

**APPLICATION BEFORE THE INTER-AMERICAN COURT
OF HUMAN RIGHTS**

*Campo Algodonero: Claudia Ivette González,
Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez*

AGAINST THE UNITED MEXICAN STATES

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I. INTRODUCTION

1. The International Reproductive and Sexual Health Law Programme at the University of Toronto, Faculty of Law (“the IRSHL Programme”) and the Center for Justice and International Law (“CEJIL”) respectfully submit an amicus brief in the matter of *Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez* (Cases Nos. 12.496, 12.497 and 12.498) against the United Mexican States.
2. Since 1993, the number of women abducted, raped and murdered in Ciudad Juárez, Mexico, has skyrocketed. Although estimates vary, it has been reported that 379 women were murdered from 1993 to 2005.¹ Victims have mostly been young women, between 15 to 25 years of age, who belong to socially disadvantaged groups (e.g. victims have often been poor and/or migrants). Typically, victims are employed in *maquiladoras* or local businesses, and/or attend school.² Many victims have been abducted, sexually abused, tortured, mutilated, and murdered: their bodies have been found days even months later, abandoned in the city’s outskirts.³ Numerous theories have been advanced to explain the violence.⁴ Notwithstanding, there is a consensus that the crimes embody gender-based violence;⁵ women were, and continue to be, targeted because they are women.⁶ Yet, “it is not just ‘being a woman’ that is a danger,” it is also “the unstated, attached constructions and assumptions about women’s value, worth, and respectability that makes ‘being a woman’ dangerous in Juárez.”⁷ That is to say, gender stereotyping has played a role in the violent and discriminatory treatment of women. Although Mexico has taken steps to address the violence, its response has been seriously deficient. For example, authorities have: failed to respond to the violence in a timely and effective manner; refused to recognize the gendered nature of these crimes;⁸ and, conducted inadequate and, in some cases, negligent investigations.⁹ This has ensured that the violence remains largely unpunished, which, in turn, has fostered a climate of impunity that has enabled the gruesome acts of violence to continue.
3. The present case raises important issues concerning discriminatory forms of gender stereotyping, and the ways in which such stereotyping can facilitate gender-based violence. The ruling of the Inter-American Court of Human Rights (“the Court”) will have significant ramifications for women’s rights to equality and non-discrimination, and their right to be free from violence, not only in the Inter-American system, but also worldwide. The ramifications will be especially significant in countries where stereotyping and violence are socially persistent and pervasive. This brief will provide the Court with information on how the right to equality, the right to non-discrimination and right to be free from violence, have been applied in international and comparative jurisprudence to address discriminatory forms of gender stereotyping, which, it is respectfully submitted, should inform the Court’s ruling. As the Court itself has done, this brief shall draw on international and comparative law, including the *Convention on the Elimination of All Forms of Discrimination against Women*¹⁰ (“CEDAW”), in order to interpret and give content and meaning to the rights contained in the *American Convention on Human Rights*¹¹ (“American Convention”) and the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*¹² (“Convention of Belém do Pará”).

II. INTERESTS OF OUR ORGANIZATIONS

4. The IRSHL Programme is an academic programme dedicated to improving women’s rights generally, and reproductive and sexual health specifically. It has legal expertise in equality and non-discrimination rights, and has collaborated with government and international agencies, non-government organizations, and academic institutions to develop policies and scholarship on this subject. It most recently filed *amicus* briefs in constitutional challenges in Colombia, Nicaragua and Mexico, and in cases pending against Poland and Ireland in the European Court of Human Rights.
5. CEJIL is a non-governmental organization, founded in 1991. CEJIL’s principal objective is to achieve the full implementation of international human rights norms in the Member States of the Organization of American States, through the use of the Inter-American System of Human Rights Protection and other international protection mechanisms. A central component of its work is the defense of human

rights before the Inter-American Commission on Human Rights ("the Commission") and the Court. Women's rights are a priority of CEJIL's agenda.

III. GENDER STEREOTYPING, BY STATES PARTIES, VIOLATES WOMEN'S RIGHTS TO EQUALITY AND NON-DISCRIMINATION

A. Gender stereotyping is a form of discrimination

6. It is an established principle of human rights law that states are obligated to eliminate discrimination against women and to ensure substantive equality. Article 24 of the American Convention codifies the right to equal protection of and before the law, while article 1 requires States Parties "to respect the rights and freedoms" recognized in the American Convention and to ensure "the free and full exercise of those rights and freedoms, without any discrimination for reason[] of ... sex" Article 2 further obligates States Parties to adopt legislative and other measures to give domestic effect to those rights and freedoms. In addition, this Court has noted: "The principle of the equal and effective protection of the law and of non-discrimination constitutes an outstanding element of the human rights protection system embodied in many international instruments and developed by international legal doctrine and case law. At the current stage of the evolution of international law, the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens*. The juridical framework of national and international public order rests on it and it permeates the whole juridical system."¹³
7. In 1979, the UN General Assembly adopted CEDAW to address ongoing discrimination against women,¹⁴ and to entrench and expand the rights afforded to women in other human rights instruments.¹⁵ CEDAW obligates States Parties to "eliminate *all forms* of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms."¹⁶ Women's rights to equality and non-discrimination have since been affirmed in a wide range of human rights instruments, including the Convention of Belém do Pará.¹⁷
8. Notwithstanding these protections, women continue to experience discrimination and inequality because they are women. One of the root causes of this ongoing discrimination and inequality is the application of gender stereotypes.¹⁸ Gender stereotypes are social and cultural constructions of men and women, due to their different physical, biological, sexual and social functions. "Gender stereotype" is an overarching term that refers to a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, men and women respectively. It is a term that encompasses sex,¹⁹ sexual,²⁰ sex-role,²¹ compounded²² and other forms of gender stereotypes. Since gender stereotypes often interact with other stereotypes to produce compounded stereotypes, it is important to take special account of how a particular subgroup of women has been stereotyped.²³ The term "gender stereotyping" is the process of ascribing to individual men and women specific attributes, characteristics or roles by reason only of their membership in the group of men or women.²⁴
9. Gender stereotypes affect both men and women. However, they often have a particularly egregious effect on women, discriminating against them by impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms, on a basis of equality.²⁵ As one commentator has explained a "useful way of examining the continued disadvantage of women is to identify the assumptions and stereotypes which have been central to the perpetuation and legitimation of women's legal and social subordination. Such assumptions have roots which stretch deep into the history of ideas, yet continue to influence the legal and social structure of modern society."²⁶
10. Gender stereotypes are not necessarily discriminatory. Sometimes, for example, they are formed as descriptive generalizations to help process the social complexity of the world. However, stereotypes may become discriminatory when they operate to ignore individuals' needs, wishes, abilities and circumstances in ways that deny them their rights and freedoms. They may also become discriminatory when they create gender hierarchies by categorizing women, or subgroups of women,

into a subordinate status. Indeed, stereotypes are at the foundation of unequal gender relations in the Inter-American region.

11. Discrimination may occur when a **distinction, exclusion or restriction is made on the basis of a gender stereotype** which has the **purpose** of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of their human rights and fundamental freedoms. Discrimination against women may also occur when a law, policy or practice is facially neutral, but has the **effect** of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of their human rights and fundamental freedoms **because it perpetuates a gender stereotype**. Not all differences in treatment based on a stereotype will constitute a form of discrimination. This is because not every difference in treatment will be characterized in law as a form of discrimination. Gender stereotyping might, for example, be justified where a state pursued a legitimate purpose and the means it chose to attain that purpose were reasonable and proportionate.²⁷

B. Conditions for discrimination and subordination are exacerbated when gender stereotyping is socially pervasive and/or persistent

12. Gender stereotypes are socially pervasive, meaning articulated across social sectors, and socially persistent, meaning articulated over time.²⁸ It has been explained that “the persistence of cultural and social norms, traditional beliefs and ... gender stereotypes were the obstacles most frequently cited by governments to the achievement of equality in all regions. ... Even in countries where basic indicators of women’s advancement show considerable progress ..., gender roles and identities continue to be shaped by patriarchal notions of ‘femininity’ and ‘masculinity’”²⁹
13. Conditions for social stratification and subordination of women exist when practices based on gender stereotypes, are both socially pervasive and socially persistent.³⁰ These conditions are exacerbated when stereotypes are reflected or embedded in the law, such as the implicit premises of laws, policies or practices, and the implications of reasoning and language of state officials, including criminal justice agents and judges.
14. Contextual factors that explain how a gender stereotype contributes to social stratification and subordination include
 - individual factors, such as cognitive and behavioral factors;
 - situational factors, such as predisposing conditions, found in different sectors, including the employment, family and criminal justice sectors; and
 - broader factors such as cultural, religious, economic and legal factors,any of which may be relevant to the usage of different gender stereotypes.

15. The **individual factors** point to how individuals form gender stereotypes through their everyday interactions with family, friends and, for example, colleagues, and also through exposure to cultural heritage.³¹ Stereotyping is part of normal cognitive processes of categorization. Under certain conditions “these categorizations can lead to inaccurate generalizations about individuals often transformed into discriminatory behavior. Sex is a common basis for faulty categorizations, of which sex stereotypes are the product.”³² Stereotypic beliefs associated with the category of sex and gender creates foundations for discriminatory behavior. “Whether realized or not, stereotypic beliefs create expectations about a person before that person is encountered and lead to distorted judgments about behavior. Therefore, stereotypes become the basis for faulty reasoning leading to biased feelings and actions, disadvantaging (or advantaging) others not because of who they are or what they have done but because of what group they belong to.”³³
16. The **situational factors** include antecedent or predisposing conditions that operate to increase the likelihood of hostile gender stereotyping. These factors can vary according to particular sectors. For example, in the employment sector, stereotyping is most likely to intrude when:

- The target or the subject of the stereotype is isolated; that is, when there are few of a kind in an otherwise homogeneous environment. Where there are many more men than women, there is more likelihood that women will be stereotyped in negative ways.³⁴
 - Members of a previously absent or omitted group move into an area (e.g. an occupation or employment) that is nontraditional for their group. That is, hostile gender stereotyping is more likely when members of a previously excluded group are introduced among traditional members of the group.³⁵
 - There is a preconceived lack of fit between the person's social group and a particular role or occupation. For example, the attributes desirable in a manager – aggressive, competitive, directive, tough – are not attributes usually expected of women. Women who behave in such managerial ways are often disliked, and often create dissatisfaction among their subordinates of both sexes.³⁶
17. The **broader** contexts include historical, cultural, religious and legal factors that might facilitate the perpetuation of gender stereotypes. Understanding the broad contexts of gender stereotypes is important in determining why and how they persist, and how they might be eliminated. Explaining how gender stereotypes, and the ideologies on which they are based, persist in different traditions, is “key to identifying and reshaping the base of shared understandings on which desirable change, or progress, can build.”³⁷ Gender stereotypes can be understood as arising out of a history of subordinate legal status of women, and the legal incapacities that women face such as in accessing the criminal justice system. Each country has its history of the legal subordination of women,³⁸ including in its customary laws and more formalized legislation and judgments. Some of these legal incapacities are based on cultural or religious traditions, or both.

C. Human rights treaties require the elimination of discriminatory forms of gender stereotyping

18. Taking into account the detrimental impact that gender stereotyping has on the elimination of all forms of discrimination against women and the realization of substantive equality, the American Convention, the Convention of Belém do Pará and CEDAW each obligate States Parties to eliminate those forms of gender stereotyping that result in the discriminatory treatment of women.
19. Article 2(f) of CEDAW requires States Parties to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” Where a law, regulation, custom or practice makes a distinction, exclusion or restriction on the basis of a gender stereotype that has the purpose or effect of impairing or nullifying women’s equal rights and fundamental freedoms, it is a form of discrimination that States Parties must eliminate. In addition, article 5(a) requires the modification of “social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.” Thus, where “laws, regulations, customs and practices” that are based on gender stereotypes do not constitute a form of discrimination for purposes of article 2(f), States Parties are nevertheless obligated to pursue the objectives of article 5(a). Article 10(c) further requires the elimination of wrongful gender stereotyping in the education sector.
20. In the Inter-American system, the American Convention has strong guarantees of equality and non-discrimination based on sex, which in turn require the elimination of those forms of stereotyping that constitute discrimination or contribute to other forms of violence (see discussion of articles 1(1), 2 and 24 in paragraph 6). This Court has explained that “[a]lthough Articles 24 and 1(1) are conceptually not identical ... Article 24 restates to a certain degree the principle established in Article 1(1). In recognizing equality before the law, it prohibits all discriminatory treatment originating in a legal prescription. The prohibition against discrimination so broadly proclaimed in Article 1(1) with regard to the rights and guarantees enumerated in the Convention thus extends to the domestic law of the States Parties, permitting the conclusion that in these provisions the States Parties ... have undertaken to maintain their laws free of discriminatory regulations.”³⁹

21. The Convention of Belém do Pará⁴⁰ supports an interpretation of the basic legal framework for the protection of women's rights as requiring the elimination of gender stereotypes. The Convention of Belém do Pará recognizes that discrimination against women is a form of gender-based violence, and identifies such violence as a reflection of "the historically unequal power relations between women and men."⁴¹ It further recognizes that women's right to be free from violence includes the right to be free from all forms of discrimination and also to "be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination."⁴² Under article 7(e) of the Convention of Belém do Pará, States Parties are obligated to "take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations to modify legal or customary practices which sustain the persistence and tolerance of violence against women." States Parties are further obligated, under article 8(b), "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 sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women." A number of other human rights instruments also support the obligation to eliminate stereotypes.⁴³

D. Human rights treaty bodies have interpreted the rights to equality and non-discrimination to require the elimination of discriminatory forms of gender stereotyping

22. Human rights treaty bodies have interpreted the rights to equality and non-discrimination to require the elimination of discriminatory forms of gender stereotyping. For example, in the *Morales de Sierra* case, the Commission found several provisions of Guatemala's Civil Code to be discriminatory, on the ground that they enforced sex-role stereotypes in marriage, in violation of the American Convention. Regarding the right to equality of and before the law, the Commission noted that, by relying on such sex-role stereotypes as men are "decision-makers" and "heads of households" to require married women to depend on their husbands to represent the marital union, the Code "mandate[d] a system in which the ability of approximately half the married population to act on a range of essential matters [was] subordinated to the will of the other half."⁴⁴ In denying the complainant, a married woman, her legal autonomy, the Code nullified her legal capacities and reinforced systematic disadvantage, thereby impairing her ability to exercise other rights.⁴⁵ Regarding the right to equality in marriage, the Commission found that in establishing distinct sex-roles, the Code institutionalized imbalances in spousal rights and duties.⁴⁶ "The fact that the law vests a series of legal capacities in the husband" it explained, "establishes a situation of *de jure* dependency for the wife and creates an insurmountable disequilibrium in the spousal authority within the marriage."⁴⁷ Thus, sex-role stereotypes constituted discrimination and prevented the complainant from exercising her rights, on a basis of equality.⁴⁸ The Commission thus concluded that stereotypes impede the achievement of equality and non-discrimination within the family.⁴⁹
23. In its *General Recommendation No. 25*, the Committee on the Elimination of Discrimination against Women ("CEDAW Committee") explained that States Parties are required "to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms."⁵⁰ It further explained that, in order to fulfill this overarching purpose, States Parties have three core obligations:

Firstly, States parties' obligation is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination – committed by public authorities, the judiciary, organizations, enterprises or private individuals – in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies. Secondly, States parties' obligation is to improve the de facto position of women through concrete and effective policies and programmes. Thirdly, *States parties' obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.*⁵¹

Thus, while it is necessary to eliminate direct and indirect discrimination and to improve the de facto position of women, doing so is not sufficient to eliminate all forms of discrimination and to achieve substantive equality. CEDAW requires States Parties to go further, to reformulate laws, policies and practices in order to ensure that they do not devalue women or reflect the patriarchal attitudes that attribute particular subservient characteristics and roles to women through stereotypes. This is further reflected in CEDAW's preamble, which recognizes that "a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women."⁵²

24. In *Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain*,⁵³ CEDAW Committee member Shanthi Dairiam explained that the Committee "must be broad in its interpretation and recognition of the violations of women's right to equality, going beyond the obvious consequences of discriminatory acts and recognizing the dangers of ideology and norms that underpin such acts."⁵⁴ Since the denial of the complainant's right to succeed to her father's title of nobility was founded on stereotypes, CEDAW Committee member Dairiam concluded that the Spanish government had violated the complainant's rights to equality and non-discrimination.⁵⁵
25. Taking into account States Parties' obligations under the American Convention, the Convention of Belém do Pará and CEDAW (see paras. 18-21), and the interpretation of the rights to equality and non-discrimination in the Inter-American and international human rights systems (see paras. 22-24), it is clear that states are required to eliminate those forms of stereotyping that discriminate against women and result in gender-based violence.

E. Chihuahua's laws, policies and practices discriminate against women on the basis of the stereotype that poor, young and mainly migrant women are inferior and subordinate to men, in violation of the American Convention, the Convention of Belém do Pará and CEDAW

26. The rights to equality and non-discrimination require States Parties to recognize and respect the equal and intrinsic worth of all human beings, both men and women. To achieve this goal, a State Party's laws, policies and practices must be free of gender stereotyping in all of its forms and manifestations, especially those forms and manifestations that degrade or devalue women, or subordinate them to men. Courts and human rights treaty bodies have found discrimination on the basis of gender stereotypes, where operative gender stereotypes treat women as men's inferiors or subordinates, such as where women are treated as the property of men,⁵⁶ or under the control of men.⁵⁷ Gender stereotyping that serves to maintain "an ideology and a norm entrenching the inferiority of women,"⁵⁸ constitutes a form of discrimination, in violation of the rights to equality and non-discrimination guaranteed in articles 1 and 24 of the American Convention, and article 2(f) of CEDAW. Moreover, gender stereotyping that is "based on the inferiority or the superiority of either of the sexes" violates the Convention of Belém do Pará and article 5(a) of CEDAW.

(i) Chihuahua's laws, policies and practices enforce a stereotype that poor, young and mainly migrant women are inferior and subordinate to men

27. ***Naming the operative gender stereotype.*** State authorities in Mexico, specifically in Ciudad Juárez, have perpetuated the compounded stereotype that women – in particular, poor, young and mainly migrant women – are inferior, and subordinate, to men. In this instance, it is not just attributes, characteristics or roles associated with a woman's sex or gender that make her inferior (i.e. a sex stereotype); it is also the attributes, characteristics and roles associated with her age, race, socio-economic status, type of employment and, for example, her status as a migrant (i.e. a compounded stereotype). In her report on Ciudad Juárez, the Commission's Rapporteur on the Rights of Women described the gender-based violence against women as having "its roots in concepts of the *inferiority and subordination of women*."⁵⁹ In its report on Ciudad Juárez, the CEDAW Committee characterized the violence as a "structural situation and a social and cultural phenomenon deeply rooted in customs and mindsets ...;"⁶⁰ these acts, it explained, are "founded in a culture of violence and discrimination that is based on women's alleged *inferiority*, a situation that has resulted in impunity."⁶¹

28. Usage of this stereotype implies that state authorities do not have to treat the subgroup of poor, young and mainly migrant women as having intrinsic and equal worth; this subgroup is subordinate and inferior to men and other subgroups of women. The connotation of inferiority further indicates that state authorities do not consider women belonging to this subgroup to be important and valuable members of society. For example, it has been explained that Mexico's inadequate response to gender-based violence against women in Ciudad Juárez has been fuelled by stereotypical beliefs that devalue women: "The arrogant behaviour and obvious indifference shown by some state officials in regard to these cases leave the impression that many of the crimes were deliberately never investigated for the sole reason that *the victims were 'only' young girls with no particular social status and who therefore were regarded as expendable.*"⁶²
29. ***Examining the context and means of perpetuation of the stereotype.*** The stereotype that poor, young and mainly migrant women are inferior and subordinate to men is perpetuated through a legal culture in Chihuahua that enforces gender stereotypes, and promotes a climate of impunity around women's subordinate status. For example, the Civil Code of Chihuahua provides that husbands should nourish and financially provide for their families, and administer marital property,⁶³ with the implication that women are not worthy or capable of fulfilling, and should therefore not be allowed to perform, such roles. Such laws establish a situation of *de jure* dependency for women,⁶⁴ foster women's inferiority and economic subordination, and promote unequal power relations between women and men. The perpetuation of this stereotype must also be considered in the broader context of a socially pervasive culture of misogyny and discrimination in the state of Chihuahua that has condoned gender-based violence against women, including systemic abduction, rape and murder, for more than a decade. The physical and mental suffering of the victims of Ciudad Juárez is indicative of a type of violence based on their domination and humiliation as young women.
30. Evidence of the perpetuation of the sex stereotype that women are inferior and subordinate to men can also be found in the conduct and inaction of state authorities (see section IV). The State's grossly inadequate response to gender-based violence in Ciudad Juárez, and the resulting climate of impunity, has reflected and perpetuated the view that such violence is not a serious crime because, according to the stereotype, poor, young and mainly migrant women are inferior and less valuable than men (and other women), and therefore crimes against them are lesser crimes that do not warrant the State's attention. For example, the Commission's Special Rapporteur on women's rights determined that only 20% of the murder cases had gone to trial and resulted in convictions, leaving the overwhelming majority of cases unresolved and unpunished.⁶⁵ In addition, Amnesty International has indicated that local authorities in Ciudad Juárez have treated violent crimes against women as private and common violence, not recognizing the existence of a persistent pattern of violence against women that has deeper roots based on discrimination and gender stereotyping.⁶⁶ Significantly, there has been no real attempt to collect and systematize information and data concerning gender violence.
31. Ciudad Juárez's rapidly changing socio-economic landscape and the vulnerability of victims have further perpetuated the stereotype that poor, young and mainly migrant women are inferior, and subordinate to, men. Following explosive growth of the *maquiladora* industry, Ciudad Juárez has developed into an unstable, exploitative environment with a high rate of migration and illicit/criminal activity, including trafficking in drugs and women. Many of the victims of gender-based violence have migrated to Ciudad Juárez in search of employment. In contrast to the majority of women in the state of Chihuahua, who have traditionally conformed to prescriptive sex-role stereotypes, victims of violence have tended to occupy a significant space in the labor market. Owing to their sex, age, socio-economic status, ethnicity and migrant status, most, if not all, victims have been marginalized members of the Ciudad Juárez community. However, all women – young and old, migrant, local or otherwise – share a subordinate position in society.
32. These contextual factors, described above, have enabled women – specifically, the subgroup of women with the lowest socio-economic and cultural standing in Ciudad Juárez – to be targeted as victims of gender-based violence. Perpetuation of the compounded stereotype of young, poor and mainly migrant women as inferior and subordinate to men (and other subgroups of women) in Chihuahua's laws, policies and practices has resulted in discrimination and violence against them. It has meant that

crimes against this particular subgroup have not elicited a significant response from state authorities (see Section IV), which, in turn, has fed the spiral of violence and impunity in Juárez.

33. ***Identifying the harm to women.*** In stereotyping poor, young and mainly migrant women as inferior and subordinate to men (and other subgroups of women), state authorities in Chihuahua have diminished the dignity of this subgroup of women by constructing them as lacking intrinsic worth. In so doing, state authorities have burdened this subgroup of women with violence, in some cases at the expense of the lives of countless women (see section IV). Moreover, the perpetuation of the stereotype of women as inferior by state authorities has enabled the marginalization of an already vulnerable group in the Ciudad Juárez community.

(ii) Chihuahua's laws, policies and practices discriminate against women on the basis of the stereotype that poor, young and mainly migrant women are inferior, and subordinate, to men, in violation of articles 1 and 24 of the American Convention and article 2(f) of CEDAW

34. In order to establish discrimination under articles 1 and 24 of the American Convention and article 2(f) of CEDAW, it must be shown that Chihuahua's laws, policies or practices make a difference in treatment on the basis of the stereotype of poor, young and mainly migrant women as inferior and subordinate to men.⁶⁷ It must also be established that the differential treatment resulting from the enforcement of this stereotype had the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by women, on a basis of equality, of the rights to equality and non-discrimination and the right to be free of gender-based violence.
35. ***Chihuahua's laws, policies and practices make a difference in treatment on the basis of a stereotype that poor, young and mainly migrant women are inferior and subordinate to men.*** As explained in paragraphs 30-33, Chihuahua's laws, policies and practices perpetuate the stereotype that poor, young and mainly migrant women are inferior and subordinate to men. Usage of this stereotype sends a disturbing message that this particular subgroup of women lacks intrinsic and equal worth. In so doing, it suggests that the state does not consider women belonging to this subgroup to be important or valued members of the Ciudad Juárez community. In contrast, however, Chihuahua's laws, policies and practices do not stereotype poor, young and mainly migrant men in the same way. While men in this particular subgroup may be considered inferior to other subgroups of men in Ciudad Juárez community, they are still treated as superior to poor, young and mainly migrant women.
36. ***The difference in treatment resulting from Chihuahua's perpetuation of the stereotype impairs, on a basis of equality of men and women, the right to live free of gender stereotyping and gender-based violence against women.*** The construction of poor, young and mainly migrant women in Ciudad Juárez as inferior, and subordinate, to men, impairs their rights to equality and non-discrimination. It prevents them from fully exercising and enjoying their legally guaranteed rights and freedoms. It also fails to accord this subgroup of women the same rights or recognition as men (and other subgroups of women). In addition, it leads to the denial of women's other rights and freedoms, including women's right to be free of gender-based violence (see Section IV). Socially pervasive and persistent gender stereotyping in Ciudad Juárez has facilitated the conditions for the social stratification and subordination of women. Gender stereotyping, on the part of state authorities, has enabled the marginalization of an already vulnerable subgroup of women: it has entrenched the subordination of poor, young and mainly migrant women in all sectors of the Ciudad Juárez community; enabled pervasive and persistent discrimination against them; and, for example, denied them and their families legal recourse for the injustices they have suffered. Such stereotyping is not justified at law.

(iii) Chihuahua's laws, policies and practices stereotype poor, young and mainly migrant women as inferior and subordinate to men, in violation of the Convention of Belém do Pará and article 5(a) of CEDAW

37. In order to establish a violation of the articles 6(b), 7(e) and 8(b) of the Convention of Belém do Pará and article 5(a) of CEDAW, it must be shown that the state failed 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. Under these provisions, it is not necessary to determine whether the prejudices or practices that are based on stereotypes are a form of discrimination. It is sufficient that there is a finding that the prejudices are practices are “based on the idea of the inferiority or the superiority of either of the sexes.” Chihuahua’s laws, policies and practices perpetuate a stereotypical view that poor, young and mainly migrant women are inferior and subordinate to men. They suggest that women who belong to this subgroup lack intrinsic and equal worth, and they send a message that these women are not worthy of the state’s protection against discrimination or violence. Chihuahua’s perpetuation of the operative stereotype in its laws, policies and practices, and the subsequent failure of the Mexican government to invalidate and reform them, thus violated the Convention of Belém do Pará and article 5(a) of CEDAW.

IV. GENDER STEREOTYPING, BY STATES PARTIES, VIOLATES WOMEN’S RIGHT TO BE FREE FROM GENDER-BASED VIOLENCE

A. Gender stereotyping is a root cause of gender-based violence against women

38. Gender stereotyping is widely recognized as a root cause and consequence of gender-based violence against women. The Inter-American human rights system has made explicit the linkages between gender stereotyping and gender-based violence against women. For instance, the Convention of Belém do Pará recognized that gender-based violence is “a manifestation of the historically unequal power relations between women and men.”⁶⁸ It also recognized that legal or customary practices can “sustain the persistence and tolerance of violence against women.”⁶⁹ In the *Morales de Sierra* case, the Commission further underscored the link between gender stereotyping and gender-based violence.⁷⁰
39. In its *General Recommendation No. 19* (violence against women), the CEDAW Committee explained that

*[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion Such prejudices and practices may justify gender-based violence as a form of protection or control of women. ... While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities.*⁷¹

The CEDAW Committee further explained that “[w]ithin family relationships women of all ages are subjected to violence of all kinds ... which are perpetuated by traditional attitudes.”⁷² As well, a UN Special Rapporteur has explained that gender-based violence against women serves as an essential component “in societies which oppress women, since violence against women *not only derives from but also sustains the dominant gender stereotypes* and is used to control women”⁷³

B. States Parties are obligated to prevent and remedy gender stereotyping by their agents and officials that fosters gender-based violence against women

40. Several human rights instruments require States Parties to eliminate those forms of gender stereotyping that foster gender-based violence against women. For example, as previously explained, the Convention of Belém do Pará contains a number of provisions that address gender stereotyping. In addition, to requiring States Parties to eliminate discriminatory forms of gender stereotyping, these provisions obligate States Parties to eliminate those forms of gender stereotyping that foster gender-based violence against women. Article 7(e) requires States Parties to “take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations to modify legal or customary practices which sustain the persistence and tolerance of violence against women.” Article 4(j) of the UN *Declaration on the Elimination Violence against Women* further obligates states to “[a]dopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other

practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.”⁷⁴

41. Courts and human rights treaty bodies also require that states address linkages between gender stereotyping, gender-based violence, and discrimination against women. For example, in *General Recommendation No. 19*, the CEDAW Committee called on States Parties to take effective measures to overcome the attitudes, customs and practices that perpetuate gender-based violence against women.⁷⁵ In the *Case of Miguel Castro Castro Prison v. Perú*, the Inter-American Court relied on *General Recommendation No. 19*, in finding that violence directed against a woman, because she is a woman, is a form of discrimination.⁷⁶ The Inter-American Commission has explained that article 7(e) of the Convention of Belém do Pará “requires that States 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.” Owing to the linkages between discrimination and violence, article 7(e) “must be interpreted as requiring States to amend discriminatory laws, practices and public policies or those whose practical effect is to discriminate against women.”⁷⁷ The Commission has further explained that “the due diligence obligations under Article 7 of the Convention of Belém do Pará include, in particular, the duty to prevent or transform structural or widespread violence against women. These should be counted among the special measures to promote equality and eradicate social and cultural patterns that foster discrimination against women in society.”⁷⁸
42. In a series of communications concerning domestic violence, the CEDAW Committee reiterated the obligations incumbent on States Parties to CEDAW to eliminate gender stereotyping that fosters violence. For example, in *A.T. v. Hungary*, the CEDAW Committee noted its concern regarding the “persistence of entrenched traditional stereotypes regarding the role and responsibilities of women and men in the family,” and the “traditional attitudes by which women are regarded as subordinate to men”⁷⁹ It also noted that the facts of the case “reveal[ed] aspects of the relationships between the sexes and attitudes towards women that the Committee recognized vis-à-vis the country as a whole.”⁸⁰ In its views, the CEDAW Committee determined that socially pervasive and persistent gender stereotyping contributed to Hungary’s failure, over a four-year period, to effectively protect the complainant against domestic violence. Considering its failure to exercise due diligence to eliminate gender stereotyping, the CEDAW Committee found Hungary in violation of articles 2, 5(a) and 16 of CEDAW.
43. In *R v. Ewanchuk*, a case concerning sexual assault, a unanimous Supreme Court of Canada overturned the acquittal of the respondent, Mr. Ewanchuk, holding that “implied consent” is not a defense to sexual assault under Canadian law. In considering how sexual stereotypes contributed to the lower courts’ decision to acquit Mr. Ewanchuk, Justice L’Heureux-Dubé explained that “[c]omplainants should be able to rely on a [legal] system free from myths and stereotypes, and on a judiciary whose impartiality is not compromised by these biased assumptions.”⁸¹ Gender stereotypes, she reasoned, should not be permitted to surface in a state’s legal system, and courts should denounce laws, policies and practices “which not only perpetuate[] archaic myths and stereotypes ... but also ignore[] the law.”⁸² Justice L’Heureux-Dubé reasoned that, in basing their decision to acquit on prescriptive sexual stereotypes, instead of making a genuine evaluation of the facts, the lower courts had privileged Mr. Ewanchuk’s (i.e. male) sexuality, while subordinating the sexuality of the complainant.

C. States Parties are obligated to ensure that gender stereotyping by their agents and officials does not foster a climate of impunity where state agents and officials fail to investigate allegations of gender-based violence against women

44. When a State Party relies on gender stereotypes in deciding not to investigate complaints of gender-based violence against women, it fosters a climate of impunity and impedes women’s ability to access justice.⁸³ For instance, if a State Party does not investigate a murder of a sex worker, due to a stereotypical belief that sex workers (typically women)⁸⁴ are “loose,” “fallen” or, for example, “trash,” the State Party sends a message that violence against sex workers is acceptable and that sex workers do not deserve to access justice. The Convention of Belém do Pará and CEDAW underscore “the link between violence against women and discrimination, and the way in which certain stereotypes and

social and cultural practices ... can have a negative influence on the conduct of public officials”⁸⁵ with respect to the investigation of such violence. According to the Commission: “the discriminatory socio-cultural patterns and behaviors that still persist are detrimental to women and prevent and obstruct the enforcement of existing laws and the effective punishment of acts of violence. ... The way in which officials in the administration of justice systems react to cases involving violence against women reflects the fact that these discriminatory socio-cultural patterns are still very much intact.”⁸⁶

45. States Parties are obligated under human rights law to ensure that gender stereotyping does not foster a culture of impunity in which women are prevented from accessing justice, on a basis of equality. For example, article 24 of the American Convention, and articles 2(c) and 15(1) of CEDAW, obligate States Parties to ensure equality of and before the law. These provisions require States Parties to rid their legal systems of gender stereotypes that diminish women’s access to justice.⁸⁷ When a State Party fails to exercise due diligence to eliminate an entrenched gender stereotype, it enables the perpetuation of that stereotype and the gender-based violence against women that it condones. It also exacerbates a climate of impunity, which entrenches the operative sex stereotype, further devaluing women and jeopardising their ability to access justice. In this connection, the Inter-American Commission, has stated that the violence in Ciudad Juárez:

has its roots in concepts of the inferiority and subordination of women. When the perpetrators are not held to account, as has generally been the case ..., the impunity confirms that such violence and discrimination is acceptable, thereby fueling its perpetuation. As the Inter-American Court ... has emphasized with respect to human rights violations generally, “the State has the obligation to use all the legal means at its disposal” to combat impunity because it “fosters chronic recidivism” of such violations, “and total defenselessness of victims and their relatives.”⁸⁸

46. Mexican authorities have been criticized for invoking a range of different sex, sexual, sex-role and compounded stereotypes in an effort to explain and justify their repeated failure to investigate complaints concerning the murder, rape and/or disappearance of women in Ciudad Juárez. For example, some state authorities have relied on the stereotypical belief that poor, young and mainly migrant women are “disposable,” which implies that, once these women’s value has been used up, men can discard or expend of them like waste, and, because they are no longer valuable, it is not incumbent upon the state to investigate the crimes against them.⁸⁹ Some state authorities have used gender stereotypes to blame victims for their violent encounters, to shift responsibility for the violence to the female victims, and to justify their failure to investigate allegations of gender-based violence. For instance, some Mexican authorities have relied upon and perpetuated the sexual stereotype that women should dress and behave modestly, which implies that immodestly dressed and behaved women invited their violent encounters. In 2003, the Commission’s Rapporteur on the Rights of Women noted that “[a]ccording to public statements of certain highly placed officials, the victims wore short skirts, went out dancing, were ‘easy’ or were prostitutes.”⁹⁰ Some authorities have relied upon and perpetuated sex-role stereotypes that women should be wives, mothers and homemakers, which imply that women ought not to be working outside the home or, for example, frequenting bars at nights. For example, Arturo González Rascón, former Attorney General for the state of Chihuahua, is reported to have stated publicly that “[w]omen who have a night life, go out late at night and come into contact with drinkers are at risk. It’s hard to go out on the street when it’s raining and not get wet.”⁹¹ One state agent allegedly observed: for girls to be out at night is “like putting a caramel in the door of an elementary school.’ When somebody gobbles them up, like children with candy, at least the source of the tawdry temptation is destroyed.”⁹²

47. The Commission’s Rapporteur has further highlighted the tendency on the part of some state authorities to blame victims:

while the official discourse in Ciudad Juárez has somewhat improved since the Human Rights Commission established a notorious practice on the part of officials of discrediting the victims -- by pointing to the length of their skirts, or that they went out at night, or even that they were ‘easy’

or prostitutes -- there remains a marked tendency to look first to the conduct of the victim ... for explanations.⁹³

The CEDAW Committee has affirmed this tendency, explaining that “[s]ome high-level officials of Chihuahua state and Ciudad Juárez have gone so far as to publicly blame the victims themselves for their fate, attributing it to their manner of dress, the place in which they worked, their conduct, [or] the fact that they were walking alone”⁹⁴

48. Stereotypical comments such as these suggest that a victim invited, or was responsible for, the violent attack against her, because of the “provocative” or “immodest” way in which she dressed, or because of the “un-feminine” nature of her behavior (e.g. she attended bars, went out at night).⁹⁵ According to such stereotypical thinking, when a victim is responsible for her own violent encounter, whether owing to her dress and/or her failure to conform to normative expectations of how women should behave, it is not incumbent on state authorities to investigate acts of violence against her; the victim, and not any man or the state, is responsible for the violence. The implication of such gender stereotyping is that state authorities do not consider themselves obligated to act on complaints of violence against these women.⁹⁶
49. Stereotypical comments such as these have also promoted a climate of impunity in Ciudad Juárez. This impunity has its roots in the laws of Chihuahua, which perpetuate gender stereotypes and suggest that women are subordinate to men, and that those women who do not conform to traditional sex-roles should suffer the consequences, including gender-based violence. Impunity also has its roots in the perpetuation of stereotypes, by state authorities, through the investigation of violent crimes against women. The State’s response to the killings and disappearance of women was to establish a link between the crimes and the way in which victims’ dress or conduct themselves, calling them prostitutes and blaming them for the crime, rather than the perpetrator.⁹⁷ State officials refused to investigate disappearances until 72 hours had passed, even though this period is considered vital to finding the victim alive. State officials relied on gender stereotypes to explain why victims disappeared, rather than concentrating on identifying persons responsible for the crime.

D. States Parties are obligated to ensure that gender stereotyping by their agents and officials does not impede the effective investigation of gender-based violence against women

50. Where state authorities have commenced investigations into allegations of gender-based violence, gender stereotypes – including many of the stereotypes already highlighted in this brief – have often undermined the integrity and effectiveness of those investigations, impeding the resolution of the majority of cases concerning gender-based violence against women, and perpetuating an ongoing climate of impunity.⁹⁸ In its 2007 report on access to justice, the Commission described the impact of stereotyping on the integrity and effectiveness of investigations:

The influence exerted by discriminatory socio-cultural patterns may cause a victim’s credibility to be questioned in cases involving violence, or lead to a tacit assumption that she is somehow to blame for what happened, whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant and so on. The result is that prosecutors, police and judges fail to take action on complaints of violence. *These biased discriminatory patterns can also exert a negative influence on the investigation of such cases and the subsequent weighing of the evidence, where stereotypes about how women should conduct themselves in interpersonal relations can become a factor.*⁹⁹

51. In *Maria Da Penha Maia Fernandes v. Brazil*, the Commission found that in some areas of Brazil, the conduct of victims continued to be a central point in investigations into allegations of sexual violations against women, requiring the victim to demonstrate the “sanctity” of her reputation and moral attributes. Based on these findings, and the impunity that existed in relation to these conducts, the Commission reasoned that the condoning of gender-based violence against women, by the entire legal system in Brazil, “only serves to perpetuate the psychological, social, and historical roots and factors that sustain and encourage violence against women.”¹⁰⁰

52. The trivialization of gender-based violence against women in Ciudad Juárez, through gender stereotyping by state authorities, has sent a message that the state does not consider the victims to be valuable members of the Ciudad Juárez community, who are worthy of protection against violence, or the state resources necessary to conduct an effective criminal investigation into complaints of violence. It has also sent a message that gender-based violence against women is a lesser crime, and that such violence is an acceptable or inevitable part of life for women. The CEDAW Committee has explained, for instance, that

the fact that initiatives such as the CNDH's issuance of recommendation 44/98 condemning the Mexican State's response to the killings in Ciudad Juárez have received no institutional follow-up, and, in particular, that not one person has evidently been sanctioned for the grave failures identified therein reflects that attention to the right of women to be free from violence is still not accorded sufficient priority. *This reinforces stereotyped notions that crimes of violence against women matter less, and that violence in the home or community is a private matter.*¹⁰¹

53. Socially pervasive and persistent gender stereotyping in the Mexican legal system has given birth to a climate of impunity surrounding such stereotyping, as well as the gender-based violence against women to which it gives rise. Such stereotyping not only perpetuates discrimination against women, but it also sends a message that women do not “deserve” to access justice because they are to blame for their own violent encounters. In addition, these statements influence the conduct of all public officials, laying the foundation for state inaction and failure to prevent, punish and remedy gender-based violence against women.
54. Despite some efforts to address gender stereotyping, stereotypical thinking remains pervasive and persistent throughout the criminal justice system in Ciudad Juárez and the state of Chihuahua. In its Concluding Observations on Mexico's periodic report in 2006, the CEDAW Committee noted its ongoing concern regarding “the pervasiveness of patriarchal attitudes which impede the enjoyment by women of their human rights and constitute a root cause of violence against women.”¹⁰² In this connection, it urged Mexico to “implement a comprehensive strategy that includes prevention efforts involving the media and public education programmes aimed at changing social, cultural and traditional attitudes that are root causes of, and perpetuate, violence against women.”¹⁰³ It further called on Mexico to “enhance victims’ access to justice and ensure that effective punishment of perpetrators is consistently imposed and that victims can benefit from protection programmes.”¹⁰⁴
55. In addition, in view of Mexico's obligation to act with due diligence to prevent violence against women, the Inter-American Commission has stressed:

Ensuring that women in Ciudad Juárez can fully and equally exercise their fundamental rights, particularly to be free from violence, requires urgent attention not just to these killings, but to the various forms of gender-based violence that violate the rights of women. The killings and disappearances in Ciudad Juárez are an especially dramatic manifestation of patterns of gender-based violence and discrimination that include other forms of sexual violence and violence within the family. Violence has its root causes in concepts of subordination and discrimination, and impunity (and the discrimination inherent in the lack of effective response) fuels its persistence.¹⁰⁵

V. CONCLUSION

56. States are obligated under human rights law to ensure equal protection of and before the law without discrimination. States are further obligated to eliminate discriminatory forms of gender stereotyping and to ensure women the right to live free of gender-based violence. Significantly, human rights instruments, as interpreted by international and regional treaty bodies, have underscored the linkages between gender stereotyping, discrimination and gender-based violence against women. Thus, in order to ensure the elimination of all forms of discrimination against women and the realization of substantive equality, states must take measures to eliminate discriminatory forms of gender

stereotyping, including those forms that foster gender-based violence. Priority must be given to gender stereotypes that are rooted in social, institutional or legal patterns and practices.

57. It is respectfully submitted that this Court should hold that the State of México did not comply with its obligations to prevent and punish discrimination and violence against women, by not taking the necessary measures to eradicate the gender stereotypes that are pervasive and persistent in the state of Chihuahua. The state failed to respond in an effective manner to the killings of Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez whose bodies were found in Campo Algodonero, Ciudad Juárez due in part to their inferior position in society. The state failed to:

- name and expose how the rights of these women were violated because they failed to meet societal expectations of them and the traditional stereotypes of women as mothers and homemakers. Moreover, the state failed to recognize how these women were subjected to hostile compounded stereotyping because of their age and, for example, their socio-economic status;
- identify the harms that these stereotypes caused, denying them equal protection of and before the law, enabling impunity in the criminal justice system for such crimes, which in turn caused further violence and killings against women in Ciudad Juárez; and
- take appropriate measures to hold its agents and officials accountable, such as by effectively investigating the significant increase in gender-based violence against women since 1993, bringing the perpetrators to justice and imposing appropriate punishments, and providing effective remedies for the families of these victims.

58. We respectfully submit that the Court should require Mexico to take the necessary measures to eradicate the gender stereotypes that are at the root of discrimination and gender-based violence against women in Ciudad Juarez. We further submit that the Court should require Mexico to eliminate patterns and practices in the criminal justice system in Ciudad Juarez that have enabled the perpetuation of discrimination and impunity for these crimes.

¹ See Inter-American Commission on Human Rights, Rapporteur on the Rights of Women, *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination*, OEA/Ser.L/V/II.117, doc. 44 (2003), at para. 41 [*The Situation of the Rights of Women in Ciudad Juárez, Mexico*]; Committee on the Elimination of Discrimination against Women, [“CEDAW Committee”], *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico*, CEDAW, U.N. Doc. CEDAW/C/2005/OP.8/MEXICO (2005), at paras. 36, 37, 61, 73; Amnesty International, *Mexico. Intolerable Killings: 10 years of Abductions and Murders of Women in Ciudad Juárez and Chihuahua*, AI Index: AMR 41/026/2003, 25; Attorney General’s Office, *Informe Final de la Fiscalía para la Atención de Delitos Relacionados con los Homicidios de Mujeres en el Municipio de Juárez, Chihuahua* [Final Report by the Prosecutor’s Office for the Attention of Crimes related to the Murders of Women in Ciudad Juárez], (Jan. 30, 2006), at para. 13.

² CEDAW Committee, *Report on Mexico*, *ibid.*, at paras. 38 and 63.

³ Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, *supra* note 1, at para. 44.

⁴ CEDAW Committee, *Report on Mexico*, *supra* note 1, at paras. 6, 37, 39, 43, 87, 96-97, 133; Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, *ibid.*, at para. 33; Amnesty International, *supra* note 1, at 12.

⁵ See, e.g., Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, *ibid.*, at para. 43.

⁶ See CEDAW Committee, *Report on Mexico*, *supra* note 1, at para. 66; Amnesty International, *supra* note 1, at 25.

⁷ Shae Garwood, “Working to Death: Gender, Labour, and Violence in Ciudad Juárez, Mexico” *Peace, Conflict and Development: An Interdisciplinary Journal* 2 (2002): 1-23, at 22, <http://www.peacestudiesjournal.org.uk/docs/working2.pdf> (accessed June 28, 2008).

⁸ Amnesty International, *supra* note 1, at 29.

⁹ See CEDAW Committee, *Report on Mexico*, *supra* note 1, at paras. 40, 87-91, 111-50. See also Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, *supra* note 1, at para. 70.

¹⁰ *Convention on the Elimination of All Forms of Discrimination against Women*, Dec. 18, 1979 (entered into force Sept. 3, 1981), 1249 U.N.T.S. 13, reprinted in 19 *I.L.M.* 33 (1980), arts. 2(f), 5(a). See also Committee on the Elimination of Discrimination against Women, *General Recommendation No. 25: Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination Against Women, on Temporary Special Measures*, U.N. Doc. A/59/38 (2004), at paras. 6-7 [“*General Recommendation No. 25*”].

¹¹ *American Convention on Human Rights*, Nov. 22, 1969 (entered into force July 18, 1978), O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, arts. 1, 24.

¹² *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, June 9, 1994 (entered into force Mar. 5, 1995), OAS/Ser.L/V/I.4 Rev (Jan 2000), reprinted in 33 *I.L.M.* 1534 (1994).

¹³ *Case of Yatama v. Nicaragua*, Judgment of June 23, 2005, Series C. No. 127, at para. 184 (Inter-American Court of Human Rights). See also *Morales de Sierra v. Guatemala*, Case 11.625, Inter-Am. C.H.R., Report No. 4/01, OEA/Ser.L/V/II.111, doc. 20 rev (2001), at para. 36 (Inter-American Commission on Human Rights); *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Advisory Opinion, OC-4/84, January 19, 1984, Inter-Am. Ct. H.R. (Ser. A) No. 4 (1984), at para. 56.

¹⁴ CEDAW, *supra* note 10, preamble para. 6.

¹⁵ See, e.g., *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

¹⁶ CEDAW Committee, *General Recommendation No. 25*, *supra* note 10, at para. 4 [emphasis added]. “Discrimination against women” is defined in article 1 of CEDAW as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of

men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

¹⁷ See Convention of Belém do Para, *supra* note 12; *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, Sept. 13, 2000 (entered into force Nov. 25, 2005), O.A.U. Doc. CAB/LEG/66.6, reprinted in 1 *Afr. Hum. Rts. L.J.* 40.

¹⁸ See Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68 (2007), at para. 150 [“Access to Justice”]. See also Yakin Ertürk, “Considering the Role of Men in Agenda Setting: Conceptual and Policy Issues” (2004) 78 *Feminist Review* 3, at 7; Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*, (Chicago: University of Chicago Press, 2006), 75.

¹⁹ A “**sex stereotype**” concerns a generalized view or preconception of the physical attributes or characteristics possessed by men or women.

²⁰ A “**sexual stereotype**” is a generalized view or preconception of sexual characteristics or qualities that are, or should be, possessed by men and women respectively.

²¹ A “**sex-role stereotype**” describes a generalized view or preconception of the roles or behavior that are ascribed to and expected of men and women because of their physical, social and cultural constructions.

²² A “**compounded stereotype**” is a gender stereotype that interacts with other stereotypes, which ascribes attributes, characteristics and roles to different subgroups of women.

²³ See Convention of Belém do Para, *supra* note 12, art. 9. See also Committee on the Elimination of Racial Discrimination, *General Recommendation No 25: Gender Related Dimensions of Racial Discrimination*, UN Doc. No. A/55/18 (2000).

²⁴ See Penelope J. Oakes, S. Alexander Haslam and John C. Turner, *Stereotyping and Social Reality* (Oxford, UK; Cambridge, MA: Blackwell Publishers, 1994), at 1.

²⁵ See, e.g., *Morales de Sierra v. Guatemala*, *supra* note 13; *Nevada Department of Human Resources v. Hibbs* 538 U.S. 721 (2003) (U.S., Supreme Court); *Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain*, CEDAW, Communication No. 7/2005, UN Doc. CEDAW/C/39/D/7/2005 (2007) (CEDAW Committee member Shanthi Dairiam, dissenting); *Public Prosecutor v. Kota*, [1993] VUSC 8; [1980-1994] Van LR 661 (Vanuatu, Supreme Court).

²⁶ Sandra Fredman, *Women and the Law* (Oxford: Clarendon Press, 1997), 3.

²⁷ See, e.g., *President of the Republic of South Africa v. Hugo* 1997 (4) SA 1(CC) (South Africa, Constitutional Court), at paras. 105-106 (Mokgoro J., concurring).

²⁸ Reva B. Siegel, “Discrimination in the Eyes of the Law: How ‘Color Blindness’ Discourse Disrupts and Rationalizes Social Stratification” (2000) 88 *California Law Review* 77, at 82.

²⁹ Ertürk, *supra* note 18, at 7.

³⁰ Siegel, *supra* note 28, at 82.

³¹ See the Honourable Madame Justice Claire L’Heureux-Dubé, “Beyond the Myths: Equality, Impartiality, and Justice” (2001) 10 *Journal of Social Distress and the Homeless* 87, at 89 [citations omitted].

³² American Psychological Association, “In the Supreme Court of the United States: *Price Waterhouse v. Ann B. Hopkins*. Amicus Curiae Brief for the American Psychological Association” (1991) 46 *American Psychologist* 1061, at 1062 [citations omitted].

³³ *Ibid.*, at 1064 [citations omitted].

³⁴ See Susan T. Fiske *et al.*, “Social Science Research on Trial: Use of Sex Stereotyping Research in *Price Waterhouse v. Hopkins*” (1991) 46 *American Psychologist* 1049, at 1050 [citations omitted]; Monica Biernat and Diane Kobryniewicz, “A Shifting Standards Perspective on the Complexity of Gender Stereotypes and Gender Stereotyping,” in William B. Swann, Jr., Judith H. Langlois, and Lucia Albino Gilbert, eds., *Sexism and Stereotypes in Modern Society: The Gender Science of Janet Taylor Spence* (Washington, D.C.: American Psychological Association, 1999), 75, at 96 [citations omitted]; American Psychological Association, *ibid.*, at 1067-8.

³⁵ Fiske, *ibid.*, at 1050 [citations omitted].

³⁶ *Ibid.*

³⁷ Katharine T. Bartlett, “Tradition, Change, and the Idea of Progress in Feminist Legal Thought” (1995) 2 *Wisconsin Law Review* 303, at 305, 313-25.

³⁸ See Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women’s Press, 1991); Gerda Lerner, *The Creation of Patriarchy* (Oxford, UK: Oxford University Press, 1986).

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- ³⁹ *Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica*, *supra* note 13, at para. 54.
- ⁴⁰ Convention of Belém do Pará, *supra* note 12, pmbli; arts. 6(b), 7(e) and 8(b). See also *Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities*, June 7, 1999 (entered into force Sept. 21, 2001), AG/RES. 1608 (XXIX-O/99), art. 3(2)(c).
- ⁴¹ Convention of Belém do Pará, *ibid.*, preamble.
- ⁴² *Ibid.*, art. 6.
- ⁴³ See *International Convention on the Rights of Persons with Disabilities*, Dec. 13, 2006 (entered into force May 3, 2008), G.A. Res. 61/106, U.N. Doc. A/61/611 (2006), art. 8(1)(b); African Protocol, *supra* note 17, arts. 2(2), 4(2)(d), 12(1)(b).
- ⁴⁴ *Morales de Sierra v. Guatemala*, *supra* note 13, at para. 38.
- ⁴⁵ *Ibid.*, at paras. 38-39.
- ⁴⁶ *Ibid.*, at para. 44.
- ⁴⁷ *Ibid.*
- ⁴⁸ *Ibid.*, at paras. 44-45.
- ⁴⁹ Inter-American Commission on Human Rights, *Access to Justice*, *supra* note 18, at para. 62.
- ⁵⁰ See CEDAW Committee, *General Recommendation No. 25*, *supra* note 10, at para. 4.
- ⁵¹ *Ibid.*, at para. 7 [emphasis added] [references omitted].
- ⁵² CEDAW, *supra* note 10, preamble para. 14. See also Committee on Economic, Social and Cultural Rights, *General Comment No. 16: The Equal Rights of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, UN Doc. E/C.12/2005/4 (2005), at para. 11.
- ⁵³ *Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain*, *supra* note 25.
- ⁵⁴ *Ibid.*, at para. 13.9 (CEDAW Committee member Shanthi Dairiam, dissenting).
- ⁵⁵ *Ibid.*
- ⁵⁶ See *Public Prosecutor v. Kota*, *supra* note 25.
- ⁵⁷ See *Morales de Sierra v. Guatemala*, *supra* note 13.
- ⁵⁸ *Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain*, *supra* note 25, at para. 13.7.
- ⁵⁹ Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, *supra* note 1, at para. 128.
- ⁶⁰ CEDAW Committee, *Report on Mexico*, *supra* note 1, at para. 159.
- ⁶¹ *Ibid.*, at para. 261 [emphasis added].
- ⁶² Human Rights Council, *Civil and Political Rights Including Questions of: Disappearances and Summary Executions: Visit to Mexico* (Report prepared by Ms. Asma Jahangir), UN Doc. E/CN.4/2003/3/Add.3 (1999), at para. 89 [emphasis added].
- ⁶³ *Civil Code of the State of Chihuahua* (as in effect in 2001), arts. 151 and 170.
- ⁶⁴ See *Morales de Sierra v. Guatemala*, *supra* note 13, at para. 44.
- ⁶⁵ See Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, *supra* note 1, at paras. 4, 81 and 135. See also Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68 (2007), *supra* note 18, at para. 20.
- ⁶⁶ Amnesty International, *supra* note 1, at 7.
- ⁶⁷ See CEDAW, *supra* note 1, art. 1.
- ⁶⁸ Convention of Belém do Pará, *supra* note 12, preamble.
- ⁶⁹ *Ibid.*, art. 7(e).
- ⁷⁰ *Morales de Sierra*, *supra* note 13, at para. 52.
- ⁷¹ CEDAW Committee, *General Recommendation No. 19: Violence against Women*, U.N. Doc. A/47/38 (1992), at para. 11 [emphasis added].
- ⁷² *Ibid.*, at para. 23.
- ⁷³ Human Rights Council, *supra* note 62, at para. 27 [emphasis added].
- ⁷⁴ *Declaration on the Elimination of Violence against Women*, Feb. 23, 1994, G.A. Res. 48/104, U.N. G.A.O.R., 11th Sess., Supp. No. 49, at 217, U.N. Doc. A/48/49 (1993), art. 4(j).
- ⁷⁵ *Ibid.*, arts. 24(e) and (f).
- ⁷⁶ *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006, Series C No. 160, at para. 303 (Inter-American Court of Human Rights).
- ⁷⁷ Inter-American Commission on Human Rights, *Access to Justice*, *supra* note 18, at para. 71.

⁷⁸ Ibid., at para. 101.

⁷⁹ *A.T. v. Hungary*, CEDAW, Communication No. 2/2003, UN Doc. CEDAW/C/32/D/2/2003 (2005), at para. 9.4. See also *Fatma Yildirim v. Austria*, CEDAW, Communication No. 6/2005, UN Doc. CEDAW/C/39/D/6/2005 (2007); *Şahide Goekce v. Austria*, CEDAW, Communication No. 5/2005, UN Doc. CEDAW/C/39/D/5/2005 (2007).

⁸⁰ *A.T. v. Hungary*, *ibid.*, at para. 9.4.

⁸¹ *R. v. Ewanchuk*, [1999] 1 S.C.R. 330 (Canada, Supreme Court), at para. 95 (L'Heureux-Dubé J., concurring).

⁸² Ibid.

⁸³ Inter-American Commission on Human Rights, *Access to Justice*, *supra* note 18, at para. 158.

⁸⁴ See *Jordan v. S* 2002 (6) SA 642; 2002 (11) BCLR 1117 (Constitutional Court), at paras. 59-60 (O'Regan and Sachs JJ., dissenting).

⁸⁵ Inter-American Commission on Human Rights, *Access to Justice*, *supra* note 18, at para. 151 [reference omitted].

⁸⁶ Ibid., at para. 8.

⁸⁷ *R v. Ewanchuk*, *supra* note 81, at para. 95 (L'Heureux-Dubé J., concurring).

⁸⁸ Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, *supra* note 1, at para. 128.

⁸⁹ See Human Rights Council, *supra* note 62, at para. 89. See generally Melissa W. Wright, "The Dialectics of Still Life: Murder, Women, and Maquiladoras" (1999) 11 *Public Culture* 453, reprinted in Jean Comaroff and John L. Comaroff, eds., *Millennial Capitalism and the Culture of Neoliberalism* (Durham, NC: Duke University Press, 2001), 125-146.

⁹⁰ Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, *supra* note 1, at para. 4.

⁹¹ Amnesty International, *supra* note 1, at 9, quoting Arturo González Rascón.

⁹² See Wright, *supra* note 89, at 129, quoting José Parra Molina, a Spanish criminologist contracted by Mexican officials [citation omitted].

⁹³ Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, *supra* note 1, at para. 25.

⁹⁴ CEDAW Committee, *Report on Mexico*, *supra* note 1, at para. 67.

⁹⁵ See *R v. Ewanchuk*, *supra* note 81, at para. 82.

⁹⁶ CEDAW Committee, *Report on Mexico*, *supra* note 1, at paras. 75 and 76.

⁹⁷ Inter-American Commission of Human Rights, Rapporteur on the Rights of Women, *Press Release No. 4/02: Special Rapporteur of the IACHR Concludes Visit to Evaluate the Situation of Women's Rights in Ciudad Juárez, Mexico* (Feb. 13, 2002), available at: <http://www.iachr.org/women/Press4.02.htm>.

⁹⁸ Commission on Human Rights, *Integration of the Human Rights of Women and a Gender Perspective: Violence against Women* (prepared by Yakin Ertürk), UN. Doc. E/CN.4/2006/61/Add.4 (2006), at para. 41.

⁹⁹ Inter-American Commission on Human Rights, *Access to Justice*, *supra* note 18, at para. 155 [reference omitted] [emphasis added].

¹⁰⁰ *Maria Da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. 704 (2000), at para. 55 (Inter-American Commission on Human Rights).

¹⁰¹ Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, *supra* note 1, at para. 153 [emphasis added].

¹⁰² CEDAW Committee, *Concluding Observations: Mexico*, UN Doc. CEDAW/C/MEX/CO/6 (2006), at para. 14. See also Inter-American Commission on Human Rights, *Access to Justice*, *supra* note 18, at para. 152 [reference omitted].

¹⁰³ CEDAW Committee, *Concluding Observations: Mexico*, *ibid.*, at para. 15.

¹⁰⁴ Ibid., at para. 15.

¹⁰⁵ Inter-American Commission on Human Rights, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, *supra* note 1, at para. 164.