

THE INCLUSION OF THE SOCIAL QUESTION WITHIN THE GENDER PERSPECTIVE

Notes to Rewrite ‘Cotton Fields’*

LAURA CLÉRICO** and CELESTE NOVELLI***

Abstract

Nancy Fraser argues that the great emphasis that was placed on recognition politics in the field of gender justice at the end of the XXth century benefited neo-liberalism. The consequence was the vulnerability to the free-market fundamentalism. Given this scenario and taken into consideration that gender issues not only originate from recognition deficits but also stem from inegalitarian distribution, thus the proposal is to couple both kinds of perspectives. This framework is useful for posing a new approach to the decision adopted by the Inter-American Court of Human Rights in the Case of González et al. (“Cotton Field”) v. México. In this case the Court applied a concept of structural inequality with a focus on cultural factors in order to explain the context of systematic discrimination and widespread violence against women in Ciudad Juárez, despite the fact that the murder victims shared similar relevant characteristics: they were young women, workers/students, poor and/or migrant. We conclude that the analysis made by the Court is insufficient. We therefore propose that the “Cotton Field” judgment should be rewritten in a way that will visibilise that gender inequality is due to the lack of both recognition and redistribution politics.

* An earlier draft of this paper was presented at the Workshop organized by the Inter-American Human Rights Network, “The good, the bad and the ugly and moving forward: what to learn from International Human Rights Systems?” (January 2016, Ghent, Belgium). We are most grateful to Martín Aldao, Federico De Fazio, Liliana Ronconi, Leticia Vita, Camila Fernández Mejjide, for the reading, their comments and valuable opinions, and, in general, to Mary Beloff, Ariel Dulitzky, Nancy Cardinaux, Oscar Parra Vera, Jan Sieckmann and Rodolfo Arango for always challenging us with regards to the arguments from the Inter-American Human Rights System.

** Lawyer (University of Buenos Aires). LLM. (Kiel) PhD [Dr. iur.] (Kiel), Professor of Constitutional Law at the University of Buenos Aires (UBA), Researcher at the National Reserch Council of Argentina (CONICET). Email: <lauraclerico@yahoo.com>.

*** Lawyer (UBA), PhD (UBA/CONICET). Email: <celestenovelli@gmail.com>.

Resumen

Nancy Fraser sostiene que el neoliberalismo se benefició del gran énfasis que se hizo en la política de reconocimiento en el ámbito de la justicia de género a finales del siglo XX. La consecuencia fue la vulnerabilidad al fundamentalismo del libre mercado. Ante este escenario y teniendo en cuenta que las cuestiones de género no sólo se originan de los déficits de reconocimiento, pero también de la distribución desigual, la propuesta consiste en acoger los dos tipos de perspectivas. Este marco es útil para plantear un nuevo enfoque en la decisión adoptada por la Corte Interamericana de Derechos Humanos en el Caso González et al. (“Campo Algodonero”) c. México. En este caso, la Corte aplicó un concepto de desigualdad estructural con enfoque en los factores culturales con el fin de explicar el contexto de discriminación sistemática y de violencia generalizada contra las mujeres en Ciudad Juárez, a pesar del hecho de que las víctimas de asesinato compartían características similares relevantes: eran mujeres jóvenes, trabajadoras/estudiantes, pobres y/o migrantes. Se concluye que el análisis realizado por el Tribunal es insuficiente. Por lo tanto, se propone que la sentencia “Cotton Field” sea reescrita de manera que visibilice la desigualdad de género debido a la falta de reconocimiento y redistribución política.

“As stated above, they are murdered because they are women and because they are poor”

United Nations, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol of the Convention, and reply from the Government of Mexico, CEDAW/C/2005/OP.8/MEXICO, 27 January 2005, para. 66.

1. INTRODUCTION

In a relatively recent paper, Nancy Fraser reviews the waves of feminism pointing out its lights and shadows. The first wave is characterised by the intention to “genderise” the socialist imaginary, the second wave by the emphasis on the recognition of the “difference”. While the former aimed to “a broad ideal of social equality”, the latter “invested most of its energy in the cultural change”. The criticism focuses, especially, on the second wave of feminism. Why? Because without being the original goal,¹ the emphasis put on the policies of recognition in the context of the end of the twentieth century was functional to neoliberalism: “(...) subordination was interpreted as a problem of culture that had nothing to do with political economy. The consequence was that we remained defenseless in front of the free market fundamentalism, which

¹ Fraser warns that those who upheld the cultural twist in feminist policies trusted that the sticking points of identity and diversity would bring about “a certain synergy with the struggles for social equality”. N. Fraser, *Escalas de Justicia* (Herder, Barcelona, 2008), p. 194.

in the meantime had become hegemonic. Captivated by the policy of recognition, actually, we involuntarily made the feminist theory to deviate towards the cultural direction in the exact moment in which the circumstances demanded double attention to the redistribution policy”.² The proposal then is the coupling, the gender-based problems are not only found in the deficient recognition³ but also in the unequal distribution. As Fraser sustains: “If our idea of gender-based justice had been combined with the previous approach to the socioeconomic inequality, it would have become deeper”.⁴ In this article we propose to analyse the judgment of the Inter-American Court of Human Rights (IACtHR) in the case “Cotton Field”⁵ from the problem of the decoupling: we sustain that this judgment can be read as a document of the time (*document de temps*), in which gender-based problems are analysed from the relative “empowerment of the cultural project”⁶ decoupled from the project of “political and economic transformation and of distributive justice”.⁷

² Fraser, *supra* n. 1, p. 194; L. Clérico and M. Aldao, “La Igualdad como Redistribución y como Reconocimiento: Derechos de los Pueblos Indígenas y Corte Interamericana de Derechos Humanos”, 9(1) *Estudios Constitucionales* (2011), p. 167, <www.cecocoh.cl/docs/pdf/revista_9_1_2011/08.%20LA%20IGUALDAD_CLERICO_ALDAO.pdf>.

³ Clérico and Aldao, *supra* n. 2, p. 167: The idea of equality as recognition comes from continental philosophy, more precisely from the phenomenology of consciousness, and aims at resolving the issue of the formation of subjectivity focused on the deficits that, in terms of access to symbolic resources, fracture society in dominating and controlled subjectivities. From this perspective, the naturalization of the current state of affairs and the obstruction of the interests of those that do not belong to the dominant groups translates into the legitimization of the inequalities in terms of social status and the increase in the gap between the poor and the rich. Also, in this way, a vicious circle in which recognition inequalities cannot be altered either by the formal principle of equality or the principle of material equality is produced, reinforcing the difficulties of accessing the stages of political involvement for those who do not fit in the white, western man mold, which, again, are the only instances that could modify this narrow understanding of justice. What defines this particular perspective is its belief that the transformation of cultural representation patterns is what constitutes the remedy for resolving the problem of social injustices. In this line of thought, they propose the reevaluation of non-respected subjectivities and their cultural productions and the recognition and valuation of cultural diversity, among other. They also identify those groups with a status of less respect, esteem and prestige, compared to the rest of society, as the object of the problem, and look for the solution to the problem of equality through the reevaluation of status reassessments and, in their most radical versions, the questioning of the criteria in which these assessments are based.

⁴ Fraser, *supra* n. 1, p. 194, 195.

⁵ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*.

⁶ Fraser, *supra* n. 1, p. 195.

⁷ *Ibid.* Ariel Dulitzky identifies with clarity the problem of decoupling – although he does not explicitly refer to it in this way: he observes that “an adequate legal protection of ancestral lands must be defended by joining the argument of ethno-cultural recognition with judicial responses to major socio-economic inequalities of black communities, through policies of redistribution”, A. Dulitzky, “When Afro-Descendants Became Tribal Peoples”, 15 *UCLA Journal of International Law and Foreign Affairs* (2010), p. 29, emphasis added, <www.utexas.edu/law/faculty/adulitzky/56-when-afro-descendants-became-tribal-peoples.pdf>; see also S. Costa and G.L. Goncalves, “Human Rights as Collective Entitlement? Afro-Descendants in Latin America and the Caribbean”, 5 *Zeitschrift für Menschenrechte* (2011), p. 52–71. See also the need to couple redistribution with

The case of “Cotton Field against Mexico” is about the disappearance and death of three young women in a context of systematic discrimination. The IACtHR stands out in this decision, due to the implementation of the concept of structural inequality to analyse the situation those women were in and the time the disappearances and murders took place,⁸ and also due to implementing a gender-based perspective.⁹ Nonetheless, the approach is insufficient. The emphasis put on the ground of structural inequality – the cultural- darkens other causes such as the socioeconomic one – is present in the context of the case (in the Court file) but absent in the relevant argumentation of the IACtHR. Our working hypothesis sustains that: Cotton Field is considered a leading case in gender-based matters and structural inequality in the jurisprudence of the IACtHR. Even if we accept this assumption, we sustain that the Court only takes the context of the case partially into account, as it does not take into account the following factors: that the disappeared women are young, workers, generally migrants and unprivileged, who worked in (or almost in) conditions of exploitation, in addition to the lack of sufficient access to the essential services that generally allow people to exercise social rights. These factors constitute the violence against women in the case. The consideration of the socioeconomic situation would have had an impact on a) the issues of the case, on b) the extension of the argumentation justifying the judgment, and on c) the reparations. For the purposes of this article we focus on the reconstruction of the context.

To sustain our hypothesis we point out the methodology of analysis of stereotypes against women that the same IACtHR implements in the judgment. However, we highlight its partial implementation from a conception of multidimensional equality. These notes are useful for two purposes: on the one hand, to emphasise a

recognition as the ground of egalitarian constitutionalism in Latin America, A. Coddou McManus, “Las interrogantes y posibilidades de un proyecto de derecho de la anti-discriminación en América Latina”, 12(2) *Estudios Constitucionales* (2014), p. 319: “To start discussing the theoretical bases of an anti-discrimination Law set as one tool among others, which are adequate to promote social equality and, in this sense, interact with other ‘emancipatory policies’ which can be triggered by the struggle for social rights or other devices. In this way, the Right to anti-discrimination must not exhaust the different institutional articulations of the principle of equality, allowing it to unfold both its redistributive dimension and its dimension of recognition.”, <www.cecoch.cl/docs/pdf/revista_12_2_2014/11._latin_american.pdf> and R. Arango, *Constitucionalismo social latinoamericano*, 2009, <biblio.juridicas.unam.mx/libros/6/2894/6.pdf>.

⁸ See R. Saba, “El Principio de Igualdad en el Diálogo entre el Derecho Constitucional y el Derecho Internacional”, in G.D. Capaldo, J. Sieckmann and L. Clérico (eds.), *Internacionalización del derecho constitucional, constitucionalización del derecho internacional* (Buenos Aires, EUDEBA, Bs. As., 2012), with reference to paragraphs 401 y 450 of “Cotton Field” case.

⁹ See, among others, J. Acosta López, “The Cotton Field Case: Gender perspective and feminist theories in the Inter-American Court of Human Rights Jurisprudence”, 21 *Revista Colombiana de Derecho Internacional* (2012), p. 17–54, who reconstructs the gender perspective in the case for the argument of the IACHR in favor of the Belém do Pará Convention’s “justiciability”, of the determination of the State’s international responsibility for failing to fulfill the obligation of preventing the disappearance and death of the women of Ciudad de Juárez in a context of violence characterized by a culture of discrimination centered on gender, for having discussed the concept of femicide and having ordered compensatory measures with a gender perspective.

methodology that combines identification of stereotypes and the equality test. On the other hand, it is useful to draft critical comments so as to rewrite a gender-based judgment,¹⁰ to visualize what was darkened: the social issue from a gender perspective. For the purposes of the development of our work, we will first provide a brief review of the Cotton Field case, the strong argumentation points (section II). This will allow us to identify what, in our view, was forgotten. We will go through a *more comprehensive contextual analysis* of the stereotypes in the case in order to show the insufficiencies in the Court's analysis, which based the grounds of structural inequality exclusively on cultural factors,¹¹ leaving aside the factors related to the structure of production which goes through the means of access to employment and its relation with the disappearance of the women (who were then murdered) in Ciudad Juarez: that is, young, poor, women, who worked in the *maquilas*, domestic workers, high school students, migrants (section III). In this sense we conclude that the judgment forgot the gender-based inequality brought about by the lack of redistribution.

2. PRESENCES IN THE COTTON FIELD CASE: AN INSUFFICIENT ANALYSIS OF THE CONTEXT AND THE GENDER-BASED STEREOTYPES

In the "Cotton Field" case the Court specified which are the factors of attribution of liability of the States for violence acts committed by non-State agents and the duties of the states enhanced by due diligence in the prevention and investigation of these acts in a context of strong inequality towards women. It also discussed the existing link between discrimination and gender-based violence fuelled by the persistence of stereotypes within the judicial and police structures, and emphasized the need to adopt "transforming measures" to guarantee the non-repetition of these acts in Latin America.

The case is about the liability of the State of Mexico for not complying with the duty of prevention and investigation of the disappearances in broad daylight and the subsequent death of the young women Claudia Gonzáles, Esmeralda Monreal y Laura Ramos Monárrez taking place in Ciudad Juarez (Mexico) in November, 2001. Claudia, Esmeralda and Laura were young, unprivileged women. Claudia was 21 years old and worked for a *maquila* plant, the day she disappeared she was not allowed into work for having arrived two minutes late; Laura was 17 years old and a fifth semester high

¹⁰ E. Brems (ed.), *Diversity and European Human Rights. Rewriting judgments of the ECHR* (Cambridge, Cambridge University Press, 2013).

¹¹ "In this regard, the State indicated that the culture of discrimination against women contributed to the fact that "the murders were not perceived at the outset as a significant problem requiring immediate and forceful action on the part of the relevant authorities." IACtHR (Judgment) 16 November 2009, *González et al. ("Cotton Field") v. Mexico*, para. 152.

school student, the last information about her was that she telephoned a friend to tell her she was ready to go to a party. Esmeralda was 15 years old, she had completed third year of secondary school and disappeared after leaving the house where she worked as a domestic employee.¹² The relatives of the disappeared women filed the report of the disappearance; the police officers delayed the investigation on their whereabouts. Time after their bodies were found in an empty field known as “Cotton Field” with signs of having suffered great cruelty and sexual violence.

For the Court these murders were perpetrated in a context of violence against women¹³ that was even admitted by the State. It observes that these deaths have in common the lack of clarification and the irregularities detected in the pertinent investigations resulting in an atmosphere of impunity and tolerance by the State for gender-based violence against women.¹⁴ The context of violence in Ciudad Juárez is crossed by cultural factors that can be also identified in the insufficient and dilatory responses given by the State authorities, the police and judicial officers.¹⁵ According to the Court, the indifference of the State authorities towards the disappearance of the young women and the perpetuation of the male and female social roles in a culture of discrimination against women, form patterns of discrimination that bring about the generalized violence against women in Ciudad Juárez. These factors are the basis for the analysis of the State liability for failure to comply with the duties of the State. Article 1 of the American Convention of Human Rights (hereinafter, ACHR) sets out that the States shall act with due diligence to prevent and avoid violations to the human rights of individuals or group of people as well as to investigate and impose sanctions to the people responsible once they have taken place. In cases of violence

¹² IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, paras. 165–168.

¹³ *Ibid.*, paras. 144, 231. We analyze the IACtHR on violence against women in L. Clérico and C. Novelli, “La violencia contra las mujeres en las producciones del Sistema Interamericano de Derechos Humanos: la Comisión y la Corte Interamericana de Derechos Humanos”, 12(1) *Estudios constitucionales* (2014), <www.cecoch.cl/docs/pdf/revista_12_1_2014/la_violencia.pdf>.

¹⁴ The Court recounts that “(...) the irregularities in the investigations and the proceedings included delays in starting investigations, slowness of the investigations or absence of activity in the case files, negligence and irregularities in gathering evidence and conducting examinations, and in the identification of victims, loss of information, misplacement of body parts in the custody of the Public Prosecutor’s Office, and failure to consider the attacks on women as part of a global phenomenon of gender-based violence. According to the UN Rapporteur on judicial independence, following a visit to Ciudad Juárez in 2001, he “was amazed to learn of the total inefficiency, incompetency, indifference, insensitivity and negligence of the police who investigated these cases earlier.” IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 150.

¹⁵ As regards state agents’ perception, the search of the missing women did not pose a problem of important scale that required immediate and strong actions. Rather, it was a problem that could wait. For this reason they minimized the complaints and put the blame on the victims or their families for what happened to them, be it because of the way they dressed, their social interactions or for being alone in the streets. On the other hand, violence towards women is also a consequence of the changes in family roles, which brought about the massive inflow of women to Ciudad Juárez’s labor market, mostly to the manufacturing sector.

against women the duty of due diligence shall be analyzed in the light of Article 7 of the Convention of Belém do Pará which demands that the States promote enhanced obligations to prevent, investigate and impose penalties.¹⁶

According to the court, the State was aware of the existence of a real and immediate risk for the victims,¹⁷ since it recognized that at the moment the women disappeared and the subsequent discovery of the bodies, Ciudad Juarez was under a strong wave of violence against women. The court then examines whether the State adopted effective measures to reduce the risk factor for women before their disappearance.¹⁸ The failure to comply with the duty of prevention is evaluated in two moments: a) on the one hand, before the disappearance of the young women; b) on the other hand, after having been informed of the disappearance and the existing risk the women were under before the discovery of their bodies. In order to determine the State failure to fulfill the duty of general prevention before the disappearance of the victims, it must be proved that the State agents were aware of the real and immediate risk hanging over the victims of the case. The Court takes into account that the State had been warned by different entities about the situation of vulnerability of women in that city, especially the young and poor, and did not implemented a general protection policy aimed to attack the violence pattern, which is the reason why the Court considered that the State failed to fulfill the enhanced obligation of prevention. Regarding the second moment (before the discovery of the bodies), the State was aware of the existence of a real, immediate and specific risk that young women were likely to be subject to different forms of humiliation, sexual assaults and finally murdered, as had long been evident in the context of violence against women in Ciudad Juarez. This awareness was materialized since the moment the relatives reported the disappearance of the

¹⁶ States “should have an appropriate legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to the respective complaints. The prevention strategy should also be comprehensive; in other words, it should prevent the risk factors and, at the same time, strengthen the institutions that can provide an effective response in cases of violence against women. Furthermore, the State should adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence.” IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 258.

¹⁷ “Cotton Field” has a particular importance in the IACHR’s case law as regards the allocation of international responsibility to the States for acts committed by individuals. The Court applies the theory of the foreseeable and evitable risk to assess the State’s responsibility in the case. According to this theory, the State is not liable for any human rights violation committed by individuals in its jurisdiction, and in order to be liable for not having fulfilled its duty of prevention these requirements must be met: 1) that state authorities knew or should have reasonably known the situation of genuine and immediate risk threatening rights, 2) that the risk threatens a particular individual or a group of individuals, and 3) that the State has reasonable possibilities to prevent or avoid that risk. On the features and complexities of this theory see the detailed works of V. Abramovich, “Responsabilidad estatal por violencia de género: comentarios sobre el caso “Campo Algodonero” de la Corte Interamericana de Derechos Humanos”, 6 *Anuario de Derechos Humanos* (2010), p. 167–182, <www.revistas.uchile.cl/index.php/ADH/article/viewFile/11491/11852>.

¹⁸ It is important to highlight that the State is the one having to show which measures were adopted and their sufficiency.

young women. Precisely, due to the violence pattern that threatened Ciudad Juárez, “the State had a duty of strict diligence in front of reports of disappearance of women, with regard to their searching during the first hours and first days”.¹⁹ The police and judicial authorities wasted the most valuable hours of the investigation to find the location where the young women presumably deprived of their liberty were, since they did not act immediately once the disappearances were reported but limited to carry out nonconductive formalities. This state of affairs is aggravated by the attitude of the public officials who disregarded the reports filed and unjustifiably delayed the searching activities. For these reasons the Court determined that the State did not act with the due diligence required to prevent the deaths and assaults suffered by the victims and that it did not implement the reasonable measures that the circumstances of the case merited to put an end to their deprivation of liberty. It also affirmed that, due to the expansive context of violence towards women in Ciudad Juárez, which was known by the State authorities, the State failed to comply with the enhanced guarantee obligations set forth in article 7.b of the Convention of Belém do Pará.

The Court also points out that the State failed to comply with the duty to investigate with due diligence taking into account the context of violence against women.²⁰ The IACtHR names and reveals the use of stereotypes of an indifferent attitude and the discredit of the victims by the State agents. The police officers expressed that the victims were “flighty”²¹ girls or that they were surely out with a boyfriend and would soon return home.²² The words of the agents towards the relatives of the victims make evident the presence of pre conceived and petrified images about which is the expected behavior women must adopt in their interpersonal relationships. The gender-based

¹⁹ “Since this obligation of means is more rigorous, it requires that exhaustive search activities be conducted. Above all, it is essential that police authorities, prosecutors and judicial officials take prompt immediate action by ordering, without delay, the necessary measures to determine the whereabouts of the victims or the place where they may have been retained. Adequate procedures should exist for reporting disappearances, which should result in an immediate effective investigation. The authorities should presume that the disappeared person has been deprived of liberty and is still alive until there is no longer any uncertainty about her fate.” IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 283.

²⁰ The irregularities committed by the police authorities and judicial officials concerning the custody of the crime scene, the handling of evidence, the delay in the investigations, the fragmentation of the cases, as well as the failure to sanction public officials involved in those irregularities reveals that the State has failed to comply with its duty to carry out a conscientious and competent investigation. In addition, these irregularities allow the Court to conclude that the State has violated the right to access to justice and the right to know the truth about what happened. The deficiencies during the investigations in conjunction with the indifference shown by the state officials towards the next of kin of the victims and their complaints, uncovers the close connection between the problems of discrimination and violence against women.

²¹ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 199.

²² Thus, for example, “Esmeralda Herrera’s mother testified that, when she reported her daughter’s disappearance, the authorities told her that she “had not disappeared, but was out with her boyfriend 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”. IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 198. Emphasis added.

stereotypes²³ present in the reasoning and language of the police and judicial officers negatively influence the result of the investigation and the assessment of the evidence, guaranteeing the impunity of the facts and, therefore, the reproduction of gender-based violence against women.²⁴ Finally, with the aim of guaranteeing the access to justice to women and to eradicate the stereotyped notions related to the subordination of women fuelled by the judicial practices, the Court orders the implementation of measures of reparations in order to change the situation of unequal distribution framing the facts of the case. These measures are principally oriented to the carrying out of serious investigations to know the truth about the death of women in Ciudad Juárez so as to bring the impunity surrounding the case to an end and to prevent the facts from occurring again, in addition to the transformation of the justice administration system, primarily through the training of its officials.²⁵

3. MAKING THE ABSENCES VISIBLE: A COMPREHENSIVE ANALYSIS OF THE CONTEXT, THE INCLUSION OF OTHER STEREOTYPES

In this case, the IACtHR pioneered in introducing the notion of structural inequality to explain the situation of women in Ciudad Juárez and in the notion of stereotype analysis. *The problem is that this is insufficient, since this Court highlights the factors that cause such inequality but take them into account (in the formulation of the issue,*

²³ This is a point that is worth to emphasize of the decision, nevertheless, we insist, insufficient. In a recent interview Rebecca Cook outlines the stereotype analysis put forward by the IACHR in the case without mentioning the insufficiency thesis: “More recently, the IACHR did a good job in the 2009 Cotton Field case ruling, in which it recognized the stereotypes involved in the situation and that hindered the investigation by the justice system of the disappearances of the three women in Ciudad Juárez. In this sense, the IACHR makes a good analysis when accepting that the stereotype of young women being promiscuous hampered the immediate taking of actions by the judicial system to investigate the disappearances. Had they taken those actions, maybe the lives of the three young women could have been saved. So, the acknowledgement of the IACHR as regards how the hostile stereotypes perpetuate in this particular context of police authorities is truly visionary. In its decision, the IACHR also established that officers should take judicial training, and I am grateful to say that the Supreme Court of Mexico does count with a genre unit, in which the judges are trained in this subject.” N. Lacrampette, “Entrevista a Rebecca Cook: ‘Estereotipos de Género: Perspectivas Legales Transnacionales’”, 10 *Anuario de Derechos Humanos* (2014), p. 202, <www.anuariodh.uchile.cl/index.php/ADH/article/viewFile/31712/33511>.

²⁴ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, paras. 400–401. The Court finds that police and judicial practices based on gender stereotypes that relegate women to a position of subordination constitutes discrimination regarding access to justice and send the message that “violence against women is tolerated; this leads to their perpetuation, together with social acceptance of the phenomenon, the feeling women have that they are not safe, and their persistent mistrust in the system of administration of justice.”

²⁵ R. Rubio-Marin and C. Sandoval, “Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment”, 33 *Human Rights Quarterly* (2011), p. 1062–1091.

the justification of the decision and in the measures of reparation), only in a partial manner.

To support our argument, we propose to revisit the analysis of gender stereotypes²⁶ as manifestations and causes of discrimination,²⁷ which is a line of reasoning that the IACtHR itself has followed in this case. Nevertheless, this gender stereotypes analysis was not carried out in a comprehensive manner, because of two reasons. Firstly, only some stereotypes are identified by the Court; for instance, the ones that caused the police officers not to initiate an immediate search to find the three missing women. Secondly, other stereotypes are causes and manifestations of the situation of structural inequality that the women of Juárez were facing. Those stereotypes are connected to the reasons by which it is “preferable” to hire women in the *maquilas*²⁸ or in other similar industries.

3.1. A COMPREHENSIVE ANALYSIS OF THE CONTEXT

The adverse effect of a stereotype depends to a large extent on the historical and social context²⁹ in which such stereotype is used. In the Cotton Field case, the Inter-American Court of Human Rights conducts a contextual analysis, albeit incomplete. The disappearances and murders of the three women from Juárez are based upon a context of violence influenced by the following stereotype: women seen as household caregivers/men seen as household providers. In this case, the Court’s ruling is based

²⁶ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, paras. 398, 401: “Similarly, the Tribunal finds that gender stereotyping refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women. Bearing in mind the statements made by the State (...) 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, as in this case. The creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women.”

²⁷ In order to show the insufficiency in the analysis of the stereotypes that appear in the case, we apply the anti-stereotype approach proposed by A. Timmer, “Toward an Anti-Stereotyping Approach for the European Court of Human Rights”, 11(4) *Human Rights Law Review* (2011), p. 707–738. See also R. Cook and S. Cusack, *Gender stereotyping: transnational legal perspective* (Philadelphia, University of Pennsylvania Press, 2009). Timmer wonders what a regional human rights court can do to eradicate harmful gender stereotypes. The answers are two: The first and more obvious is that the court does not incur in the use of stereotypes in their own argument. The second refers to the court’s implementation (and development) of a methodology to identify, name the stereotypes that appear in the case to be decided upon, and evaluate them as ways of discrimination (contesting). Timmer proposes this approach thinking about the European Court of Human Rights. We consider that it is also applicable to the IACtHR’s case law for two reasons. First, the IACtHR, like the ECtHR, is a regional human rights court that applies rules that contain equality clauses. Second, the IACtHR is the one which analyzes the case in a “stereotypes” way, and apart from the concrete proposal put forward by Timmer, the approach is not foreign to it, as it is based in CEDAW reports in the IACtHR’s Cotton Field case decision.

²⁸ Translator’s note: *Maquilas* are manufacturing and/or assembly textile plants.

²⁹ See Timmer, *supra* n. 25.

on the following arguments from the State: “One of the structural factors that have led to situations of violence against women in Ciudad Juárez is the change in family roles, as a result of women working. [...] traditional roles began to change, with women becoming the household provider. This, according to the State, led to conflicts within the family because women began to present an image of being more competitive and financially independent”.³⁰ The Inter-American Court notes that the State itself acknowledges that these mechanisms are strongly linked to a “culture deeply rooted in stereotypes, based on the underlying assumption that women are inferior” and that this situation “cannot be changed overnight” because “changing cultural patterns is a difficult task for any government”.³¹ The Court’s working hypothesis is that the underlying causes of this context are connected to the dominant patriarchal cultural pattern.³² This argument is based on various reports. It takes into account the report of the IACHR Rapporteur, which indicates that violence against women in Ciudad Juárez “has its roots in concepts of the inferiority and subordination of women”.³³ It also quotes, in a partial manner, a report from the CEDAW to stress that gender-based violence cases “are not isolated, sporadic or episodic cases of violence; rather they represent a structural situation and a social and cultural phenomenon deeply rooted in customs and mindsets” and that these situations of violence are founded “in a culture of violence and discrimination” based on gender.³⁴

However, the description of the context is biased. The Court overshadows (decouples) that other part of the context that refers to manifestations and causes of a socioeconomic structure that contributes to a higher vulnerability of women, predominantly young women, including girls, female workers – mostly from *maquilas* or, at times, domestic employees – who are underprivileged, students, or migrants that are exposed to situations of violence not only at their own homes (as a legacy of the patriarchal culture), but also on their way to and from work, at the workplace itself and also while accessing to the labor “market”.

The Court notes that the State itself acknowledges that there are “other factors” that generate violence and “marginalization”, such as the “absence of basic public

³⁰ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 129.

³¹ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 132 with reference to the Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol of the Convention, and reply from the Government of Mexico, CEDAW/C/2005/OP.8/MEXICO, 27 January 2005.

³² IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*.

³³ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 133. In this paragraph the Court cited the 2003 Report of the IACommHR about “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, para. 128.

³⁴ *Ibid.* In this paragraph the Court cited the United Nations Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol of the Convention, and the reply from the Government of Mexico, CEDAW/C/2005/OP.8/MEXICO, 27 January 2005, paras. 159, 261.

services in the underprivileged areas”; “people trafficking which take place in Ciudad Juárez because it is a border city”; and “the high rate of school desertion”, among others. If the foregoing is considered in connection with the arguments of the State, which were taken up by the Court: “The State explained that, in Ciudad Juárez, the *maquiladora* industry started up in 1965, and increased in 1993 with the *North American Free Trade Agreement*. It indicated that, by giving preference to hiring women, the *maquila* industries caused changes in their working life”, everything leads to the conclusion that the socioeconomic structure is a barrier to the effective access of women to the enjoyment of social rights and to an adequate standard of living.³⁵

The IACtHR judgment mentions in passing all these contextual points. However, these aspects are not part of the Court’s main line of argumentation. The context of violence was (is) not only due to cultural causes but also generated by socioeconomic reasons. On the one hand, the absence of basic public services shows that the material conditions required to enable effective access to social rights are insufficient.³⁶ On the other hand, the high rates of employment of women in the *maquilas*, who were subject to periodic checks to determine whether they were pregnant or not as a condition for employment, among other discriminatory measures,³⁷ speaks of a context in which the right to just and favourable conditions of work is not guaranteed in reality. Finally, the insufficient (inexistent?) state control – through the government agency responsible for labor matters- over the working conditions in the *maquilas*³⁸ shows

³⁵ See M. Beloff and L. Clérico, “Derecho a condiciones de existencia digna y situación de vulnerabilidad en la jurisprudencia de la Corte Interamericana”, in SELA – Seminario de Latinoamérica de Teoría Constitucional y Política (Lima, Yale Law School, 21 June 2014), <www.law.yale.edu/documents/pdf/SELA14_BeloffClerico_CV_Sp.pdf>.

³⁶ See, for example, CESCR, *General Comment 14*, “The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)”, E/C.12/2000/4, 11 August 2000, para. 11: “The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.”

³⁷ M. Giles, “An Understanding of the Relationship between Maquiladoras and Women’s Rights in Central America”, in *Nebraska Anthropologist*, Paper 18, 2006, <digitalcommons.unl.edu/nebanthro/18>. She argues that “Maquiladoras created by globalization provide jobs for poor and undereducated women with few other options of employment. Because of the natures of the global economic system and issues of gender, the positions of these women of poverty are easily exploited. Though the consequences can be devastating, out of chaos and conflict also comes growth. As people become more aware of the negative effects of globalization and its counterparts, changes, though slow, are made.” See also, D.M. Weissman, “The Political Economy of Violence: Toward an Understanding of the Gender-Based Murders of Ciudad Juarez”, 30 *North Carolina Journal for International Law & Commercial Regulation* (2005), p. 795.

³⁸ In that regard, Elvia Arriola argues the following: “Yet, an important factor is constantly overlooked in the public discourse about the Juárez murders. Few seriously examine the relationship between systematic violence against women and the changes in the social environment of the city that allows such violence to occur. Along Mexico’s border, and especially in Ciudad Juárez, many changes have

that the context of violence is not just limited to cultural causes but rather demonstrates that the socioeconomic conditions (poverty), the lack of access to basic public services, and the causes of school desertion, among other factors, also contribute to a higher vulnerability of young women³⁹ (girls⁴⁰, female workers – mostly from

resulted from the rapid industrialization produced by Mexico's intense participation in the global economy. The unspoken element of the discourse is the multinational corporations' complicity with Mexican officials in disregarding the health, safety, and security needs of Mexican women and girls who work in the maquiladoras. Multinational corporations come into Mexico, lease large plots of land, run their factories twenty hours a day, pay no taxes, and do very little to ensure that the workers they employ will have a roof over their heads, beds to sleep in, and enough money to feed their families. Juárez, like many other border towns affected by NAFTA, may have factories and cheap jobs, but such employment has not enhanced peace and prosperity among the working classes; instead, hostility against the poor working women – who form the majority of those employed by the maquiladoras – has intensified. (...), *the undeveloped point that surrounds the phenomenon of the murders is the fact that the very girl whose body was found mutilated and dumped had worked hard, very hard, in one of those factories. She was trying to improve her lot in life, as well as that of her family, and no one, not even her own government, cares to take responsibility. What about the fact that the same attitude about the murders – “we are not responsible” – is also reflected in employment policies that encourage indifference to the workers' needs and human rights, whether in or out of the factories?* E.R. Arriola, “Accountability for Murder in the Maquiladoras: Linking Corporate Indifference to Gender Violence at the U.S. Mexico Border”, 5(2) *Seattle Journal for Social Justice* (2007), p. 605. Emphasis added.

³⁹ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 123. In this paragraph the Court cited the following reports: IACHR, *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, 7 March 2003, para. 44; United Nations, *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol of the Convention, and reply from the Government of Mexico*, CEDAW/C/2005/OP.8/MEXICO, 27 January 2005, paras. 38, 63; United Nations, *Report of the mission of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, Mission to Mexico*, E/CN.4/2000/3, Add.3, 25 November 1999, para. 85; Amnesty International, Mexico, *Intolerable killings: 10 years of Abductions and Murders or Women in Ciudad Juárez and Chihuahua*, AMR 41/027/2003, p. 36; Informe Final. Evaluación y Monitoreo sobre el trabajo de la Fiscalía Especial para la Atención de Delitos Relacionados con los Homicidios de Mujeres en el Municipio de Juárez, Chihuahua, de la Procuraduría General de la República, November 2006. The Court cited the 2006 Report of the Special Rapporteur on violence against women, but not the paragraph quoted here and relevant at this point: see United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Integration of the human rights of women and a gender perspective: violence against women*, Mission to Mexico, E/CN.4/2006/61/Add.4, 13 January 2006, para. 40. Furthermore, the following report (not cited by the Court) also notes a significant increase of violence against young women in Ciudad Juárez: Human Rights Council, *Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit*, Mission to Mexico, A/HRC/7/8/Add.2, 28 January 2008, paras. 61, 62. However, this report was not part of the Court's decision.

⁴⁰ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 123. In this paragraph the Court cited the following reports: IACHR, *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, 7 March 2003, para. 86; Amnesty International, Mexico, *Intolerable killings: 10 years of Abductions and Murders or Women in Ciudad Juárez and Chihuahua*, AMR 41/027/2003, p. 36. See also, Human Rights Council, *Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit*, Mission to Mexico, A/HRC/7/8/Add.2, 28 January 2008, paras. 61–63 (see *supra* n. 39).

*maquilas*⁴¹ – who are underprivileged,⁴² students,⁴³ or migrants⁴⁴) to violence.

⁴¹ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 123. In this paragraph the Court cited the following reports: IACHR, *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, 7 March 2003, para. 44; United Nations, *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol of the Convention, and reply from the Government of Mexico*, CEDAW/C/2005/OP.8/MEXICO, 27 January 2005, paras. 38, 63; and Amnesty International, Mexico, *Intolerable killings: 10 years of Abductions and Murders or Women in Ciudad Juárez and Chihuahua*, AMR 41/027/2003, p. 32. The following reports are also cited by the Court, but not the part we brought up and which is relevant because it reveals one of the key characteristics of the profile of the victims (female workers in the *maquilas*): United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Integration of the human rights of women and a gender perspective: violence against women*, Mission to Mexico, E/CN.4/2006/61/Add.4, 13 January 2006, para. 40; United Nations, *Report of the mission of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, Mission to Mexico*, E/CN.4/2000/3, Add.3, 25 November 1999, para. 86. See also Human Rights Council, *Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit*, Mission to Mexico, A/HRC/7/8/Add.2, 28 January 2008, paras. 61 and 62 (see the clarification contained in n. 39 above).

⁴² IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 123. In this paragraph the Court cited the following reports: United Nations, *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol of the Convention, and reply from the Government of Mexico*, CEDAW/C/2005/OP.8/MEXICO, 27 January 2005, paras. 38, 63; United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Integration of the human rights of women and a gender perspective: violence against women*, Mission to Mexico, E/CN.4/2006/61/Add.4, 13 January 2006, paras. 38, 40; Amnesty International, Mexico, *Intolerable killings: 10 years of Abductions and Murders or Women in Ciudad Juárez and Chihuahua*, AMR 41/027/2003, p. 36; Evaluación y Monitoreo sobre el trabajo de la Fiscalía Especial para la Atención de Delitos Relacionados con los Homicidios de Mujeres en el Municipio de Juárez, Chihuahua, de la Procuraduría General de la República, November 2006, Informe Final y Comisión para Prevenir y Erradicar la Violencia contra las Mujeres en Ciudad Juárez, Tercer informe de gestión, May 2005-September 2006, citing the Second Progress Report entitled “El feminicidio: formas de ejercer la violencia contra las mujeres”.

⁴³ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 123. In this paragraph the Court cited the following reports: IACHR, *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, 7 March 2003, para. 44; United Nations, *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol of the Convention, and reply from the Government of Mexico*, CEDAW/C/2005/OP.8/MEXICO, 27 January 2005, para. 38; and Amnesty International, Mexico, *Intolerable killings: 10 years of Abductions and Murders or Women in Ciudad Juárez and Chihuahua*, AMR 41/027/2003, p. 36. See also United Nations, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Integration of the human rights of women and a gender perspective: violence against women*, Mission to Mexico, E/CN.4/2006/61/Add.4, 13 January 2006, para. 40 and United Nations, *Report of the mission of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, Mission to Mexico*, E/CN.4/2000/3, Add.3, 25 November 1999, para. 86. We noted that both reports are cited by the Court, however the above mentioned paragraphs are missing from the sentence.

⁴⁴ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 123. In this paragraph the Court cited the following reports: IACHR, *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,

Therefore, a biased analysis of the context have implications that lead to questions about the positive measures that the State should have adopted to prevent the context of general risk in which the underprivileged (poor) women of Ciudad Juárez live, and, in turn, also affects the evaluation of the discriminatory effects of the use of stereotypes.

What was missing in the IACtHR's argumentation? The Court did not maintain an attitude of constant argumentative alert. It failed to question the argumentation schemes provided by the State, which seemed to be based on practices or mechanisms that speak of socioeconomic structures that generate inequality. For instance, the State argues that the *maquilas* prefer to employ women. The IACtHR does not consider this premise to be a problem. This conception is based on a gender stereotype that influences a recruitment policy: women are "caregivers by nature", men are "household providers by nature"; therefore, women that work outside their homes "help" but do not provide the main salary; therefore, women are destined to work in low-paid activities. Another variation of this stereotype: "women are caregivers"; therefore, "they are not competitive" by nature; therefore, they are preferred for employment. Another stereotype is: "women do not develop abstract thinking", therefore, they are preferred for manual and routine work. To sum up, women, destined by nature to be caregivers, do not expect professional success. Furthermore, if working conditions are poor, it is because they cannot negotiate, as they are not competitive. The list of stereotypes that lies behind a policy for the employment of women for low-paid activities that do not guarantee decent working conditions is quite varied. For example, the Special Rapporteur on the sale of children, child, prostitution and child pornography pointed out the role played by stereotypes in the process involving the feminization of *maquilas*: "(...) these enterprises prefer young women and minors because they are considered to be a more docile labour force, less informed of their rights and less inclined to assert them, and more capable of putting up with meticulous and monotonous work and hard days in the *maquiladoras*; all this, combined with low salaries, increases the rate of return and the comparative advantages".⁴⁵ Similarly, the Special Rapporteur on migrant workers indicated that the working conditions of migrant day labourers in Mexico "are still very precarious, full respect for them is still a long way off and, regardless of their legal status, they are vulnerable to a host of abuses such as unjustified dismissal, withholding of wages and documents, excessively

Doc. 44, 7 March 2003, para. 44; United Nations, *Report of the mission of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, Mission to Mexico*, E/CN.4/2000/3, Add.3, 25 November 1999, para. 86.

⁴⁵ Human Rights Council, *Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, Mission to Mexico*, A/HRC/7/8/Add.2, 28 January 2008, para. 61. The Inter American Court's decision in Campo Algodonero did not reference this report. The report was published two years before the ruling, and it contains relevant information about women and children living and working on the *maquiladoras* in Ciudad Juarez. In the part this paper refers to, the report identifies gender stereotypes that are used to place women in a subordinate position, dominate them in relation to their labour conditions and possibilities and that have a negative impact on their access to social rights.

long working hours, ill-treatment and discrimination. They constitute abundant and cheap labour living on a poor diet and in deficient accommodation and health conditions (...) the abuses most commonly reported are dismissal in the event of illness and the sexual harassment and rape of women day workers”.⁴⁶ In this regard, the Special Rapporteur stressed “the need to consolidate protection and regulation by the State and local authorities in this sphere”.⁴⁷ The aforementioned is deemed to be sufficient to serve the purposes of this work.

3.2. EFFECTS

In the Cotton Field case, the IACtHR lines of argument revolve around the definition of the victims solely as women. The Court is satisfied with the characterization of the context of violence caused only by a persistent patriarchal culture. It tends to stay in the fields of the acknowledgement of subordination interpreted as a cultural problem disconnected from political economy – as the Mexican State strongly proposed in its defense strategy. However, the murdered women were also poor workers (most of all, those from the *maquilas*). Moreover, they were underprivileged, students or migrants; and, what is more, they were young. None of these characteristics is relevant for the Court. The consideration of these characteristics would have enabled the Court to address inequality from an intersectional perspective.⁴⁸ This would then make it possible to highlight the fact that the problem also lies in the socioeconomic structure that generates inequality and shows young, migrant women, *maquila* and domestic female workers as “objects” of violence. The Court did not pay due attention to the broader context of the case. By that time, there were reports that showed the effects of discrimination towards migrant, young women and girls working in the *maquilas*.⁴⁹

⁴⁶ Human Rights Council, *Report submitted by the Special Rapporteur on migrant workers, Gabriela Rodríguez Pizarro*, Mission to Mexico, E/CN.4/2003/85/Add.2, 30 October 2002, para. 42.

⁴⁷ Ibid.

⁴⁸ See P. Muñoz Cabrera, *Violencias Interseccionales. Debates Feministas y Marcos Teóricos en el tema de Pobreza y Violencia contra las Mujeres en Latinoamérica* (Honduras, CAWN, 2011), p. 11: “the intersectional analysis approaches forms of violence or oppression to women as a link or knot where women’s poverty and impoverishment affects them differently depending on categories like gender, race, ethnic group, sexuality, age, among others”, available at: www.cawn.org.

⁴⁹ United Nations, *Report of the mission of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir*, Mission to Mexico, E/CN.4/2000/3, Add.3, 25 November 1999; *Report of the Special Rapporteur on the independence of judges and lawyers, Dato Param Kumaraswamy*, Mission to Mexico, E/CN.4/2002/72/Add.1, 24 January 2002; *Report submitted by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur on the human rights of migrants, “Migrant workers”*, Visit to Mexico, E/CN.4/2003/85/Add.2, 30 October 2002; *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol of the Convention, and reply from the Government of Mexico*, CEDAW/C/2005/OP.8/MEXICO, 27 January 2005; *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Integration of the human rights of women and a gender perspective: violence against women*, Mission to Mexico, E/CN.4/2006/61/Add.4, 13 January 2006; *Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography*,

A thorough analysis of these third party reports would have sufficed to determine these effects.⁵⁰ Thus, the Court did not reveal the socioeconomic structure that is defined by a dominant labor pattern that, while including women, it also exploits them in its recruitment policies, within the workplace, and even on the way to or from work. As a consequence of this situation, the partial gender perspective (recognition only) that prevails in the Court's line of argumentation leaves women defenseless – as previously noted- towards the “free-market fundamentalism”⁵¹ that has become hegemonic in times of neoliberalism.⁵² The transforming potential of the case has not been sufficiently utilized.

Juan Miguel Petit, Mission to Mexico, A/HRC/7/8/Add.2, 28 January 2008; *Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante*, Mission to Mexico, A/HRC/11/7/Add.2, 24 March 2009.

⁵⁰ Human rights bodies' reports published for that time and which we documented in the quotes found in this work's footnotes allow us to see the amplified context which the IACtHR did not consider in its decision. Likewise, the writings presented by different NGOs and universities as *amici curiae* show the profile of the case's victims (young, poor and mainly migrant women) and contribute to making an integral reconstruction of the facts. For instance, in one of such writings it is argued that these features allow us to identify a compound gender stereotype that puts these women in a position of subordination: “(...) 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, socioeconomic status, type of employment and, for example, her status as a migrant (i.e. a compounded stereotype).” (para. 27). “(...) Following explosive growth of the maquiladora industry (...) 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, socioeconomic 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. These contextual factors, described above, have enabled women – specifically, the subgroup of women with the lowest socioeconomic 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 (...)” Amicus Curiae brief forwarded to the IACtHR in the “Cotton Field” case by The International Reproductive and Sexual Health Law Programme (University of Toronto, Faculty of Law) and the Center for Justice and International Law (CEJIL), 3 December 2008, paras. 31–32, <www.law.utoronto.ca/documents/reprohealth/BriefMexicoCiudadJuarez2008English.pdf>.

⁵¹ Fraser, *supra* n. 1, p. 195.

⁵² In its decision, the Court takes the State's description of the facts, according to which the appearance of maquilas is fostered by the NAFTA, but only mentions this. In that period the working conditions, detrimental to women's rights working in the maquilas, were widely known, and there is even a fact that does not draw the Court's attention: one of the women disappears when returning home from work, after having been rejected entrance to her work for arriving a couple of minutes late.

3.3. THE STATE (UN)REASONS

It is clear –as a first step- that stereotypes do not count as reasons to justify State actions and that a strict analysis needs to be conducted⁵³ to evaluate if those actions were adequate and sufficient to help underprivileged (poor), young and migrant women workers from Ciudad Juárez overcome the situation of structural inequality they are currently facing.

The IACtHR correctly emphasizes that preconceptions about women cannot be used to justify the absence of immediate investigations into the whereabouts of the missing young women. The Court rightly considers that “in the instant case, the comments made by officials that the victims had gone off with a boyfriend or that they led a disreputable life, and the use of questions about the sexual preference of the victims constitute stereotyping. In addition, both the attitude and statements of the officials reveal that, at the very least, they were indifferent towards the next of kin of the victims and their complaints.” This mechanism is both a cause and a part of the discrimination, and it cannot be held as a reason to justify the breach of the State’s duty to investigate.

Now, stereotypes about women –which were previously analyzed- reveal mechanisms of discrimination that affect their access to basic services, to just and favourable conditions of work, and also impacts on school attendance. This speaks of the contribution that the socioeconomic structure (poverty, inadequate housing, economic and social relegation, among other factors) makes to a higher vulnerability of women to violence.⁵⁴ In the IACtHR arguments, the question about the (un)reasons for the insufficient State actions to remove this subjugated group from the situation of subordination⁵⁵ is conspicuous by its absence. This is therefore reflected in the measures of reparation.

The IACtHR insists on the transforming desire⁵⁶ with which the State obligations to tackle the causes of structural discrimination must be carried on.⁵⁷ However, as

⁵³ Timmer, *supra* n. 27, p. 723.

⁵⁴ The IACHR only explicitly referred to “social inequalities” once, but does not mention it again later. IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 113.

⁵⁵ About the equality test in situations of structural inequality, see R. Saba, “(Des)Igualdad estructural”, in M. Alegre and R. Gargarella (eds.), *El derecho a la igualdad. Aportes para un constitucionalismo igualitario* (Buenos Aires, LexisNexis, 2007). About structural inequality from a redistribution and recognition approach, see Clérico and Aldao, *supra* n. 2.

⁵⁶ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, paras. 450, 129, 152.

⁵⁷ Regarding this point, the Court’s reasoning mirrors the CEDAW’s conception of de facto or substantive equality: “The position of women will not be improved as long as the underlying causes of discrimination against women, and of their inequality, are not effectively addressed. The lives of women and men must be considered in a contextual way, and measures adopted towards a real transformation of opportunities, institutions and systems.” CEDAW, *General recommendation No. 25: Article 4, paragraph 1, of the Convention (temporary special measures)*, 30th session, 2004, para. 10.

previously noted, the analysis of such causes and the resulting redress only go half way toward fulfilling such obligations. For instance, the Court demands to establish transforming actions as part of the measures of reparation. However, if the causes of inequality are not identified to their full extent with a multidimensional approach, it is quite possible that the measures of reparation only bear a reforming interest,⁵⁸ rather than a transforming desire⁵⁹, as the unequal *status quo* (also generated by the socioeconomic structure) will remain intact because it is not even noticed in all its depth.

4. CONCLUSIONS

There is no doubt about the importance of the Cotton Field case since it includes a gender perspective, and a dimension of the structural inequality. However, it falls short since it does not identify nor analyze the way the socioeconomic structure is part of the context of violence that affects working, underprivileged (poor), young, and migrant women of the region. Of course, the IACtHR cannot dismantle the causes of the social discrimination alone. However, as Timmer points out,⁶⁰ the regional Courts of Human Rights should at least identify the stereotypes through a comprehensive analysis of the context, determine the extent of the harm and damage

⁵⁸ As a common feature in the crimes of Cotton Field appears the victims and/or relatives' impossibility to quickly access judicial protection and guarantees. Because of this, as regards compensation measures, the Court emphasizes the importance this access has in the fight against impunity and to avoid these crimes from happening again. Compensatory measures must be oriented to a gender perspective. This means that, in its design and implementation, the differential impact violence based on gender has in women and girls must be taken into account (para. 451 iv). According to the Court's point of view, in order to erase the factors that cause the discrimination that produces violence against women, a serious and effective investigation that inquires upon the facts and allows identifying and sanctioning the people responsible for Cotton Field's young women's death as well as the officials involved in the irregularities produced in the different penal procedures is essential. It is fundamental that specific lines of investigation be set up as regards sexual violence pursuant to international standards and protocols used in the subject and that officials that are highly qualified in discrimination and gender-based violence be involved (para. 455). Lastly, as a remedy to the denial of justice that women go through, there appears the transformation of the judicial system through the training of judicial operators and police officers specialised in gender subjects. In this way, the aim is to remove the different obstacles that hinder the due process of these investigations, such as the stereotypes spread among state authorities, which associate women with a position of inferiority, the discriminatory behaviours against victims and its relatives, the lack of contextualization of women and the unjustified delay in the investigation process of these cases. See Clérico and Novelli, *supra* n. 13, item 7.

⁵⁹ Transformative remedies can be characterized as those aimed at correcting "inequitable outcomes" as they restructure the "frameworks" generating them: N. Fraser, *Iustitia Interrupta* (Bogotá, Siglo de Hombres Editores/Universidad de los Andes, 1997), p. 23.

⁶⁰ Timmer, "From inclusion to transformation: rewriting Konstantin Markin v. Russia", in E. Brems (ed.), *Diversity and European Human Rights* (Cambridge, Cambridge University Press, 2013), p. 156.

they inflict and specify the State obligations that must be fulfilled in order to tackle the causes of discrimination in a multidimensional manner.⁶¹

In this work, we intended to deal with gender-related structural inequality considering lack of recognition and lack of redistribution as complementary reasons. We uphold the view that the IACtHR has conducted an insufficient reconstruction and analysis of the context in which the disappearances of these women occurred. For example, in the argumentation, the State makes reference to the *maquilas* but it does not explain nor explore the working conditions that exist in those establishments. The State argues that there is a preference for hiring women, but the Court does not further explore this situation. Claudia disappeared on her way from work,⁶² to which she was not allowed in because of having arrived 2 (two) minutes late.⁶³ Esmeralda disappeared

⁶¹ With regard to gender violence issues, the IACHR seems to be always a step ahead of the Court. On the one hand, according to the latest thematic reports issued by the IAHR, there is a close interrelationship between gender violence and the lack of access to social, economic and cultural rights. The Commission argues that “Although anyone can become the victim of poverty, its impact is different for women because of the social discrimination they experience and the added burdens they carry, such as family and household responsibilities that limit their chances of getting the financial resources they need for their livelihood and that of their family. Because of the inequalities they experience and the difficulties they encounter in getting access to and control over economic resources, women’s participation in areas vital to their human rights is very limited.” IACHR, *The work, education and resources of women: the road to equality in guaranteeing Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.143 Doc. 59, 3 November 2011, para. 25. On the other hand, more recently, the Commission indicated in the report entitled “Missing and murdered indigenous women in British Columbia, Canada”, that “Canadian authorities and civil society organizations largely agree on the root causes of these high levels of violence against indigenous women and the existing vulnerabilities that make indigenous women more susceptible to violence. These root causes are related to a history of discrimination beginning with colonization (...) As a consequence of this historical discrimination, the IACHR understands that indigenous women and girls constitute one of the most disadvantaged groups in Canada. *Poverty, inadequate housing, economic and social relegation, among other factors, contribute to their increased vulnerability to violence*. In addition, prevalent attitudes of discrimination – mainly relating to gender and race – and the longstanding stereotypes to which they have been subjected, exacerbate their vulnerability”. The IACCommHR also states that “The lack of due diligence in cases of violence against indigenous women is especially grave as it affects not only the victims, but also their families and the communities to which they belong (...) addressing violence against indigenous women is not sufficient unless the underlying factors of racial and gender discrimination that originate and exacerbate the violence are also comprehensively addressed”. IACCommHR, *Missing and murdered indigenous women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc. 30/14, 21 December 2014, paras. 7–11. Emphasis added.

⁶² In an *amicus curiae* brief submitted by an NGO in the “Cotton Field” case attention is drawn to the risks faced by female workers at maquilas due to poor labour conditions. In general, those concerned are women living under precarious conditions, often with familiar responsibilities. As a consequence of their working activity and bad economic situation, these women are forced to take the bus alone and ride long distances from the poor outskirts of Ciudad Juárez to their place of work, study or leisure. They have daily routines, schedules, set routes and journeys, which make women easy target for gender violence. See *Amicus curiae* submitted in the “Cotton Field” case before the IACtHR by Women’s Link Worldwide, 27/04/2009, para. 20, <www.campoalgodonero.org.mx/sites/default/files/documentos/Women_s_Link.27abril2009.AmicusCuriae.CampoAlgodonero.pdf>.

⁶³ IACtHR (Judgment) 16 November 2009, *González et al. (“Cotton Field”) v. Mexico*, para. 166.

after leaving the house where she worked as a domestic employee. The circumstances surrounding these disappearances are related to “accidents” *in itinere*.⁶⁴ The Court does not even investigate the fact that the late arrival is “punished” directly with the denial of access to the workplace. These working “conditions”, among others, describe the context.⁶⁵ However, they were not deemed relevant by the Court. Moreover, the State argued that there is a lack of roads and services in Ciudad Juárez; nevertheless, the Court did not pay attention to this absence. *All these elements shape the context that is mentioned but made invisible in the Court’s arguments.* The context speaks not only about a cultural patriarchy, as the State seems to argue, but also about a situation of precariousness and exploitation, thus requiring a work that should be conducted with focus on the multidimensional inequality: redistribution and recognition.⁶⁶ Therefore, the Cotton Field judgment should be rewritten.

⁶⁴ Accidents *in itinere* are those which happen during journeys between the worker’s residence and the place where they work.

⁶⁵ “Sadly, Claudia Ivette González is a martyr for justice in the maquiladoras, a place where workers have no expectation of safety in or out of the workplace and where supervisors can take actions against workers that, collectively, become *the structure of fatal indifference*. Claudia’s abduction, and that of so many of the victims of Juárez who were maquiladora workers, is the ultimate result of free trade and globalization. *Her body may have been abducted and grossly violated by whomever found an easy target that morning, but the life preceding her brutal killing had already been defined as insignificant: a fleck in the fabric of global production.*” Arriola, *supra* n. 38, p. 626–627, emphasis added.

⁶⁶ Fraser, *supra* n. 1.