and policies that are also perpetuated and enforced by the State. Indeed, so important are these deeply embedded discriminatory practices to an understanding of the ways in which violence against women is embodied in regulations and stereotypes that the MESCEVI at the Third Special conference to the States Parties held virtually in 2023, presented a Regional Declaration on the Eradication of Gender Stereotypes in Public Spaces Resulting in Symbolic and Political Gender Based Violence Against Women. In this declaration the MESCEVI acknowledged the reality that symbolic violence hinders and affects the full enjoyment and exercise of women and girls' human rights in all aspects of their lives and agreed to work towards eradicating gender stereotypes that normalize their subordination and serve as a source of gender-based violence reproduction¹³.

30. Although it is true that significant efforts have been made at the regional level to fulfill the obligation to progressively eradicate gender stereotypes¹⁴, the reality is that they continue to be deeply rooted in our societies and fully integrated into our social, economic, educational, medical, family, cultural and institutional systems, policies and practices, *inter alia*, which establishes a prevalence of inequality and structural violence for reasons of gender, and the limitation of the free development of the personality of women. Consequently, women, adolescents and girls are subsumed in these stereotypes, subordinating their freedom of choice to an external and abstract power, which determines desirable or acceptable behaviors of the collective, which sacrifices the exercise of their rights and their full development in equality of conditions.
31. In sum, then, the net result of discriminatory practices against women is far reaching. It is postulated:

Stereotypes degrade women when they assign them to subservient roles in society and devalue their attributes and characteristics. Prejudices about women's inferiority and their stereotyped roles generate disrespect and devaluation of women in all sectors of society. [More than that is that] women themselves may be socially conditioned to absorb negative stereotypes about

¹³ OAS/ MESCEVI (2023) Regional Declaration on the Eradication of Gender Stereotypes in Public Spaces Resulting in Symbolic and Political Gender-Based Violence Against Women. Available at: https://belemdopara.org/cim_mescevi/regional-declaration-on-the-eradication-of-gender-stereotypes-in-public-spaces-resulting-in-symbolic-and-political-gender-based-violence-against-women/

¹⁴ See, OEA/MESCEVI. *Third Hemispheric Report on the Implementation of the Belém do Pará Convention*. Available at: <https://belemdopara.org/wp-content/uploads/2021/12/TercerInformeHemisferico-EN.pdf>.

themselves and to fulfill the subordinate, passive role they consider appropriate to their status.] (p.1)¹⁵

A. STEREOTYPES AND WOMEN’S VULNERABILITY TO VIOLENCE

32. In the Second Hemispheric Report, the CEVI indicated that “violence against women has moved from a hidden or invisible issue to a real problem that systematically violates women’s right to live free from violence, and hinders the realization of their civil, political, economic, social and cultural rights – all of which are key to their full development in conditions of equality with men¹⁶.
33. This violence is systemic and structural; it is part of all societies globally and is present in the family and in all areas of development and social strata, impacting the freedom and rights of women, adolescents, and girls, as well as the full development, in all spheres, of families, communities and countries.
34. Violence against women for reasons of gender, as established by the Inter-American Court, has, as a breeding ground, gender stereotypes, which are one of the main causes and consequences of violence against women and girls¹⁷. Thus, the CEVI considers that violent behavior is the result of the need to subdue and subordinate women by perpetuating the stereotype and that as long as it remains rooted in the social construct, situations of violence and structural discrimination for reasons of gender will prevail.
35. This situation, of course, also occurs in the institutional violence that is exercised from state institutions, which, according to what this Committee has established, is reflected implicitly and explicitly in omissive policies, and installed practices of public power, evidenced in an extreme tolerance of the state authorities, which are manifested in limited policies or in the absence of policies so that women can access a life free of violence.
36. That is why the Belém Convention establishes, in its article 8, the obligation of the States Parties to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the

¹⁵ Cook, R.J. & Cusack, S. 2010. *op. cit.*

¹⁶MESECVI. *Second Follow-up Report on the implementation of the recommendations of the Committee of Experts of MESECVI*. 2015, p. 8. Available at: <https://belemdopara.org/wp-content/uploads/2021/12/MESECVI-SegundoInformeSeguimiento-EN.pdf>

¹⁷ *cf.* _ IHR Court. *Case of González et al. v. Mexico* (Campo Algodonero), Judgment of November 16, 2009, Preliminary objection, merits, reparations, and costs, para. 401. Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf

sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women¹⁸.

37. Further, the CEDAW Committee has indicated that:

...the full implementation of the Convention requires States parties not only to take steps to eliminate direct and indirect discrimination and improve the *de facto* position of women, but also to modify and transform gender stereotypes and eliminate wrongful gender stereotyping, a root cause and consequence of discrimination against women. Gender stereotypes are perpetuated through various means and institutions, including laws and legal systems, and can be perpetuated by State actors in all branches and at all levels of government and by private actors¹⁹.

BOX 1: One in three women will experience physical or sexual violence in her lifetime. Whilst there is no single cause for such violence, some of the strongest and most consistent factors are harmful social norms that contribute to gender inequality. These norms are based on shared beliefs and expectations about how people should behave. They include male entitlement, domination and control over the bodies of women and girls, and rigid gender roles, as highlighted in an **Oxfam's research** from 12 countries across Africa, Latin America and the Caribbean and the Pacific.²⁰

38. According to Oxfam's Research²¹ there are ten social norms that drive violence against women and girls. These norms are:

- i. Women must be submissive to male family members in all aspects of their life;
- ii. Men are expected to exercise coercive control;
- iii. Men have the right to discipline women for 'incorrect' behavior;
- iv. Women cannot deny their male partner sex;
- v. Sexual harassment is normal;
- vi. Women experience violence because they are dressed provocatively;
- vii. All women should become mothers;
- viii. Girls are valued as wives not individuals;
- ix. Heterosexuality is the only sexual orientation that is valued;
- x. Divorced women and widows have less value.

¹⁸ OAS. *Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belém Do Pará)*, article 8. Available at: <https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf>.

¹⁹ UN. CEDAW Committee, Case OG vs. Russia, Opinion of November 6, 2017, para. 7.2.

²⁰ OXFAM International. The future is equal. Ten harmful beliefs that perpetuate violence against women and girls. <https://www.oxfam.org/en/ten-harmful-beliefs-perpetuate-violence-against-women-and-girls>

²¹ OXFAM International. *Op.cit.*

IV. THE IMPACT OF STEREOTYPES IN JUDICIAL SYSTEMS

39. As has been pointed out, gender stereotypes, in addition to being generators of violence, also constitute an obstacle to access to justice for women survivors of gender-based violence and their families, because when gender stereotypes are present in the institutional actions of the judicial systems, these are a vehicle for the principles of due process to be violated, such as substantive equality, efficiency, the guarantee of impartiality, due diligence, fair trial, evaluation of evidence, the application of the human rights approach and the gender perspective, non-revictimization, the right to the truth, the principle of presumption of innocence when the accused is a woman, among others.
40. This is so because, in the words of the Inter-American Court: “[...] personal prejudices and gender stereotypes affect the objectivity of state officials in charge of investigating the complaints that are presented to them, influencing their perception to determine whether or not an act of violence occurred, in their evaluation of the credibility of the witnesses and of the victim herself”²².
41. Thus, prejudice and gender stereotyping “distorts perceptions and results in decisions based on preconceived beliefs and myths, rather than relevant facts”, which, in turn, may give rise to the “denial of justice, and the revictimization of the complainants”²³.
42. Once the stereotype has been defined and the way in which it perpetuates discrimination against women through social beliefs rooted in the culture is traced, the ways in which it violates women's right to access to justice should then be analyzed. Access to justice here refers to both the administration of justice and the process of accessing justice as well as the application of the law.
43. To do so, there is then, an analysis of various cases in which States have failed to comply with their duty to investigate and punish crimes against women because the authorities acted based on discriminatory stereotypes regarding women.

A. ACCESS TO JUSTICE: CHALLENGES FACED BY WOMEN AT VARIOUS STAGES IN THE CRIMINAL JUSTICE CONTINUUM

²² I/A Court HR, Case of Gutiérrez Hernández et al. v. Guatemala, Judgment of August 24, 2017, para. 173. Available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_339_esp.pdf

²³ IHR Court. *Case of Barbosa de Souza et al. vs. Brazil*. Judgment September 7, 2021. para. 144. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_435_ing.pdf

44. Table 3 provides an overview of various ways in which women may be subjected to gender-based discrimination at all stages of the justice system. This discrimination is based on widely held entrenched, normalized stereotypical perceptions of women’s competencies and needs, held and exercised particularly by male officers and judges in the system. The net result of these discriminatory belief systems is the heightening of vulnerability and risk for female offenders throughout all stages of the criminal justice system from the point of initial contact through to post-trial outcomes.

Table 3: Challenges Faced by Women at All Stages of the Justice System

STAGES	CHALLENGES FOR WOMEN
Prevention	<ul style="list-style-type: none"> ▪ Unique experiences of women, including victimization, not considered in national crime prevention policies; ▪ Acts that implicate only or mostly women may be codified as crimes in criminal laws.
Initial Contact	<ul style="list-style-type: none"> ▪ Lack of literacy and the necessary knowledge to understand and navigate the criminal justice system; ▪ Limited financial or other resources to effectively navigate the system including meeting bail and requirements of sureties; ▪ Women with childcare responsibilities most affected by decisions to arrest; ▪ Legal aid/advice is often not available at this stage and women may not be able to afford commercial legal services; ▪ Women who are arrested or detained maybe at risk of sexual and other forms of violence from State officials.
Investigation	<ul style="list-style-type: none"> ▪ Most police officers are male and/or are not trained in gender sensitive interrogation techniques; ▪ Suspects and accused persons (especially women) are at greater risk of torture or forms of ill treatment, ranging from neglect to demands for bribes to coerced confessions and unlawful detention; ▪ Illiterate women are more susceptible to coercion and under such situations face the risk of signing papers that have serious legal implications.
Pre-Trial	<ul style="list-style-type: none"> ▪ Women in pre-trial detention are at the risk of sexual violence and other forms of abuse;



	<ul style="list-style-type: none"> ▪ Women held in pre-trial detention suffer trauma due to the likelihood of losing their jobs and family contact being interrupted; ▪ At the stage, the accused person may not have access to legal aid services or representation before trial and therefore be not well prepared for the trial; ▪ Women may require comprehensive legal aid and services to holistically address their needs in criminal, civil and family matters; ▪ Detention at this stage can be unnecessarily long subjecting women to additional socioeconomic consequences which impact their families as well.
<p>Trial</p>	<ul style="list-style-type: none"> ▪ Lack of legal representation can lead to limited chances of being considered for bail; ▪ Backlogged judicial systems can lead to slow trials and lengthy detention; ▪ Judges do not rely on social services reports sufficiently to identify mitigating circumstances for women offenders; ▪ As a result, judges are often not aware of women’s relevant history and background (eg. of violence and abuse) and do not apply alternatives to imprisonment even when appropriate.
<p>Post-Trial</p>	<ul style="list-style-type: none"> ▪ Imprisonment creates unique challenges for women (gender-specific hygiene and health care needs) with pregnant women and women with children being particularly affected; ▪ Women may be stigmatized and may suffer rejection by their families and communities; ▪ Women prisoners are at heightened risk of sexual violence and other forms of abuse; ▪ Women who have been imprisoned experience difficulties in finding housing and jobs, reuniting with family members and particularly with their children; ▪ There is an overall lack of access to post-release care and follow-up that is suited to address women’s mental health and other complex needs.

B. STEREOTYPES AND THE FAILURE OF THE STATE TO COMPLY WITH ITS OBLIGATIONS TO PROTECT WOMEN, AS WELL AS, TO INVESTIGATE AND PUNISH VIOLATIONS OF THEIR HUMAN RIGHTS

45. Having noted in general terms the way in which stereotypes violate women's right of access to justice, this section analyzes the relationship between the failure of States Parties to comply with their obligations and the existence of stereotypes. This is done through cases where authorities criminalize the victim. In addition, this section analyzes in detail the main stereotypes existing among the authorities that impede the effective exercise of access to justice.

C. GENDER-BASED VIOLENCE IN THE ADMINISTRATION OF JUSTICE

46. Once the way in which these stereotypes violate effective access to justice is observed, it can be seen how they also constitute generators of violence in the administration of justice, since they encourage the abuse of authority and the use of sexual violence as elements of subjugation. This section, like the previous ones, is based on various rulings of the Inter-American Court of Human Rights and some resolutions of the CEDAW.

47. Although judges wield considerable power in the judicial system, which allows them, if guilty of judicial stereotyping, to consolidate legal support for such stereotypes, they are not the only actors in the system capable of evidencing their culpability in perpetuating such biases. In the context of gender-based violence, while women may appear to be the obvious victims of harmful gender stereotypes, it is important to recognize that men and LGBTQ+ victims of violence can also be affected by these stereotypes.

48. Gender stereotypes produce inferences about victims of gender-based violence that are often prejudicial. These inferences often undermine the claims of injury by the victim and provide a defense for the actions of the alleged perpetrator.²⁴ Importantly, one stereotype produces multiple negative inferences, so the power of the stereotype to influence public policy, legislation, treatment by the police and judicial actions should not be underestimated or understated.

49. Traditional stereotypes about gender have been identified in the case *I.V v Bolivia*, heard in 2015 by the Inter-American Court of Human Rights, as contributing to the

²⁴ Cusack, S. (2014). Eliminating Judicial Stereotyping: Equal access to justice for women in gender-based violence cases. Available at <https://www.ohchr.org/Documents/issues/Wome/WRGS/StudyGenderStereotyping.doc>

denial of access to information for the woman²⁵. The complainant, I.V., endured sterilization without prior consent and sustained further injury resulting from the procedure. The court identified the following stereotypes as those undergirding the sterilization decision made by the doctor: (1) women are not reliable decision makers, which limits the information healthcare providers give them; (2) women are impulsive and need a stable man to manage them; and (3) women should be responsible for sexual health and should choose which form of protection to use²⁶.

50. Traditional stereotypes about gender and relationships have also been identified as undergirding judicial decisions made in the case of *Fornerón and Daughter v Argentina*, brought before the IACHR in 2012²⁷. Mr. Fornerón’s infant daughter had been handed over by her mother for pre-adoptive care to a married couple without the consent of her biological father, who had no access to the child. Despite numerous requests by Mr. Fornerón over a period of ten years, the State of Argentina had not ordered or implemented a visiting regime. The Commission considered that the passage of time was particularly relevant in the determination of the legal status of the child and her father, because the judicial authorities granted the simple adoption of the girl in favor of the couple with guardianship on December 23, 2005, based on the relationship that had developed over that time²⁸. The IACHR in its ruling indicated that assertions made by the first instance judge and other judicial officials,

correspond to preconceived ideas about the roles of a man and a woman with regard to certain reproductive processes or functions in relation to a future maternity and paternity. These notions are based on stereotypes indicating the need for eventual ties of affection or a supposed mutual desire to form a family, the presumed importance of the “formality” of the relationship, and the role of the father during pregnancy, who should provide care and attention to the pregnant woman, because if these assumptions do not exist, a lack of capacity or aptness of the father will be presumed as regards his role in relation to the child, or even that the father was not interested in providing care and well-being to the child. (para 94)²⁹.

²⁵ Loyola Law School. (2015). I.V. v Bolivia. https://iachr.ils.edu/sites/default/files/iachr/Cases/I_V_v_Bolivia/i_v_v_bolivia_sebastian_richards.pdf

²⁶ Idem

²⁷ Inter-American Court of Human Rights. Case of *Fornerón and Daughter v. Argentina*. Judgment of Aprils 27, 2012 (Merits, Reparations and Costs). Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_242_ing.pdf

²⁸ Idem

²⁹ Idem

51. The IACHR also drew attention to the assumptions made by the first instance judge in respect of what it is to be a single parent, Mr. Fornerón’s capacity and possibility of fulfilling the role of father as a single parent, effectively, being questioned and conditioned to the existence of a wife. The single status of Mr. Fornerón, was compared by one of the judges to “the absence of biological family,”³⁰ and was, consequently, used as grounds for legally depriving him of the right of performing his role as a father. This, the IACHR ruled, constituted the denial of a basic right based on stereotypes about ‘the capacity, qualities or attributes required to exercise single parenthood, without considering the specific characteristics and circumstances of a father’³¹ who desires to fulfil that role as a single parent.
52. Judges may engage in stereotyping in one of two ways. They may apply, enforce, and perpetuate stereotypes in their decision-making by substituting stereotypes for law and facts in evidence. They may also facilitate the perpetuation of stereotypes by failing to challenge stereotyping, for example by lower courts or the parties to legal proceedings.
53. Judicial stereotyping is wide-ranging in its implications. It might, *inter alia*:
- distort judges’ perceptions of what occurred in a particular situation of violence or of the issues and myths to be determined at trial
 - affect judges’ perspective about who is a victim of gender-based violence
 - influence judges’ perceptions of the culpability of persons accused of gender-based violence
 - lead judges to permit irrelevant or highly prejudicial evidence to be admitted to court and/or affect the weight judges attach to certain evidence
 - influence the directions that judges give to juries
 - cause judges to mis-interpret or mis-apply laws
 - shape the ultimate legal result.³²
54. In *Karen Tayag Vertido v. The Philippines*³³, the majority of the CEDAW Committee concluded that the trial judge had drawn conclusions based on judicial stereotyping, and, in so doing, drew inferences about the credibility of the rape victim and the perpetrator. The victim had not responded in a way that the judge thought an ideal credible witness should respond. The victim’s response was evaluated as contradictory: resistance at some point and submission at another, as she failed to escape the attack,

³⁰ *Idem*, para 95

³¹ *Ibid*, para 95

³² Cusack, S. (2014). Eliminating Judicial Stereotyping: Equal access to justice for women in gender-based violence cases. Available at <https://www.ohchr.org/Documents/issues/Women/WRGS/StudyGenderStereotyping.doc>

³³ *Karen Tayag Vertido v. The Philippines*, CEDAW/C/46/D/18/2008 Communication No 018/2008, July 16, 2010. Available at <https://juris.ohchr.org/casedetails/1700/en-US>

though having many opportunities to do so. The absence of injury on both the victim and perpetrator, and “the nature, amount or severity, and the perceived effects of the force, threat or intimidation applied to the complainant³⁴” were also features of the evidence that concerned the judge. The majority of the CEDAW Committee also concluded that the judge had made several references to stereotypes of male and female sexuality in the trial decision, using these to determine that the perpetrator was more credible than the victim.

55. Judges’ resort to stereotypes as the lens through which to view facts and arguments in a case, can lead to compromised impartiality of the courts and the process, particularly when stereotypes and myths replace relevant law and facts³⁵.

56. In the case of *López Soto et al v. Venezuela*³⁶, heard before the I/A Court of Human Rights, the judges drew attention to the use of stereotypes to minimize the seriousness of the situation of Linda López. Officials of the state referred to the victim as the partner of the perpetrator and, hence, did not discharge the due diligence in the investigation that was required of the state. The state also did not provide the victim, her family and lawyer with measures of protection, based on the threats they had received. The failure to provide protective measures seems related to the attempt to minimize the seriousness of the allegation.

57. All of these outcomes, effectively, prompted by the acts of commission and omission of the state and its actors, constitute psychological violence against women and other actors based on the application of gender stereotypes.

V. CONSEQUENCES OF THE USE OF STEREOTYPES BY JUDICIAL SYSTEMS

58. This section focuses on analyzing all the negative consequences derived from the use of stereotypes and, therefore, warns of the seriousness of perpetuating gender ideas in a community. Among the consequences observed are the high rates of impunity for crimes committed against women, as well as, the various psychological and social effects suffered by the victims.

A. REVICTIMIZATION

³⁴ *Idem*

³⁵ See *M.Z. v. Bolivia*, Case 12.350, Report No. 73/01 (admissibility), 10 October 2001 (Inter-American Commission on Human Rights).

³⁶ I/A Court HR., Case of *López Soto et al. V. Venezuela*. Merits, Reparations and Costs. Judgment of September 26, 2018. Series C No.362. Available at: <https://jurisprudencia.corteidh.or.cr/vid/corte-idh-caso-lopez-883978068>

59. Within the same framework of the consequences of stereotypes, the phenomenon of revictimization is analyzed, understood as the ways in which the authority violates the direct or indirect victims by perpetuating the violation of their rights.
60. Throughout the section, there is an exploration of the various ways in which revictimization is generated and how it arises from the stereotypes and prejudices that third parties, authorities and institutions have towards the victim, and can cause psychological and emotional damage that can lead to even more serious consequences, such as post-traumatic stress, depression, isolation, addictions and even suicide.
61. CEDAW, in its General Recommendation number 33, stated that:
- Stereotyping and gender bias [...] impede women's access to justice in all areas of law, and may have a particularly negative impact on women victims and survivors of violence [...]. judges adopt rigid standards about what they consider to be appropriate behavior for women and penalize those who do not conform to those stereotypes. [...] they also affect the credibility given to women's voices, arguments and testimony as parties and witnesses [...] they can cause judges to misinterpret laws or apply them defectively. This has far-reaching consequences, for example, in criminal law, as it results in perpetrators not being held legally accountable for violations of women's rights, thereby upholding a culture of impunity [...] stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimization of complainants³⁷.
62. This re-victimization or secondary victimization occurs when a woman who has already experienced gender-based violence is victimized again, but in this case due to a series of actions or omissions by third parties that generate a feeling of repetition of violence, experienced previously or exacerbate it since the victim, *inter alia*, is judged, held accountable, blamed, minimized or singled out for the situation of violence or crime that they have experienced before.
63. When this re-victimization occurs within the justice administration and prosecution systems, it is usually generated by gender stereotypes and prejudices that justice operators have towards the survivor or the victims' relatives.
64. In this sense, justice operators go from being defenders of the human rights of victims to being secondary perpetrators, and cause the denial of justice and the weakening of democratic institutions and the rule of law, accompanied by psychological and

³⁷UN/CEDAW. General Recommendation number 33 on Women's Access to Justice, para. 26. Available at: <https://digitallibrary.un.org/record/807253?ln=en>

emotional outcomes that can lead to even more serious consequences, such as post-traumatic stress, depression, isolation, loss of life project, addictions and even suicide of the victims.

65. This re-victimization is commonplace in cases of gender-based violence against women and occurs at all stages of the proceedings, even from the moment the surviving woman or the victim's relatives try to present the complaint and face indifference or blaming of the victim or their families by the authorities by focusing on gender stereotypes, stereotypes that follow them during the ordeal that their process before the justice institutions becomes.
66. Likewise, women suffer disproportionate impacts due to the use of gender stereotypes when:
 - they are judged for their statements about the acts of violence they experienced; or
 - they are dismissed due to differences in the statements as a result of the post-traumatic stress they are going through and the multiplicity of occasions in which their declaration is requested;
 - they are subjected to unnecessary tests or expert opinions, without a gender perspective and in often degrading conditions;
 - the state personnel who act in the different parts of the procedure do not show sensitivity or are not trained or do not have the adequate tools to provide the process with dignity and a gender perspective, or when they show openly discriminatory attitudes;
 - the process focuses on the stigmatization and/or blaming of the victims and/or their families;
 - figures are used to minimize the responsibility of the aggressor, such as crimes of passion or the principle of seduction, or the emotional instability of the victim is appealed to;
 - the case is isolated from a systematic pattern of violence and discrimination against women for reasons of gender; or
 - the reasoning of the authorities focuses on gender stereotypes and prejudices.
67. In this sense, the CEVI considers that when the justice administration and procurement system turns its back on the victims, and shows them that it offers them neither reparation nor justice and, on the contrary, antagonizes them, the feeling of defenselessness and vulnerability, in addition to generating devastating consequences for them, sends a very clear message of impunity and permissibility of the State in the face of gender-based violence towards teenage women and girls.
68. In relation to this permissibility and the high degrees of impunity in cases of gender-based violence against women, the IACHR has established that:

In several countries, there is a pattern of systematic impunity in the judicial process and in the proceedings regarding cases of violence against women due to the fact that the vast majority of these cases lack effective investigation, punishment and reparation.

The impunity that attends these human rights violations perpetuates a social acceptance of gender-based violence, which in turn feeds women's sense of insecurity and their abiding mistrust of the administration of justice system. Given these deficiencies, the number of [...] convictions in no way measures up to the severity of the problem [...] ³⁸.

69. This has led to a huge lack of confidence among women in state institutions. Indeed, according to the UN, despite the fact that around a third of women worldwide have experienced physical and/or sexual violence by an intimate partner or by another person, less than 40% of the women who suffered from it sought help of any kind. Those women who did, for the most part, went to family and friends instead of going to health services or reporting directly to the authorities. In addition, in almost all the countries where records are available, the number of women who sought police help did not exceed 10% of the total ³⁹.
70. The CEVI warns that the reluctance to go to the police authorities and report situations of violence is due, in large part, to the normalization of violence against women, and the way in which this normalization and the use of gender stereotypes impact on the discriminatory and aggressive experiences that women survivors or their families face when they decide to initiate a legal process in the face of the violence experienced.
71. In this regard, the CEVI notes that, with all these barriers caused by stereotyping in the judicial processes of cases of violence against women, it is easy to understand their distrust of the authorities and their reluctance to file a criminal complaint when they have suffered gender-based violence. This, at the same time, reflects the seriousness of the existence of gender stereotypes that normalize violence and make women invisible, contributing to impunity which, in addition, is an act that violates the rule of law and weakens the credibility of institutions.

³⁸OAS/IACHR . *Access to Justice for Women Victims of Violence in the Americas*, para. 124. Available at: <http://www.cidh.org/women/access07/chap2.htm>.

³⁹ UN, *The World's Women 2015, Trends and Statistics*. Available at: <https://unstats.un.org/unsd/gender/downloads.html>.

72. This impunity, along with many other violations of women's access to justice, is reflected in all stages of the judicial process, since justice operators base their actions and criteria on their stereotypical preconception of women and how they should act according to the patriarchal norms that govern our societies. This exerts such a serious influence that it leads to an absolute denial of due process and a revictimization of women whose human rights are violated by institutional violence against them for gender reasons. This occurs in all procedural matters in direct, indirect and even subtle ways, leaving women completely defenseless.
73. In this sense, the pattern of impunity that permeates gender violence in general and sexual violence in particular has devastating consequences for the victims that include, as we have already mentioned, depression, loss of self-esteem, isolation, general health problems and can even to cause the death of the victim, either by the aggressor (femicide) or by suicide ⁴⁰, in a world that continues to ignore and devalue the violence that women experience, accusing them, in many cases, of being responsible for the aggression suffered.
74. In this way, when justice operators start response from gender stereotypes and, therefore, form their prejudices in the face of cases of gender-based violence, they generate State responsibility, because this translates into a lack of action. and/or in a series of omissions that deny or limit women's access to justice.
75. Thus, the process is distorted through a skewed perception of the world that discriminates, violates, and revictimizes the women involved in the process, leaving the gender perspective in a secondary place, prioritizing gender stereotypes as the main element to be valued, promoting an impunity that is replicated and multiplied, and that directly affects all women in their right to access a life free of violence.
76. Thus, in an *environment of stereotyping of gender violence*, going to the judicial authorities to file a complaint does not guarantee a prompt, pertinent and impartial investigation. Rather, it turns out to be a cumbersome, long, re-victimizing and aggressive transit, if it is not simply ignored, which also puts the victims in danger from the aggressor, who can exacerbate the violence when feeling threatened, and even lead to femicide.

⁴⁰It is important to mention that the Committee of Experts included in the Model Law to Prevent, Punish and Eradicate the Violent Death of Women and Girls the "femicide suicide" as the act carried out by any man who induces or forces a woman to commit suicide or lends her help to do it. OAS/MESECVI. Inter-American Model Law to Prevent, Punish and Eradicate the Violent Death of Women and Girls (Femicide/Femicide). Available at: <https://www.oas.org/en/mesecevi/docs/LeyModeloFemicidio-EN.pdf>



77. In this sense, the CEVI once again reiterates that it is not surprising that the victims remain silent in the face of the violence they experience, since all their experience and the references they may have of cases of gender violence or publications in the media create the perception that denouncing will only serve to revictimize them, without there being any hope of obtaining justice and reparation.

B. DISTRUST IN THE AUTHORITIES AND THE JUSTICE SYSTEM

78. Another consequence of the use of stereotypes in the justice systems is the victims' distrust of the authorities. Thus, this section analyzes how women stop approaching the institutions responsible for protecting them because, far from protecting their rights, these institutions violate them, generating a situation of distrust that fosters impunity.

79. It is important that states ensure that women's complaints and cases are treated with seriousness and promptly. The state must manifestly demonstrate respect for the complainants' integrity and dignity. Women should receive professional and effective service from the state. State agents should be careful that they do not mis-apply the law in such a way as to reinforce gender hierarchies.

80. Importantly, every effort must be made to ensure the justice system works in a way that builds confidence in women that it will offer them a fair chance and their grievance will receive the requisite attention. Employing a trauma-based approach in the service delivery will take into account the impact that violence has on the mindset of victims. Such an approach must avoid the application of stereotypes in the response to these victims.

C. THE IMPUNITY OF THE AGGRESSORS AND THE LACK OF PUNISHMENT FOR OFFICIALS IN CHARGE OF PROCURING AND IMPARTING JUSTICE IN CASES OF VIOLENCE AGAINST WOMEN

81. In correlation with the previous sections, this one analyzes the lack of sanctions for the commission of crimes against women, which can be understood as a kind of tolerance towards crimes of violence. In addition, it is noted that many of the officials who commit revictimization or acts of abuse of authority against the victim also go unpunished, leaving the woman in a state of total defenselessness.

82. This requires states to avoid passivity in the investigation, prosecution of perpetrators of gender-based violence, there will be a perception on the part of victims that the justice system has failed them. Women will not feel vindicated, and they will not feel secure if their attacker is allowed to roam freely.

D. SYMBOLIC VIOLENCE AS AN ENABLING FRAMEWORK THAT AT THE LEVEL OF OUR SOCIAL STRUCTURES REINFORCES BARRIERS THAT STAND IN THE WAY OF WOMEN’S ACCESS TO JUSTICE

83. While the Belém do Pará convention does not explicitly address Symbolic Violence, it would be difficult to adequately provide a framework for analyzing States Parties’ responses to the ways in which gender stereotypes impact women’s access to justice if the routine violence arising from unequal power, discriminatory practices, policies and structures within which these stereotypes are located, is not identified and examined. Occurrences of gender-based violence against women are not isolated incidents, but are facilitated by an imperceptible and intangible web of symbolic violence that reflects dominant, patriarchal gender ideologies and stereotypes embedded in national systems, structures and policies and which become codified in the culture.
84. Symbolic violence⁴¹, therefore, is a system of social organization that benefits the dominant group over that of the subordinate group, and, specifically refers to the advantage that persons and groups exert against others because of their higher status in the social order of society; and those deemed inferior accept its manifestations as though they are ‘natural’ societal norms. These differences often result in members of the dominant group displaying various forms of violence and harmful practices – physical, sexual, psychological and economic - over those of the subordinate group, predominately women.
85. The Theory of Vulnerability⁴² also provides a useful framework for delivering social justice in such a way as to confront the web of symbolic violence and overcome the

⁴¹ According to the Regional Declaration on the Eradication of Gender Stereotypes in Public Spaces Resulting in Symbolic and Political Gender-based Violence against Women of the CEP of the MESECVI (September 2023), symbolic violence is:

“24. That symbolic violence is the set of messages, values, symbols, icons, signs, and family, educational, ideological, social, economic, political, cultural, aesthetic, and religious impositions that generate, transmit, reproduce and institutionalize, directly or indirectly, inequality, domination and structural discrimination towards women in all their diversity, naturalizing the subordination of them. The prior, makes it difficult to perceive this type of violence despite its impact and its materialization through gender stereotypes that reinforce unequal power relations; 25. That symbolic violence and gender stereotypes relate women to the sphere of domesticity and care and, thus, perpetuate the unequal distribution of care and the sexual division of labor; 26. That symbolic violence affects women's freedom of expression and their autonomy and excludes them from public debate, weakening deliberative democracy and the rule of law(...)”.

⁴² Martha Fineman is the theorist associated with Vulnerability Theory.

strictures of formal equality⁴³ and provide, instead, substantive equality.⁴⁴ Vulnerability Theory challenges the dominant conception of a universal subject that is an autonomous, independent and fully- functioning adult living a life that is circumscribed by individual responsibility as opposed to societal responsibility⁴⁵. It allows for the understanding of the ‘socially and materially dynamic vulnerable legal subject’ that is based on an account of how actual people’s lives are ‘shaped by an inherent and constant state of vulnerability across the life-course’⁴⁶. It is not only the case that vulnerability is an aspect of the human condition that shapes the lives of people across all life cycles; it also shapes the ways in which societal institutions that are created by people and upon which people rely, are themselves vulnerable, and can be corrupted and, hence, effectively do violence to citizens.

86. Further, article 9 of the Belém do Pará convention urges the States Parties to take special account of the vulnerability of certain groups of women on the basis of their status by virtue of their race, ethnic background, refugee or migrant status, or status as displaced persons.

87. This understanding of vulnerability makes a strong case for enlarging the role of states in respect of protecting citizens from discrimination, to employ the same institutions to ‘mediate and mitigate’ vulnerability. Since it is a given that the circumstances of human life make us all susceptible to both bodily change, and also to change in our social arrangements, then there ought to be both political and legal implications⁴⁷. In situating vulnerability as universal, shared and constant, states are afforded the opportunity to overcome the challenges of delivering social justice to a subject that has ‘fragmented multiple identities’ by focusing efforts to promote human agency and resilience in the context of the ubiquitous experience of vulnerability.

88. Even as vulnerability theory urges states in the direction of delivery of social justice through a post-identity approach that focuses on institutions as opposed to populations, there are situations where targeting populations will be the most effective and efficient way to deliver justice. This means that as states confront the task of eliminating

⁴³ Formal equality is the typical outcome of justice that emerges from the notion that government’s responsibilities and obligations in respect of distributing resources is limited to protecting citizens from discrimination and ensuring their equal treatment before the law (Kohn 2014).

⁴⁴ Substantive equality is targeted and seeks to address or remedy discrepancies in wealth and other critical resources. (Kohn, *op cit*).

⁴⁵ Fineman, M.A. (2021, February 01).What Vulnerability Theory Is and Is Not. Emory University. <https://scholarblogs.emory.edu/vulnerability/2021/02/01/is-and-is-not/>

⁴⁶ Ibid.

⁴⁷ Ibid.

stereotypes that compromise the integrity of justice systems, there has to be a measured and cautious approach taken to moving beyond identity -based policy.

89. What, therefore, is self-evident is that efforts to prevent and eliminate gender-based violence against women and girls and improve their access to justice, must not only take into account stereotypical beliefs and practices that deepen discrimination, but also, ways in which these beliefs and practices become codified and embedded in national policies, systems and structures around which all societies are organized creating an intangible web of symbolic violence. This symbolic web needs to be identified, disrupted, and replaced by more equitable policies systems and structures that promote greater equality between and among all groups of women and girls as well as eliminate barriers to access to justice for individuals affected by violence.

VII. CONCLUSIONS AND RECOMMENDATIONS

90. Stereotypes are central to the production and maintenance of gender inequality and gender-based violence. Their presence in every aspect of the lives of women and men means that the negative inferences about the behaviors of groups of people are equally ubiquitous and problematic. In the context of victims of gender-based violence accessing justice through all the various stages of the justice system – prevention policies and strategies, initial contact with the system, investigative process, pre-trial, trial and post-trial – there are pitfalls to be encountered, created by various actors using the lens of gender stereotypes to draw meaning and conclusions, press or charges or decline to press charges, apply the law and determine remedies and punishment.
91. States Parties to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) have a range of duties and obligations that they must discharge even as they work to develop prevention strategies, eradicate gender- based violence and provide remedies and punishment for survivors and perpetrators.
92. In discharging this range of duties and obligation, States Parties are also meeting their fundamental affirmative duty to respond to human vulnerability, and achieving this through ensuring equal access to societal institutions such as the justice system.
93. The UN Secretary General’s (2006) in-depth study on violence against women, highlighted the fact both necessity and insufficiency of a purely legal approach to address the problem. The (2006) study found that whilst the legal code provides an important framework for addressing the problem in respect of establishing the crime, deterring wrongdoers and providing access to justice and a means of accessing remedies

and reparation by victims, these outputs need to be part of a broader public effort, which embraces public policies, education and other services proffered in the administration of justice.⁴⁸

94. It is important that as women bring cases of gender-based violence to national legal systems and international human rights adjudicatory mechanisms, the details of their experiences and the ways that States have failed them may provide guidance and direction on the ways in which State laws and practices need to be modified⁴⁹.
95. Against this background of pervasive and dangerous gender stereotypes undermining women's access to justice as victims of gender-based violence, the CEVI urges states to develop robust public policies and implement strategies that challenge the practice of stereotyping and ensure justice for women. Once the problem of stereotypes in the administration of justice has been identified from different angles, the obligations of the States Parties and, therefore, all the actions that must be taken to ensure effective compliance with international standards can be identified.
96. The following section provides guidance on the applicable rights of women affected by gender-based violence to access all stages of the justice system, and the duty of States to implement provisions, consistent with the Convention to ensure compliance with such measures. In this regard, general recommendations for implementation are suggested.

1. Rights Protected

A. Right to live a life free from violence in the public and private sphere (art.3)

97. The State has a duty to implement prevention measures, as well as, provide protections and remedies for women who are victims of gender-based violence in the public and private spheres.

98. Recommendation

- a) Establish protocols that identify and treat with stereotypes as an integral factor in the

⁴⁸ International Commission of Jurists (2016) Women's Access to Justice for Gender-based Violence: A Practitioners' Guide No.12, p5. Available at <https://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-accesss-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf>

⁴⁹ International Commission of Jurists (2016) Women's Access to Justice for Gender-based Violence: A Practitioners' Guide No.12, p7. Available at <https://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-accesss-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf>

discrimination that fuels gender-based violence. This will allow for the discrimination in gender-stereotypes and the associated negative inferences to be made visible and provide a rationale for their elimination.

B. Modification of Social and Cultural Patterns of Conduct (art 8)

99. In accordance with article 8, states must work to promote awareness and observance of the right of women to be free from violence, and the right of women to have their human rights respected and protected, particularly in respect of modifying social and cultural patterns of conduct of men and women with a view to counteracting prejudices, customs and all other practices including gender stereotyping that are based on the notion of inferiority or superiority of any of the sexes or on their roles. Adjustments to attitudes in respect of appropriate roles, entitlements and responsibilities of men and women as article 8 requires, will only be effected through a comprehensive, mainstreamed program of education and training that is designed to transform awareness and change behaviors. Such a program should benefit from a gender-perspective and apply an intersectional approach to its content development. States should also invest in research to collect empirical data relating the causes, frequency and consequences of gender-based violence so as to inform interventions.

100. ***Recommendation***

- a) Conduct programmes of public awareness that draw attention to gender-stereotypes as drivers of gender-based violence and gender inequality in the society at large, and particularly in women's access to justice as victims.
- b) Design and conduct workshops on legal advocacy for the defense of victims of gender-based violence for prosecutors, lawyers and other victim advocates so as to build awareness of gender-based violence as a type of discrimination and gender stereotypes as a factor that enables the discrimination. These workshops should highlight laws and policies that prohibit and sanction judicial stereotyping and draw attention to the rules of evidence and procedures that limit it.
- c) Design and conduct training workshops for judges, judicial staff, police, administrative staff who interface with victims of gender-based violence to bring attention to laws and policies that prohibit and sanction judicial stereotyping and the rules of evidence that limit it. This will build judicial capacity to challenge the use of stereotypes.

- d) Design and conduct training workshops for media workers on gender stereotyping in general, and the consequences of gender stereotyping in the judicial system in particular so as to encourage gender-sensitivity and awareness in the public discourse.
- e) Invest in research that collects statistical data, as well as, investigates causes, frequency and consequences of stereotyping in the administration of justice for victims of gender-based violence. The findings should be integrated into intervention strategies.
- f) Conduct research into the rate of case completion in respect of gender-based violence to probe any factors that could be contributing to impunity for perpetrators and distrust of the judicial system on the part of victims.
- g) Apply principles of Strategic Gender-based Violence Litigation so that accountability can be informed by victims'/survivors' perspective. Strategic Gender-based Violence litigation is a strategic tool that can be utilized to address structural obstacles that survivors face to access justice and protection. These obstacles include failure to recognize Gender Based Violence as a human right violation and failure to recognize those who have been subject to it as victims; prevalence of stigma combined with persistent gender stereotypes which impacts survivors' ability to disclose and share with others; the harm experienced; lack of trust in institutions which further deters victims from lodging formal complaints⁵⁰. It supports the victim-centered approach that is recommended for gender-based violence interventions.
- h) Search out international best practices on eliminating stereotypes from the administration of justice to victims of gender-based violence.
- i) Submit report as is required to treaty bodies so as to contribute to knowledge sharing and capacity building and also to benefit from the technical expertise that is available.

⁵⁰ Office of the United Nations High Commissioner for Human Rights (2019). *Strategic litigation for Sexual and Gender-based Violence: Lessons learnt. Workshop Report*. Available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/OHCHR-StrategicLitigationforSV-workshopreport-web.pdf>

C. Access to the Justice System: ‘Right to live lives free from discrimination and stereotypes’ (art. 6)

To guarantee the right of women who are victims of GBV and gender stereotyping, the state must actively engage in removing obstacles that impede their access to the justice system and unbiased treatment at each stage of the system. The state is, therefore, obliged to ensure that the obstacles in the path of women who need to access the justice system are eliminated at all stages of the process.

101. ***Recommendation***

- a) Conduct a review of laws, policies and administrative practices to identify and remove embedded gender stereotypes that will result in discrimination against women who are victims of gender- based violence.
- b) States should recognize and respond to women’s intersectional identities so as to eliminate any discrimination they may face in the justice system, as well as, recognizing the special vulnerabilities they face because of these identities with a view to adopting special measures to treat with these.

D. Obstacles based on stereotypes at all stages of the justice system- Right to equal protection before the law and of the law (art 4.f)

States must actively commit to ensuring that women who confront the justice system as victims of gender- based violence do not experience discriminatory treatment based on gender inequality.

102. ***Recommendation***

- a) Evaluate the pathways to accessing justice in respect of gender- based violence to eliminate gender inequality.

Right to simple and prompt recourse to a competent court for protection against acts th.at violate her rights (art 4.g)

Justice delayed is justice denied. States Parties must guarantee women who are victims of gender-based violence a pathway to accessing justice that is visible and moves swiftly so that there is no opportunity for victims to feel that their complaints are not considered to be important.

103. ***Recommendation***

- a) Conduct public awareness programs so that the steps and pathways for women to access justice as victims of gender-based violence are widely publicized.
- b) Review the steps and pathways to accessing justice so that procedures that contribute to any unnecessary extension or delay of the process can be removed. Where there is need for more resources, human and other, to make the process more efficient, these should be provided.

Right to live lives free from discrimination and stereotypes (art. 6)

To guarantee this right the state must actively engage in removing obstacles that result in discrimination against women who are victims of gender-based violence and gender-stereotyping.

E. Duties of States

Articles 7 and 8 both outline the specific duties that states must diligently undertake to be in compliance with the articles that articulate the rights that are to be protected by the convention. This requires, according to article 7, the states to actively refrain from, and ensure that their officials, agents and other personnel also refrain from engaging in any act or practice of violence against women. The states must be actively engaged and occupied in developing and undertaking prevention measures, must investigate and impose penalties for violations and ensure that victims have access to restitution and reparation. The review and adjustments to states' domestic legislation, penal, civil and administrative codes to bolster their capacity to discharge these obligations to the Convention must also be undertaken with urgency. In the final analysis, State Parties are responsible for breaches of the Convention made by judges.

104. ***Recommendation***

- a) It is proposed that states implement protocols for action, investigation, and administration of justice with a gender perspective that allows the principles of equality and impartiality to be addressed.