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**EXPERT OPINION BEFORE
THE INTER-AMERICAN COURT
OF HUMAN RIGHTS**

GLADYS CAROL ESPINOZA GONZALES

AGAINST PERU

CASE 11.157

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by

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I. Overview

A. Introduction

1 *Gladys Carol Espinoza Gonzales v. Perú* raises important questions about the role of gender stereotyping in matters of violence against women in the criminal justice system and how such stereotyping affects women's access to justice. The decision of the Inter-American Court of Human Rights will therefore have significance not only for the immediate outcome of the case, but also for the development an adequate application of international norms and jurisprudence relating to adverse stereotyping against women.

2 As ordered by this Court, this expert opinion accordingly addresses "the role of the law, public policies and the State practices in perpetuating gender stereotypes, and the use of stereotypes by the judiciary and their influence in the legal analysis of cases regarding violence against women." It concentrates on how gender stereotyping can facilitate gender-based violence against women and how it undermines the ability of survivors to access justice, including in criminal matters. This opinion highlights the key obligations under regional and international human rights law to address and remedy adverse stereotyping. The opinion is of a general character and does not address the specific facts of the case.

B. Relevant experience that qualifies the author to give an expert opinion in the matter addressed in this declaration

3 The author has substantial legal expertise in international women's rights law,¹ including as it relates to gender stereotyping,² has been called as an expert third party intervener in domestic³ and international cases,⁴ and taught widely on the issue.⁵ The author has sought to aid the normative development and implementation of international human rights obligations related to gender stereotyping through this work.

II. Gender Stereotypes and Stereotyping Contribute to Gender-based Violence against Women Suspects, and Impair their Access to Justice

4 Gender stereotypes and stereotyping of women suspected, accused or convicted of crimes work to:

- permit and condone violence against them, for example when law enforcement agencies fail to investigate violence against them, or when state authorities commit violence against them in custody or in prison; and
- limit their opportunities to obtain a fair trial, and may result in harsher sentences because of their non-conformity.

A. Understanding Gender Stereotypes and Gender Stereotyping

5 "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.⁶ Gender stereotypes are social and cultural constructions of men and women, due to their different physical, biological, cognitive, sexual, and social functions.⁷ Gender stereotypes are formed in different contexts usually for the purpose of exerting control over women.⁸ They are formed around different characteristics including sex,⁹ sexual,¹⁰ sex-role,¹¹ and/or compounded¹² attributes. Since gender stereotypes often interact with other stereotypes to produce compounded stereotypes, it is important to understand how particular subgroups of women are stereotyped in different ways than from women generally.¹³ For example, the subgroup of women suspected of criminal activity, including terrorist activity, might lead to assumptions that they are not credible.

6 "Gender stereotyping" is the practice of ascribing attributes, characteristics, or roles to individuals based on their presumed membership in a social group of women or men.¹⁴ This practice of identifying women with a particular social group, especially when the individual women do not associate

themselves with such groups, is a “significant challenge to the practical realization of women’s human rights.”¹⁵ It has been identified as such because it is both a root cause and consequence of discrimination and a broad range of other human rights violations, including gender-based violence¹⁶ and denial of a fair trial.¹⁷ The practice of gender stereotyping will vary accordingly to sectors of society, such as criminal justice administration, and will depend on individual, situational and broader factors prevailing in those sectors (see II.D. below).

A. Naming gender stereotypes of women suspects

7 It has been explained that “the ability to eliminate a wrong is contingent on it first being ‘named,’ . . . Naming is an important tool for revealing an otherwise hidden harm, explaining its implications, and labeling it as a human rights concern. . . .”¹⁸ Naming the operative stereotypes necessitates an examination of the particular attributes, characteristics and/or roles assigned to affected individuals.¹⁹ This requires careful analysis of a context to “determine what the law, policy, or practice provides, either explicitly or implicitly, about men or women and the nature and hierarchy of gender relations.”²⁰ This Court has taken judicial notice of the phenomenon of gender stereotyping.²¹ In the context of marriage and family relations, this Court has recognized the stereotype of women as creators of family.²² The Inter-American Commission on Human Rights has explained that the stereotype of women as homemakers and caretakers and the stereotype of men as breadwinners are often reflected in laws that give men sole legal authority over the family.²³ The homemaker/caretaker stereotype of women often evolves into prescriptive stereotypes that women should be passive, docile and deferential to men, both physically and intellectually.

8 Several possible characteristics of the subgroup of women in the criminal justice system, such as women suspected or convicted of crimes, include attributes of being assertive, manipulative, lacking credibility and defying authority. Such characteristics allow a woman to be labeled as a “bad girl”, contrary to the politically compliant “good girl” who defers to authority. Characterization of women suspected of criminal activity as bad girls serve to deny them their maturity and humanity and relieve their assailants of responsibility.²⁴ Such characterizations imply that state authorities do not have to treat women suspects as having intrinsic and equal worth. As a result, violence against women suspects is condoned.

9 The ability to obtain justice is very dependent on a woman’s ability to be perceived as a good girl. As a result, it is difficult for women characterized as bad to access a fair criminal trial.²⁵ Even judges may deny them a presumption of innocence. When women suspects or convicted women criminals do not conform to how women are expected to behave, they are punished for their non-conformity, irrespective of whether or not they actually engaged in any particular form of criminal behavior.

B. Harming women suspects through stereotyping

10 Once stereotypes have been named, consideration needs to be given to how the operative stereotypes contribute to women’s experiences of gender-based violence in criminal justice systems. It is not enough to identify a particular stereotype; it must also be explained *how* the stereotype harms women. This requires an analysis of the inferences intended to be drawn, based on the generalized views and related assumptions about women and men. The stereotype that “men are/should be heads of households” may, for instance, perpetuate the view of men as holding ultimate power within family relations and ultimately entitled to subordinate women within those relations. This view may, in turn, effectively give men so-called “permission” to discipline women through violence if they do not defer to male authority.

11 Prejudices against women suspects might be triggered in criminal justice officials when such women act in assertive ways. Police officials biased against assertive women might justify sexual assaults of women in custody as a means of “correcting” such assertiveness, employing force to exploit women’s sexual vulnerability. Psychiatrists and psychologists who are biased against assertive women might make assessments of the mental state of female prisoners that are unrelated to a female

prisoner's actual state of mind. For instance, they might characterize women as pathologically "depressed" when they exhibit the normal reaction to suffering abuse under the ongoing charge of abusive "guardians" against whom they are powerless. Criminal justice officials who are prejudiced against women because they do not comply with conventional gender stereotypes of women as passive might fail to order an investigation into how a woman was actually treated. Judges who share similar gender stereotypes about women suspects might not rely on appropriate evidence in ruling on their innocence or guilt, or might give them harsher punishments than women suspects who do defer to legitimate male authority.

i. Stereotypes condone and justify violence against women suspects

12 The Inter-American human rights system acknowledges that gender stereotyping is a root cause of gender-based violence against women. The *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (the Convention of Belém do Pará) recognizes that stereotyping legitimizes and exacerbates gender-based violence against women.²⁶ It also recognized that legal or customary practices can "sustain the persistence and tolerance of violence against women."²⁷ In *González et al. ("Cotton Field") v. Mexico*, this Court explained that "[t]he creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women."²⁸ This Court also explained that "the subordination of women can be associated with practices based on persistent socially-dominant gender stereotypes, a situation that is exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the judicial police authorities...."²⁹

13 The Committee on the Elimination of Discrimination against Women (the CEDAW Committee) has identified the linkages between gender stereotyping and gender-based violence against women. In its *General Recommendation No. 19*, the 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.³⁰

14 The CEDAW Committee has subsequently confirmed the above in its jurisprudence.³¹ UN Special Rapporteurs concur that stereotyping, prejudices and biases is a contributing factor in the prevalence and nature of gender-based violence against women.³²

ii. Stereotypes impair women suspects' access to justice

15 Gender stereotypes can impair access to justice for women suspects by discrediting them and their testimony, by fostering a climate of impunity concerning the gender-based violence they suffer, and by ineffectively investigating, inadequately prosecuting and/or under-punishing such violence.

a. discrediting the victim

16 There is a variety of ways in which state officials discredit or blame the victim.³³ Prejudicial thinking by officials often implies that a victim invited, or was responsible for, the violent attack against her, because of her "provocative" ways, her "un-feminine" nature or her failure to defer to authority. When such prejudices pervade the minds of state officials, they often think that they do not have to investigate such acts of violence because the assailants are justified in employing or not responsible for the violence.³⁴ In *Gonzalez et al. ("Cotton Field") v. Mexico*, this Court explained how state officials blamed the victim.³⁵ It referenced the testimony of the victims' mothers to show how state officials had generated hostile stereotypes of the victims' roles, attributes and characteristics, in part to justify their avoidance of their obligations to investigate. For example, this Court cited testimony of Esmeralda

Herrera's mother saying that "when she reported her daughter's disappearance, the authorities told her that she "had not disappeared, but was out with her boyfriends or wandering around with friends," and "that if anything happened to her, it was because she was looking for it, because a good girl, a good woman, stays at home."³⁶ Importantly, the Court concluded that "...the comments made by officials that the victims had gone off with a boyfriend or that they led a disreputable life, ... constitute stereotyping."³⁷

17 Discrediting the victims sends a message that the state does not consider them to be worthy of protection against violence or of the state resources necessary to conduct an effective criminal investigation into their complaints of violence. It also sends a message that gender-based violence against women is a lesser crime, and that such violence is an acceptable, natural and/or inevitable part of life for women.³⁸

b. fostering a climate of impunity

18 Stereotypical thinking promotes a climate of justification or impunity. This impunity has its roots in state laws that perpetuate gender stereotypes and suggest that women are subordinate to men, and that women who do not conform to traditional sex-roles should suffer the consequences, including gender-based discipline through violence. Impunity also has its roots in the perpetuation of stereotypes by state authorities, through the inadequate investigation of alleged violent crimes against women. The state's dismissive response to the killings and disappearances of women was to establish a link between the crimes and the way in which victims dressed or conducted themselves, blaming them for the crimes, rather than the perpetrators.³⁹

19 Where women defy male authority, they can be beaten with impunity because they do not comply with traditional expectations of women as compliant with legitimate male control. A culture of impunity in turn perpetuates default understandings of women suspects as less valuable than men (and other women). Evidence that women should be subordinate to men can also be found in the conduct and inaction of state authorities. States' and judges' inadequate responses to gender-based violence that women suffer in police custody or in imprisonment has reflected and perpetuated the view that such violence against women is not a serious crime. In short, violence against women suspects is obscured and under-penalized, allowing it to continue with impunity.⁴⁰

20 Socially pervasive and persistent gender stereotyping in a state's legal system has generated 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 or judicial remedies because they are to blame for their own violent encounters. In addition, authoritative stereotyped observations influence the conduct of all public officials, laying the foundation for state inaction and failure to prevent, punish and/or remedy gender-based violence against women.

21 State Parties to human rights treaties are obligated to ensure that gender stereotyping by their agents of officials does not foster a climate of impunity where state agents and officials fail to investigate allegations of gender-based violence against women. When a State Party relies on gender stereotypes in deciding not to investigate complaints of gender-based violence against women, it impedes women's ability to access justice.⁴¹ The Convention of Belém do Pará and the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW Convention)⁴² 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"⁴³ with respect to the investigation of such violence. According to the Inter-American 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."⁴⁴

22 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 on Human Rights⁴⁵ (the American Convention), and articles 2(c) and 15(1) of the CEDAW Convention, 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 contribute to impunity and denial of equality before the law. The Inter-American Commission has explained that when

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.”⁴⁶

c. ineffective investigations, prosecutions and punishments

23 This Court has called for the implementation of a gender perspective in criminal investigations and judicial proceedings.⁴⁷ The implementation of a gender perspective requires ensuring that gender stereotyping by their agents and officials does not impede or distort the effective investigation, adequate prosecution and/or appropriate punishment of gender-based violence against women. This Court has recognized that prejudices about women suspects resulted in their harsher punishment and crueler treatment.⁴⁸

24 Where state authorities have commenced investigations into allegations of gender-based violence, gender stereotypes have often undermined the integrity and effectiveness of those investigations, impeding the resolution of innumerable cases concerning gender-based violence against women, and perpetuating an ongoing climate of impunity.⁴⁹ In its report on access to justice, the Inter-American 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.*⁵⁰

D. Perpetuating stereotypes of women suspects

25 Conditions for subordination of women are exacerbated when gender stereotyping is socially pervasive and/or persistent. Gender stereotypes are socially pervasive, meaning articulated across social sectors, and socially persistent, meaning articulated over time.⁵¹ These conditions are aggravated when stereotypes are reflected or embedded in the law, policies or practices, and in the reasoning and language of state officials, including criminal justice agents and judges. 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’”⁵²

26 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 criminal justice sector or the judiciary; and
- broader factors such as cultural, political and legal factors.⁵³

Understanding these factors is important in determining why and how stereotypes persist, and how they might be eliminated.

27 **Individual** factors refer to how individuals form gender stereotypes through their everyday interactions with family, friends and, for example, colleagues, and also through exposure to cultural heritage. Stereotypic beliefs associated with sex and gender often create foundations for discriminatory behavior, for instance among police officials and psychologists acting as expert witnesses. “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.”⁵⁴ For example, where women suspects exhibit assertive characteristics and do not comply with traditional expectations of women as passive, they might be assessed more negatively and punished more harshly than women who do comply with such expectations.

28 **Situational** factors include antecedent or predisposing conditions in a particular sector that operate to increase the likelihood of hostile gender stereotyping. Stereotyping is most likely to intrude when the target 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, for instance, there is more likelihood that women will be stereotyped in negative ways.⁵⁵ For example, a predisposing condition might be a very high percentage of male police officers who are prejudiced against women who act assertively.

29 **Broader** factors include historical, cultural, religious and legal factors that might facilitate the perpetuation of gender stereotypes. Gender stereotypes can be understood as arising out of a history of patriarchy,⁵⁶ and consequent legal incapacities and practices that prejudice women’s equal exercise of their human rights, particularly in the criminal justice system.

III. State obligations to address gender stereotyping that undermines the human rights of women suspects

30 In order to implement each of the human rights of women suspects, states must name the operative stereotypes that implicate their rights, and explain how they contribute to and perpetuate violations of women’s rights.

A. Rights to non-discrimination and substantive equality

31 The achievement of substantive equality obligates States Parties to the American Convention, the Convention of Belém do Pará and the CEDAW Convention to eliminate forms of gender stereotyping that result in the discriminatory treatment of women. Negative gender stereotypes affect human rights of all individuals, but they often have a particularly egregious effect on women, discriminating against them by impairing or nullifying the recognition, enjoyment or exercise of their human rights and fundamental freedoms.⁵⁷ Stereotypes become discriminatory when they operate to conceal individuals’ needs, wishes, abilities and circumstances in ways that deny them their rights and freedoms. They also become discriminatory when they create gender hierarchies by categorizing women, or subgroups of women, into a subordinate status.

32 The American Convention’s Article 24 codifies the right to equal protection of and before the law, while its 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.

33 The CEDAW Convention 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.”⁵⁸ Article 2(f) of the CEDAW Convention 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.” That is, states must reformulate laws, policies and practices to ensure that they do not devalue women or reflect the patriarchal attitudes that attribute particular subservient characteristics and roles to women through stereotypes. While it is necessary to eliminate direct and indirect discrimination and to improve the de facto position of women, states must go further “*to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts...but also in law, and legal and societal structures and institutions*” in order to achieve substantive equality.⁵⁹

34 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.⁶⁰ This Convention supports an interpretation of the basic legal framework for the protection of women’s rights that requires the elimination of gender stereotypes. The Convention recognizes gender-based violence as a reflection of “the historically unequal power relations between women and men.”⁶¹ It acknowledges that women’s right to be free from violence includes the right to be free from all forms of discrimination and also “be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.”⁶² 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.”⁶³ States Parties are further obligated “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.”⁶⁴

35 States’ laws, policies and practices often discriminate against women, on their face or in their application, on the basis of the stereotype that women are inferior and subordinate to men, in violation of the American Convention, the Convention of Belém do Pará and the CEDAW Convention. 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. Human rights treaty bodies have explained that where it can be shown that laws, policies or practices make a difference in treatment on the basis of the stereotype of women as inferior and subordinate to men, and where that differential treatment prejudices women’s rights, they will find discrimination.⁶⁵ Where gender stereotypes do not constitute a form of discrimination for purposes of article 2(f) of the CEDAW Convention or article 6(a) of the Convention of Belém do Pará, it is sufficient for a condemnation that there is a finding that practices are based on the inferiority or subordination of women.⁶⁶ Thus, a state’s laws, policies and practices must be free of hostile gender stereotyping, including those forms and manifestations that subordinate or that degrade women.

B. Rights to be free from gender-based violence against women

36 This Court has held two States Parties responsible for failure to address gender-based violence. In the *Cotton Field* decision,⁶⁷ this Court held Mexico responsible under the American Convention and the Convention of Belém do Pará for failing to investigate the gendered disappearances and murders of

three poor, migrant women. The decision is important for a number of reasons, including that for the first time, the Court considered states' positive obligations to respond to violence against women by private actors, looked at the murders of these three women in the context of mass violence against women and structural discrimination, and found that gender-based violence constitutes gender discrimination. The Court decided that the state violated the obligation not to discriminate contained in Article 1(1) of the Convention, in connection with the obligation to guarantee the rights embodied in Articles 4(1) [life], 5(1) [physical, mental and moral integrity], 5(2) [torture or cruel, inhuman, or degrading punishment or treatment] and 7(1) [personal liberty and security] of the Convention, to the detriment of the three victims; as well as in relation to the right of access to justice established in Articles 8(1) [right to a fair trial] and 25(1) [simple, prompt, effective recourse] of the Convention, to the detriment of the victims' next of kin (paras 402, 602(6)).

37 In the *Case of Miguel Castro Castro Prison v. Perú*, this Court relied on CEDAW *General Recommendation No. 19* to find that violence directed against a woman, because she is a woman, is a form of discrimination.⁶⁸ Some states have taken their obligations seriously by enacting laws designed to eradicate violence against women.⁶⁹

C. Right to a Fair Trial

38 States need to ensure that women accused of a crime can rely on a legal system that is free of prejudices and hostile stereotypes, and on a judiciary whose impartiality is not compromised by biased assumptions.⁷⁰ In its decision in *J v. Perú*, this Court explained that biased assumptions about women accused of terrorism can neither preclude a careful investigation into the allegations of sexual violence nor impede access to a fair and impartial trial.⁷¹ The CEDAW Committee has held states parties accountable for judicial stereotyping resulting in the discriminatory denial of the right to a fair trial.⁷²

39 In order to overcome hostile gender stereotypes, prejudices and biases and to ensure impartial judicial proceedings, Professor Fenton has made recommendations for codes of professional conduct and rules of evidence.⁷³ She suggests reforming codes of professional conduct for lawyers to allow for the regulation of stereotypic speech where it prejudices the integrity and fairness of the judicial process.⁷⁴ While her recommendation is limited to lawyers, it could be extended to cover all those professionals, including expert witnesses, in legal proceedings. Professor Fenton has also recommended that rules of evidence allow for the exclusion of evidence based on “stereotypic statements, innuendo and allusions ... if their probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury [or judge].”⁷⁵

40 In order to ensure the impartiality of judges, states have to build capacities of members of the legal profession to identify and challenge such stereotypes, prejudices and assumptions to ensure that legal proceedings are conducted fairly and impartially and free of harmful stereotypes, prejudices and biases.⁷⁶ An excellent example of capacity building is the *Equal Treatment Bench Book*, which includes guidance for judges on gender and other forms of stereotyping. Among other things, this bench book:

- identifies common stereotypes about women and men, and recognizes that stereotypes can disadvantage women and lead to unlawful discrimination against them;
- clarifies that judges should not make stereotypical assumptions about women and men; and
- provides important information that help dismantle stereotypes and myths related to gender-based violence against women.⁷⁷

41 With regard to the above suggestions, the importance of the implementation of national legislation and public policies designed to protect women from acts of violence and discrimination must be stressed. The Inter-American Commission has called for the earmarking of sufficient resources to enact the necessary regulations to ensure their effective implementation nationwide, and to create benchmarks to monitor compliance.⁷⁸

D. Right to an effective remedy

- 42 To be effective, remedies to address wrongful gender stereotyping should “contain both individual and structural dimensions.”⁷⁹ *Individual remedies* should aim, as far as is possible, to restore a woman to the position she was in before she was wronged as a result of gender stereotyping and may, for instance, include an acknowledgement that relevant actions/decisions were based on stereotypes and not law or fact, an apology, and reparation for the material harm of wrongful gender stereotyping.⁸⁰
- 43 *Structural remedies* should de-institutionalize gender stereotypes from the laws, policies, and practices of the state,⁸¹ and the states should take all measures available to “combat gender-based stereotyping, bias and prejudices in all aspects of the criminal justice system, including investigation, prosecution, interrogation and protection of victims and witnesses, and sentencing, including by training judicial actors.”⁸² States should also aim to build capacity to identify wrongful gender stereotyping, name operative gender stereotypes and understand and articulate the harm caused by such gender stereotypes/stereotyping. Structural remedies might include measures, such as training and education for members of the judiciary and other key decision-makers, including law enforcement officials, to ensure that all legal procedures in cases involving gender-based violence “are impartial and fair, and not affected by prejudices or stereotypical gender notions.”⁸³ In *Cotton Field*, this Court urged the State Party to implement gender-sensitive training to “enable all officials to recognize the effect on women of stereotyped ideas and opinions in relation to the meaning and scope of human rights.”⁸⁴ It ordered the State “to continue implementing permanent education and training programs and courses in elimination of stereotypes of women’s roles in society.”⁸⁵

IV. Conclusion and recommendations

- 44 States are obligated under human rights law to ensure all women equal protection of and before the law without discrimination. States are further obligated to eliminate negative forms of gender stereotyping and to ensure women, even when held in custody, 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.
- 45 In order to comply with their human rights obligations to prevent and condemn violence against women and to ensure access to justice, states are obligated to take the necessary measures to eradicate harmful gender stereotypes. States need to ensure that their criminal justice officials, members of their judiciary and professionals associated with criminal justice have the necessary capacities to name and expose how the rights of women were violated because they failed to comply with prescriptive stereotypes of how women ought to conduct themselves. States are obligated to institute and apply the necessary policies and codes to ensure the elimination of discrimination in all sectors of government. This obligation requires the implementation of existing national legislation and public policies designed to protect women from acts of violence and discrimination, to earmark sufficient resources, to enact the necessary regulations to ensure their effective implementation nationwide, and to create benchmarks to monitor compliance.
- 46 Finally, states are obligated to take appropriate measures to hold their agents and officials accountable, such as by effectively investigating gender-based violence against women in custody or in prison, bringing the perpetrators to justice, imposing appropriate punishments, and providing effective remedies for the victims and their families.

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¹ R.J. Cook (ed.) *Human Rights of Women: National and International Perspectives*, (Philadelphia: University of Pennsylvania Press, 1994), 634 pp.; revised Spanish edition (Bogota, Colombia: Profamilia, 1997), 602 pp; S. Cusack, S. & R.J. Cook, “Combating Discrimination Based on Sex and Gender” in *International Protection of Human Rights: A Textbook*, Krause, C and Scheinin, M. eds. (Turku, Finland: Institute for Human Rights, Abo Akademi University, 2009) 206-226; (2nd revised edition, 2012) 211-242; Cook, R.J. & V. Undurraga, “Article 12 [Health]” in M. Freeman, C. Chinkin and B. Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012) 311-333.

² R.J. Cook and S. Cusack, *Gender Stereotypes: Transnational Legal Perspectives* (University of Pennsylvania Press, 2010); Spanish edition *Estereotipos de Género: Perspectivas Legales Transnacionales* (Bogota, Colombia: Profamilia, 2011) <http://www.profamilia.org.co/images/stories/libros/estereotipos-de-genero.pdf> ; R.J. Cook, “Lessons from the Cotton Field Case about Gender Justice,” *International Law in a Time of Change: Proceedings of the 104th Annual Meeting of the American Society of International Law*, Washington DC, March 24-27, 2010, 104 ASIL Proc. 565-567 (2011); S. Cusack and R.J. Cook, “Stereotyping Women in the Health Sector: Lessons from CEDAW,” 16.1 (2010) *Washington and Lee Journal of Civil Rights and Social Justice* 47-78.

³ R.J. Cook, Expert Report for the Attorney General of Canada for the Polygamy Reference Case, Re The Constitutional Question Act, the Charter of Rights and Freedoms and a Reference by the Lieutenant Governor in Council set out in order in Council No. 533 dated October 22, 2009, concerning the constitutionality of s. 293 of the Criminal Code of Canada, RSC 1985, c. C-46. “State Obligations to Eliminate Polygamy under International Law,” 105 pp., submitted to the Supreme Court of British Columbia July 16, 2010.

⁴ S. Cusack and R.J. Cook *et al.*, *González et al. (‘Cotton Field’) v. Mexico*, Amicus brief submitted to the Inter-American Court of Human Rights (Faculty of Law, University of Toronto and CEJIL, 2008).

⁵ Faculty of Law, University of Toronto: 1987-present; Human Rights Academy, American University: 2005-present.

⁶ Cook and Cusack, *supra* note 2, 9.

⁷ Cook and Cusack, *supra* note 2, 20.

⁸ Z.E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 *Colum. J. Gender & L.* 1-64 (1998-1999).

⁹ A “**sex stereotype**” concerns a generalized view or preconception of the physical and cognitive attributes or characteristics possessed by men or women, Cook and Cusack, *supra* note 2, 25-26.

¹⁰ A “**sexual stereotype**” is a generalized view or preconception of sexual characteristics that are, or should be, possessed by men and women respectively. Cook and Cusack, *supra* note 2, 27-28.

¹¹ 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. Cook and Cusack, *supra* note 2, 28-29.

¹² A “**compounded stereotype**” is a gender stereotype that interacts with other stereotypes, which ascribes attributes, characteristics and roles to different subgroups of women. Cook and Cusack, 29-31

¹³ *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, (entered into force 5 March 1995) [hereinafter *Convention of Belém do Pará*] 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).

¹⁴ Cook and Cusack, *supra* note 2, 12.

¹⁵ Commission on the Status of Women, *Commemorating 30 Years of the Convention on the Elimination of All Forms of Discrimination against Women: Moderator’s Summary*, UN Doc. E/CN.6/2010/CRP.12 (2010), paras. 10–11.

¹⁶ *González et al. (‘Cotton Field’) v. Mexico*, Judgment of 16 November 2009 (Preliminary Objection, Merits, Reparations, and costs) (IACtHR) [hereinafter *Cotton Field*], para. 401; *R.K.B. v. Turkey*, Communication No. 28/2010, UN Doc. CEDAW/C/51/D/28/2010 (2012), para. 8.8.

¹⁷ *Karen Tayag Vertido v. The Philippines*, Communication No. 18/2008, UN Doc. CEDAW/C/46/D/18/2008 (2010) [hereinafter *Vertido*]; G. Knaul, *Report of the Special Rapporteur on the*

independence of judges and lawyers, UN Doc. A/66/289 (10 August 2011) (analyzing how stereotyping undermines women’s access to justice, particularly in the criminal justice system), para. 46.

¹⁸ Cook and Cusack, *supra* note 2, 38

¹⁹ Cook and Cusack, *supra* note 2, 45-54.

²⁰ *Ibid.*, 46.

²¹ *Cotton Field*, *supra* note 16, para 401

²² In *Artavia Murillo et al. (“in Vitro Fertilization”) v. Costa Rica*, Judgment of Nov 28, 2012 (Preliminary Objection, Merits, Reparations, and Costs) (IACtHR), this Court recognized the stereotype of women as the creator of the family (para 295), and emphasized that “they are incompatible with international human rights law and measures must be taken to eliminate them” (para 302).

²³ In the *Morales de Sierra v. Guatemala*, Case 11.625, IACmHR, Report No. 4/01, OEA/Ser.L/V/II.111, doc. 20 rev (2001) [hereinafter *Morales de Sierra*], 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.” at para. 38. 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, at paras. 38-39; sex-role stereotypes constituted discrimination and prevented the complainant from exercising her rights, on a basis of equality paras. 44-45.

²⁴ Fenton, *supra* note 8, 25-6.

²⁵ Fenton, *supra* note 8, 25.

²⁶ Convention of Belém do Pará, *supra* note 13, art. 8(b) (providing that States Parties must undertake “progressively specific measures,” including programs “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”).

²⁷ *Ibid.*, art. 7(e).

²⁸ *Cotton Field*, *supra* note 16, para. 401.

²⁹ *Ibid.*

³⁰ CEDAW Committee, *General Recommendation No. 19: Violence against Women*, U.N. Doc. A/47/38 (1992), at para. 11 [emphasis added].

³¹ See for example, *A.T. v. Hungary*, Communication No. 2/2003, UN Doc. CEDAW/C/32/D/2/2003 (2005); *Vertido* *supra* note 17, and *V.K. v. Bulgaria*, Communication No. 20/2008, UN Doc. CEDAW/C/49/D/20/2008 (2011).

³² R. Manjoo, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, UN Doc. A/67/227 (2012), has explained that “[w]omen with disabilities are at high risk of violence based on social stereotypes and biases that attempt to dehumanize or infantilize, exclude or isolate them, and target them for . . . violence.” (para. 32); M. Sekaggya, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, UN Doc. A/HRC/16/44 (2010) identified stereotyping as one reason why women defenders are more at risk than their male counterparts of certain forms of violence: “women defenders are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society.” para. 23.

³³ Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II, Doc. 63, 9 December 2011 at para 183. Spanish edition: *Acceso a la Justicia para Mujeres Víctimas de Violencia Sexual en Mesoamérica*, <http://www.cidh.oas.org/pdf%20files/MESOAMERICA%202011%20ESP%20FINAL.pdf>; Knaul, *supra* note 17, para 48 and 51.

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- ³⁴ 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. 75-76.
- ³⁵ *Cotton Field*, *supra* note 16, para 196-208.
- ³⁶ *Cotton Field*, *supra* note 16, para 198.
- ³⁷ *Cotton Field*, *supra* note 16, para 208; see also *Maria Da Penha Maia Fernandes v. Brazil*, Case 12.051, IACmHR, Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. 704 (2000), (conduct of victims continued to be a central point in investigations into allegations of sexual violations against them) para 55.
- ³⁸ 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. 153 [emphasis added].
- ³⁹ *Cotton Field*, *supra* note 16, paras 196-208.
- ⁴⁰ Fenton, *supra* note 8, 48; 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) [hereinafter *Access to Justice*] para. 14. Spanish edition: *Acceso a la Justicia para Mujeres Víctimas de Violencia en Las Américas*, <http://www.cidh.org/women/acceso07/indiceacceso.htm> .
- ⁴¹ *Access to Justice*, *ibid.* para. 158.
- ⁴² *Convention on the Elimination of All Forms of Discrimination against Women*, Dec. 18, 1979 (entered into force Sept. 3, 1981) (the CEDAW Convention).
- ⁴³ *Access to Justice*, *supra* note 40, at para. 151.
- ⁴⁴ *Ibid.*, at para. 8.
- ⁴⁵ *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 (the American Convention).
- ⁴⁶ Inter-American Commission on Human Rights, *Women in Ciudad Juárez*, *supra* note 38, at para. 128.
- ⁴⁷ *Cotton Field*, *supra* note 16, para 541.
- ⁴⁸ *Case of the Miguel Castro Castro Prison v. Perú*, Judgment of November 25, 2006, Series C No. 160, (IACtHR) para 270.
- ⁴⁹ Commission on Human Rights, *Integration of the Human Rights of Women and a Gender Perspective: Violence against Women* (prepared by Y. Ertürk), UN. Doc. E/CN.4/2006/61/Add.4 (2006), at para. 40.
- ⁵⁰ *Access to Justice*, *supra* note 40, at para. 155 [emphasis added].
- ⁵¹ Cook and Cusack, *supra* note 2, 22-24.
- ⁵² Ertürk, *supra* note 49, at 7.
- ⁵³ Cook and Cusack, *supra* note 2, 32-36.
- ⁵⁴ 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 1064.
- ⁵⁵ See S.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.
- ⁵⁶ See *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Advisory Opinion, OC-4/84, January 19, 1984, IACtHR (Ser. A) No. 4 (1984), at paras. 55 and 64. G. Lerner, *The Creation of Patriarchy* (Oxford, UK: Oxford University Press, 1986).
- ⁵⁷ See, e.g., *Cotton Field*, *supra* note 16; *Morales de Sierra*, *supra* note 23.
- ⁵⁸ CEDAW Committee, *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 para. 4 [emphasis added]. The CEDAW Convention defines “Discrimination against women” 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.” (article 1).
- ⁵⁹ *General Recommendation No. 25, Ibid.* at para. 7 [emphasis added].
- ⁶⁰ See *Convention of Belém do Pará*, *supra* note 13; see also *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, O.A.U. Doc. CAB/LEG/66.6; *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, Council of Europe Treaty Series No. 210, 2011; *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).

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- ⁶¹ *Convention of Belém do Pará*, *supra* note 13, preamble.
- ⁶² *Ibid.*, art. 6.
- ⁶³ *Ibid.*, art. 7(e).
- ⁶⁴ *Ibid.*, art. 8(b).
- ⁶⁵ See *Morales de Sierra*, *supra* note 23; *Vertido*, *supra* note 17.
- ⁶⁶ CEDAW art. 5(a), *Convention of Belém do Pará* art. 7(e).
- ⁶⁷ *Cotton Field*, *supra* note 16.
- ⁶⁸ *Miguel Castro Castro Prison v. Perú*, *supra* note 48, at para. 303.
- ⁶⁹ *General Law on Women's Access to a Life Free of Violence* (Mexico), 2007, arts. 8(ii), 17(i), 38(ii), 41(xviii), 45(vii), 45(xii), 52(vii).
- ⁷⁰ *J. v. Perú*, Judgment of Nov 27, 2013(Preliminary Objection, Merits, Reparations, and Costs) (IACtHR); *Access to Justice*, *supra* note 40, at para 296; G. Knaul, *Report of the Special Rapporteur on the independence of judges and lawyers*, *supra* note 17; *R. v. Ewanchuk*, [1999] 1 S.C.R. 330 (Canada, Supreme Court).
- ⁷¹ *J. v. Perú*, *ibid* at para 352.
- ⁷² *Vertido*, *supra* note 17 (concluding, *inter alia*, that judicial stereotyping had violated the right to a fair trial, read in conjunction with the right to non-discrimination at para 8.4); *V.K. v. Bulgaria*, *supra* note 31 (concluding, *inter alia*, that stereotyping affects women's right to a fair trial at para. 9.11).
- ⁷³ *Fenton*, *supra* note 8, 56-62.
- ⁷⁴ *Fenton*, *supra* note 8, 58-60.
- ⁷⁵ *Fenton*, *supra* note 8, 61.
- ⁷⁶ *Access to Justice*, *supra* note 40, at paras. 254-255; *Knaul*, *supra* note 17, 34-40.
- ⁷⁷ U.K. Judicial College, *Equal Treatment Bench Book* (2013), 214-215, 220-223, http://www.judiciary.gov.uk/Resources/JCO/Documents/judicial-college/ETBB_all_chapters_final.pdf.
- ⁷⁸ Inter-American Commission of Human Rights, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II Doc.68 (2007) pp. 122 and 123).
- ⁷⁹ *Cook and Cusack*, *supra* note 2, 94.
- ⁸⁰ *Cook and Cusack*, *supra* note 2, 93-96.
- ⁸¹ *Cook and Cusack*, *supra* note 2, 93-95, 96-98.
- ⁸² *Access to Justice*, *supra* note 40, at paras. 258-281; *Knaul*, *supra* note 17, para 93.
- ⁸³ *Vertido*, *supra* note 17, para. 8.9(b); *V.K. v. Bulgaria*, *supra* note 31, at para 9.16(b)(iv); *R.K.B. v. Turkey*, Communication No. 28/2010, UN Doc. CEDAW/C/51/D/28/2010 (2012) at 8.10(b)(ii).
- ⁸⁴ *Cotton Field*, *supra* note 16, para. 540.
- ⁸⁵ *Cotton Field*, *supra* note 16, para. 541.