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**Beyond Precautionary Measures: The Commitment and Practice of the  
Inter-American Commission of Human Rights to implement a gender  
and multicultural perspective**

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## **Dedication**

I dedicate this to my family. I used to say my family in Venezuela, but now they find themselves crossing borders in search of a better life. Esta tesis de maestría, como todo lo que hago, se la dedico a ustedes, mi querida familia. Ustedes me enseñaron desde muy pequeña, que Venezuela no es un lugar, es un sentimiento.

## Acknowledgements

This is not the thesis I wanted to write, but the thesis I was able to write along the way. Few know the way has been met with disappointments and accomplishments—all wrapped into a beautiful chapter of my life. I am thankful for the lessons and the people who supported me through this journey. The lessons are too many to name, but the people are a list worth mentioning. First, I want to thank mi lindo, Eric. Those late night writing sessions while you played video games were so comforting. Thank you for always believing in me and in our vision, together.

Second, I would like to thank my chosen LLILAS family: Fatima Valdivia, eres la guerrera que siempre quise tener a mi lado. Nos espera un lindo camino por delante. Juan, Nathalia, y Sherley, juntos comprobamos que el perreo es una forma de rebelión y de existencia. Ana, you are a constant source of joy in my life. Marianela, eres y serás mi ángel guardián. Zhandra, eres la mejor mamá del mundo y el mundo te debe mucho. Graciela, apareciste durante mi último capítulo en LLILAS, pero juntas nos fuimos por rumbos mejores. Patricia, Carla, y Perla thank you for holding down the fort.

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Lastly, I would like to thank my mentors. Nicole is a force that has always inspired me and has guided me during times I was completely lost. Paola is a light that makes academia a much kinder place, where theory meets practice. Juliet left to theorize in other places, but her lessons will forever guide me. Christen has seen me grow even

during my awkward stages; thank you for your patience and for the radical spaces you created for many of us to grow. Ginny you have the biggest heart, and you expect nothing in return. I was a witness to your love and legacy. I am because they are, my female scholar inspirations.

## **Abstract**

# **Beyond Precautionary Measures: The Commitment and Practice of the Inter-American Commission of Human Rights to implement a gender and multicultural perspective**

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New iterations of violence have emerged in Latin America as democratic governments replaced old dictatorships. However, human rights abuses have continued as new models of neoliberalism and globalization reinforce old structures of gender, race and ethnicity. The human rights systems, besides its cosmetic procedural changes and new programs, seem to be navigating cautiously and slowly these new iterations and evolving economic models while attempting to monitor and defend human rights. This thesis engages in a reflection on how human rights mechanisms, in general, and precautionary measures in the Inter-American Commission, in particular, are protecting people and communities in vulnerable situations today.

Gender-mainstreaming has led to a slow, but visible rise in practices around gender sensitivity in the Inter-American System. As a result of multiculturalism in the human rights regimes, the System has celebrated the rise of collective and cultural rights,

but the logic of multicultural neoliberalism has presented challenges to communities accessing the System. Where the literature has fallen short and this thesis makes a contribution is that there must be an intersectional analysis of these two trends—gender mainstreaming and multiculturalism—in order to understand many of the opportunities and challenges confronting the System. The gender violence that results from or exists in the context of multicultural neoliberalism is often silenced but becomes visible in this thesis through a survey of different cases of precautionary measures. Femicides, disappearances, and the assassination of human rights defenders are all on the rise. And these iterations of violence threaten in particular ways the lives of women and indigenous and afro-descendant women.

In general, the study aims to expand on the literature of human rights, engage in a reflection of human rights mechanisms, and identify the opportunities and limitations of international human rights systems in achieving gender, multicultural and racial justice as part of transformative, counter-hegemonic projects during a time of neoliberalism.



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## Chapter 1: Thinking Beyond Procedural Reforms of Precautionary Measures in the IACHR

The contradictions inherent in human rights are inescapable: colonial palaces can host gatherings with the most iconic activists in the region, many of them indigenous, afro-descendant and female leaders. Pushing through heavy, wooden doors, I entered a large room adorned with chandeliers, lined with red carpet, and walled in by golden-painted columns and majestic stained glass. The Palacio Legislativo (*the Legislative Palace*) of Uruguay was the backdrop of the 165<sup>th</sup> session of the Inter-American Commission of Human Rights (IACHR).<sup>1</sup> The session was a week of private meetings and public hearings between nation states, IACHR Commissioners and staff, human rights defenders and the survivors or family members of victims of grave human rights abuses throughout the Americas. My friend Fatima and I were Clinical students of the Human Rights Clinic at UT Law, and we flew to Uruguay to conduct research for a report on Precautionary Measures in the IACHR.

With my notebook in hand, I walked into a public hearing, past cameras, a C-shaped table cluttered with microphones, laptops and paperwork, and two old-school stand-up flags, one of the Organization of American States (OAS) and the other of Uruguay, the host country of the sessions.<sup>2</sup> I squeezed through people in badges and interns dressed in suits to get a glimpse of a group of women sitting in the front row, their heads wrapped in white headscarves, the icons of a female-led movement against disappearances in Argentina during the Dirty War: Las Abuelas de Plaza de Mayo (the Grandmothers of the Plaza de Mayo).<sup>3</sup>

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<sup>1</sup> IACHR, *Schedule of Hearings: 165 Period of Session Montevideo, Uruguay*, PDF file, accessed November 20, 2019, <http://www.oas.org/en/iachr/sessions/docs/Calendario-165-audiencias-en.pdf>.

<sup>2</sup> Personal observations during public hearing on October 24, 2017.

<sup>3</sup> Ibid.



Image 1: Abuelas de Plaza de Mayo during IACHR 165 Period of Sessions 4

In the face of systemic disappearances by the military junta of Argentina from 1976 to 1983, the time of “Dirty Wars,” the mothers and grandmothers of the disappeared organized in search of their loved ones, creating a new mode of political expression and resistance.<sup>5</sup> A small group of women started out by meeting at the house of Azucena de Villaflor De Vicente. They wrote letters to several international organizations, endured long hours in waiting rooms of government ministries, and visited prisons and military barracks to obtain information about their relatives.<sup>6</sup> As the government took notice and took actions against the women in their weekly congregations at the Plaza de Mayo, the

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<sup>4</sup> Personal photography taken by author during public hearing on October 24, 2017.

<sup>5</sup> Margarite Guzman Bouvard, *Revolutionizing Motherhood: The Mothers of the Plaza de Mayo* (Wilmington: Scholarly Resources Inc, 1994), 240-242.

<sup>6</sup> Bourvard, *Revolutionizing Motherhood*, 242.

Mothers' organization became more complex establishing divisions of labor, widening their networks of communication, and adopting a symbolic identity by wearing white, baby shawls during public events.<sup>7</sup> As the Mothers gained international attention and recognition, their political mobilization became a direct threat to a regime that intended to placate all political dissent, and their resistance opened a public, political space for women.<sup>8</sup>

Almost forty years later, some of these women were sitting in the front row of the hall across from me. Estela de Carlotto, the President of the organization Las Abuelas de Plazo de Mayo, stood up smiling along with the rest of them. I joined the crowd in applauding the women and celebrating their legacy as one of the most iconic human rights movements in the region. They were still an inspiration for many. Later in the day, the Abuelas would meet with the Argentinean government in a public hearing on “The Right to Memory, Truth, and Justice for Crimes Against Humanity in Argentina.”<sup>9</sup> Sadly, we would later be in another room to witness another public hearing on a more recent case of enforced disappearance in Mexico: the Special Follow-Up Mechanism for the Ayotzinapa Investigation, Mexico.<sup>10</sup>

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<sup>7</sup> Bourvard, *Revolutionizing Motherhood*, 243-245.

<sup>8</sup> *Ibid.*, 247-251.

<sup>9</sup> IACHR, *Schedule of Hearings: 165 Period of Session Montevideo, Uruguay*, PDF file, accessed November 20, 2019, <http://www.oas.org/en/iachr/sessions/docs/Calendario-165-audiencias-en.pdf>.

<sup>10</sup> *Ibid.*



Image 2: Participants of the Hearing on the Ayotzinapa Investigation <sup>11</sup>

According to the Grupo Interdisciplinario de Expertos Independientes (GIEI, or *Interdisciplinary Group of Independent Experts*), 43 students from the Normal Isidro Burgos de Ayotzinapa, a rural school in Iguala, Mexico, were disappeared on the night of September 26, 2014.<sup>12</sup> Instead of the truth, the families of the students received different versions of what had happened, and grave irregularities, like tampering with the evidence, surfaced in the aftermath.<sup>13</sup> The case sparked international indignation and

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<sup>11</sup> Personal photography taken by author during public hearing on October 24, 2017.

<sup>12</sup> Grupo Interdisciplinario de Expertos Independientes (GIEI), "Investigación y Primeras Conclusiones de las desapariciones y homicidios de los normalistas de Ayotzinapa," *Informe Ayotzinapa*, September 6, 2015, <https://www.oas.org/es/cidh/actividades/giei/GIEI-InformeAyotzinapa1.pdf>.

<sup>13</sup> *Ibid.*

national mobilizations.<sup>14</sup> The IACHR became involved; first, when it granted a precautionary measure to the 43 students immediately after their disappearance on September 30, 2014, and then, when it formed the GIEI to investigate the facts, find the disappeared, and support the victims and their families.<sup>15</sup> Three years after the disappearances, and despite GIEI's findings and the creation of the Follow-Up Mechanism to the Ayotzinapa Case (MESA), the student's whereabouts remain unknown.<sup>16</sup> Since then, the case became a symbol that shed light on the numerous other cases of disappearances in Mexico and mobilized human rights organization in Mexico around enforced disappearances especially through the use of international mechanism, such as precautionary measures in the IACHR.<sup>17</sup>

“Vivos se los llevaron y vivo los queremos!” The words of a father of one of the students disappeared echoed over and over again in the hall.<sup>18</sup> He stood up firmly and looked straight at the other side of the table, towards the government officials representing the State of Mexico.<sup>19</sup> As the mothers and abuelas wore their white headscarves painfully carrying the memory of their disappeared children, here was a father wearing a white t-shirt with the 43 faces of the students printed on it. And as I witnessed this father demand the whereabouts of their disappeared children, I could only wonder if all the microphones, cameras, and note taking could ever grasp the inexplicable

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<sup>14</sup> Ibid.

<sup>15</sup> Grupo Interdisciplinario de Expertos Independientes (GIEI), “Investigación y Primeras Conclusiones de las desapariciones y homicidios de los normalistas de Ayotzinapa,” *Informe Ayotzinapa*, September 6, 2015, <https://www.oas.org/es/cidh/actividades/giei/GIEI-InformeAyotzinapa1.pdf>; IACHR, Precautionary Measure 409-14, “Estudiantes de la escuela rural ‘Raúl Isidro Burgos’ respecto del Estado de México,” October 3, 2014, <http://www.oas.org/es/cidh/decisiones/pdf/2014/MC409-14-ES.pdf>.

<sup>16</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 110-114.

<sup>17</sup> Ibid.

<sup>18</sup> Personal observations during public hearing on October 24, 2017.

<sup>19</sup> Personal observations during public hearing on October 24, 2017.

void of a father's missing son. As I peaked over to the Abuelas, it seemed like they were the only eyes that could tune in to that father's search for justice. And it was there where a cycle of suffering, of state violence, of justice merged into one.

Times had changed since the time of dictatorships in the 1980s in Latin America, when the Abuelas marched around the Plaza de Mayo, but today disappearances continue, especially in Mexico. The human rights system of the 1980s has changed, but it seems that many things remain the same when addressing the situations of violence that communities throughout Latin America confront today. Despite many institutional changes, like the changes in the rules of procedures in 2013, many contradictions remain.<sup>20</sup> There were the contradictions of a flashy setting to discuss grave human rights abuses in the legislative place, a physical manifestation of the State, while this space hosted civil society and individuals in confronting the state for failing to ensure the safety, rights, and lives of its vulnerable people. Many contradictions and limitations of the practice of human rights and its mechanisms are also revealed through the dominant narratives heard in the halls of this legislative palace: the limited funding the IACHR has them relying on States to fund its programs and host its sessions while asserting independence from them; as the IACHR seeks legitimacy through procedures, note taking, recordings and quasi-jurisprudence, it becomes less accessible to those looking to defend their rights relying on human rights lawyers to help them navigate what amounts to a complicated bureaucratic system; as the sessions of the IACHR move from Uruguay to its headquarters in Washington DC, local issues and actors have to physically travel, with limited resources, to be heard in international settings, attempting to amplify their case and, in that process, create transnational networks; and simultaneously, as the

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<sup>20</sup> IACHR, "About Precautionary Measures," *Inter-American Commission of Human Rights*, accessed November 20, 2019, <https://www.oas.org/en/iachr/decisions/about-precautionary.asp>.

IACHR opens its doors to the survivors, victims and their families, it becomes a space of historical and repeating contestations; far from a place of justice and healing but a hall where the truth is demanded and where the victims have a voice.<sup>21</sup>

From this reflection, and continuing throughout the writing of the report on precautionary measures for the Human Rights Clinic, I started to grapple with certain questions: How does the IACHR, and its mechanisms of public hearings, cases, and precautionary measures provide an appropriate strategy through which to demand justice and safety from current iterations of state violence? What are the limitations that exist in this body of human rights as it holds States accountable for these new iterations of violence that results from neoliberalism and globalization? And how do these limitations and the actors, especially those who choose to participate in these human rights mechanisms, inform possible transformations of or negotiations with the human rights system?

The 43 students disappeared in Ayotzinapa.<sup>22</sup> Berta Cáceres indigenous, environmental leader in Honduras.<sup>23</sup> Judge Maria Lourdes Afiuni in Venezuela.<sup>24</sup> Miriam Miranda leader of the Black Fraternal Organization of Honduras (OFRANEH).<sup>25</sup> Yoani Sanchez, human rights defenders and blogger of internet use and freedom of expression in Cuba.<sup>26</sup> The case that sparked debates around legalizing abortion in El Salvador.<sup>27</sup>

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<sup>21</sup> Personal observations during public hearing on October 24, 2017 and October 25, 2017.

<sup>22</sup> IACHR, Precautionary Measure 409-14, “Estudiantes de la escuela rural ‘Raúl Isidro Burgos’ respecto del Estado de México,” October 3, 2014, <http://www.oas.org/es/cidh/decisiones/pdf/2014/MC409-14-ES.pdf>.

<sup>23</sup> Initially Cáceres was protected under the collective measure PM 196-09 to Honduras after the Coup, but the IACHR later decided to separate her case and make her a main beneficiary Cáceres in PM 405-09.

<sup>24</sup> IACHR, Precautionary Measure 380-09, “María Lourdes Afiuni, Venezuela,” January 11, 2010, <http://www.oas.org/es/cidh/decisiones/cautelares.asp#tab1>.

<sup>25</sup> IACHR, Precautionary Measure 322-11, “Miriam Miranda, Honduras,” September 16, 2011, <http://www.oas.org/es/cidh/decisiones/cautelares.asp#tab1>.

<sup>26</sup> IACHR, Precautionary Measure 350-12, “Yoani María Sánchez Cordero, Cuba,” November 9, 2012, <http://www.oas.org/es/cidh/decisiones/cautelares.asp#tab1>.



These are judges, politicians, indigenous and afro-descendent leaders and communities, human rights defenders, prisoners, and even some anonymous women whose stories resisting and fighting against human rights abuses have shaken the region of Latin America. I studied some of these cases throughout my training in Latin American Studies as both an undergraduate and master student. Some, like the assassination of Berta Cáceres, were events I mourned personally—Berta’s death came two months after I personally met her in a discussion at UT Law about her environmental activism and her struggles as an indigenous woman.<sup>28</sup> As I enrolled in the Clinic of Human Rights to complete a report on precautionary measures in the IACHR, their cases surfaced in my research. All of them were beneficiaries of precautionary measures granted by the Inter-American Commission of Human Rights (IACHR).

## **METHODOLOGY**

In the fall of 2017, I joined a research team to publish a report on precautionary measures with the Human Rights Clinic at the University of Texas School of Law under the supervision of Ariel Dulitzky. In the process of the first semester we conducted over 30 interviews with state officials, civil society, and beneficiaries of precautionary measures.<sup>29</sup> During the Spring of 2018, I continued on the research team conducting more interviews, and then, I was hired on that summer as a consultant to support the writing and editing of the 150 page report published in November 2018 and titled: *Prevenir Daños Irreparables: Fortalecer las Medidas Cautelares de la Comisión Interamericana*

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<sup>27</sup> IACHR, Precautionary Measure 114-13, “B, El Salvador,” April 29, 2012, <http://www.oas.org/es/cidh/decisiones/cautelares.asp#tab1>.

<sup>28</sup> “Rights, Resources, Territory: The Struggles of the Garifuna and Lenca in Honduras,” *The Bernard and Audre Rapoport Center for Human Rights and Justice*, Event on November 10, 2015, <https://law.utexas.edu/humanrights/events/rights-resources-territory/>.

<sup>29</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 14.

*de Derechos Humanos (Preventing Irreparable Harm: Strengthening Precautionary Measures in the Inter-American Commission of Human Rights).*<sup>30</sup>

As a result of this experience, I started reflecting on some of the dynamics in the IACHR. This master's thesis honors some of those reflections that were never the focus of the report on precautionary measures but stem from my own interests in gender, race, and ethnicity. As a master's thesis, I took several coursework on gender, race, and ethnicity in Latin America; and I had been committed to studying the impact of legal systems on women, indigenous and afro-descendent communities since my undergraduate thesis on reproductive and sexual rights in Venezuela. My academic journey begins with those courses and research projects and continues on these pages as part of a personal political project to transform legal systems in order to better guarantee justice for the most vulnerable.

As a Latina immigrant born in Venezuela and in route to law school, I am invested in legal research as a methodology but fully aware of its limitations and faults. Therefore, I engage in other practices like participant observation to address the shortcomings of legal sources and interviews with human rights defenders. Throughout this thesis, I weave case studies with personal observations about the state of human rights institutions in Latin America. In this process, I acknowledge my blind spots and probably fail to see my own privilege in accessing a network of human rights lawyers, government officials, and staff at the Inter-American Commission of Human Rights. The most important aspect of this exercise I call my "master's thesis" is to engage in a debate with the key sources and practices of human rights in order to recognize that mechanisms and human rights systems are not neutral, and instead, racialized, gendered, and often violent narratives and dynamics are involved.

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<sup>30</sup> Ibid.

The methodology of this research primarily relies on legal sources to build case studies and analyze them. The IACHR publishes in their website guiding documents, like their rules of procedures, strategic plans, press releases, reports, and resolutions of precautionary measures. I chose to focus on resolutions between 2013 and 2018 to analyze key cases that contained certain characteristics I wanted to analyze: gender, race, ethnicity, and other issues that led to the granting of the measure.<sup>31</sup> A couple of interviews that I conducted during the summer of 2018 with users of the IACHR are used interspersed to zoom into certain cases or dynamics. These interviews were conducted during the time period approved by the International Review Board at the University of Texas.<sup>32</sup> My own journal notes from experiences like attending the IACHR sessions in Uruguay and participant observation enrich the case studies and fill in gaps about the practice of human rights that are often left out of the legal analysis. Lastly, secondary sources are used to help contextualize certain case studies or clarify legal procedures.

Through this mixed methodological approach, this work identifies the need for more in depth analysis of cases concerning women beneficiaries and other minority communities including indigenous and afro-descendent populations, cases centering women's rights issues, and cases that often demonstrate the lack of a gender and cultural perspective in the implementation of precautionary measures both by the IACHR and the corresponding national governments. The case studies include traditional women's rights issues (e.g. reproductive and sexual rights) and seemingly "neutral" human rights issues (e.g. land rights or disappearances) to measure, in particular, the IACHR's practices in

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<sup>31</sup> During the summer of 2018, I conducted a lot of my research and analysis of primary sources. It was not until the Fall of 2019 that I was able to enroll in the thesis course to complete the writing portion. This explains the absence of 2018 and 2019 resolutions as part of my analysis at the time of publishing this master's thesis.

<sup>32</sup> On March 27, 2018, I received IRB Exempt Determination for Protocol Number 2018-02-0014 for the titled project at the time "Beyond Precautionary Measures: a gendered critique of human rights in the Americas" under the supervision of my thesis advisor, Dr. Christen Smith.

implementing an intersectional perspective that includes gender, race, and ethnicity in the mechanism of precautionary measures.

The main informational source are those published by the IACHR: press releases, reports, recordings of IACHR hearings, statistics, published resolutions of precautionary measures, and other documents that relate to the cases analyzed in the following chapters.<sup>33</sup> According to the IACHR Strategic Plan 2017-2021, the Commission is constantly to work on its transparency with and accountability to the users of the system.<sup>34</sup> In this effort, they publish press release where the Commissioners and staff of the IACHR release statements condemning ongoing human rights abuses and developments in the region.<sup>35</sup> In addition to private meetings with human rights defenders and government officials, they also conduct regular public hearings like the one I attended in Uruguay: the 165th Period of Sessions of the IACHR from October 23rd to 24th.<sup>36</sup> They usually record the different public sessions hosting in their website a rich resource to evaluate the types of issues, players and debates that occur during these proceedings.<sup>37</sup> The IACHR regularly conducts internal studies to inform its users abouts its proceedings and goals like the Strategic Reports, and they publish curated statistics on the activities of the IACHR: number of petitions, decisions, and precautionary measures

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<sup>33</sup> For example some of the sources are housed in the following IACHR websites: <http://www.oas.org/es/cidh/decisiones/cautelares.asp#tab1>, <http://www.oas.org/es/cidh/informes/pais.asp>, <http://www.oas.org/es/cidh/informes/tematicos.asp>, [http://www.oas.org/es/cidh/mandato/documentos\\_basicos.asp](http://www.oas.org/es/cidh/mandato/documentos_basicos.asp).

<sup>34</sup> IACHR, *Strategic Plan 2017-2021*, published on March 20, 2017, <https://www.oas.org/en/iachr/mandate/StrategicPlan2017/docs/StrategicPlan2017-2021.pdf>

<sup>35</sup> IACHR, “Press Releases 2019,” *About the Inter-American Commission of Human Rights*, accessed on November 20, 2019, [http://www.oas.org/en/iachr/media\\_center/press\\_releases.asp](http://www.oas.org/en/iachr/media_center/press_releases.asp).

<sup>36</sup> IACHR, *Schedule of Hearings: 165 Period of Session Montevideo, Uruguay*, PDF file, accessed November 20, 2019, <http://www.oas.org/en/iachr/sessions/docs/Calendario-165-audiencias-en.pdf>.

<sup>37</sup> IACHR, “165 Period of Session Uruguay 10/23/17-10/27/17,” *IACHR Hearings and Other Public Events*, accessed November 20, 2019, <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=en&Session=1155>.

by year and by country.<sup>38</sup> After a period of reform 2009-2013 in the IACHR, the Commission was required to publish resolutions for their decisions of precautionary measures.<sup>39</sup> Since 2013, every precautionary measure that the IACHR has requested on different countries to implement has an assigned resolution that details the beneficiaries profiles, a chronology of the events that led to the request of the urgent measure to protect an individual or group of people, and other information that applies the decision-making framework the IACHR uses to grant the precautionary measure.<sup>40</sup>

### **TOWARDS A GENDERED APPROACH TO HUMAN RIGHTS IN A DECADE OF NEOLIBERAL MULTICULTURALISM**

In order to analyze the effectiveness of the precautionary measures as a human rights mechanism in the Inter-American Commission of Human Rights (IACHR), the work incorporates an intersectional gender perspective, which acknowledges class, race and sexuality. In order to fill in the gap of the legal sources, my own observations and reflections apply this intersectional gender perspective. My personal experiences and conversations attending the 165th session in Montevideo, Uruguay are used to reflect on larger conversations that inform the praxis and limitations of human rights mechanism and networks.

In general, the study aims to expand on the literature on human rights and engage in a feminist critique, or reflection, of human rights mechanisms to outline the limitations

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<sup>38</sup> “Statistics,” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/multimedia/statistics/statistics.html>.

<sup>39</sup> “Precautionary Measures,” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/decisions/precautionary.asp>

<sup>40</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 31-35.

of international human rights litigation in achieving gender and racial justice as part of transformative, counter-hegemonic projects during a time of neoliberalism.

Therefore, this thesis engages in a reflection on how human rights mechanisms, in general, and precautionary measures, in particular, are adequately helping or failing to protect people and communities in vulnerable situations in the last decade: 2010-2020. Because of current structures of powers that enforce systems of oppression, some people and communities face multiple systems resulting in racial, sexual, and gender violence separately and, most often, intersectional. The question opens up to two tasks: the first is to identify the limitations of the mechanism when it tries to protect people from state violence, especially gender and racial violence; and the second is to apply a bottom-up approach in strengthening the mechanism to further counter-hegemonic projects of liberation. A precautionary measure in the Inter-American Commission is a microcosm of the larger mechanisms of human rights. This mechanism is one institutional site where the state, neoliberalism, and globalization clash with civil society, social movements, and the local. And from this clash unresolved questions about power, violence and justice challenge the practice of human rights.

### **PRECAUTIONARY MEASURES IN THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS**

What are precautionary measures and how does the IACHR fit within the larger human rights ecosystem? The Inter-American System (IAHRS) is composed by the Inter-American Commission of Human Rights (IACHR) and the Inter-American Court of Human Rights (Court), and it is the Organization of American States' (OAS) most important, autonomous organ to promote “the observance and protection of human

rights.”<sup>41</sup> The IAHR was established in 1948 by the American Declaration of the Rights and Duties of Man resulting in the OAS Charter that created the IACHR.<sup>42</sup> In 1969, the *American Convention on Human Rights* was passed, and it outlined the human rights that the States ratifying the Convention must uphold.<sup>43</sup> As defined by the Convention, the work of the Commission is divided into 3 sections: “(i) the individual petition system regarding specific cases of human rights violations, (ii) monitoring Member States on their respective human rights situation, especially historically marginalized populations, and (iii) the attention devoted to priority thematic areas.”<sup>44</sup>

Within this large mandate to observe and protect human rights, the Commission began to replicate the practice of other international bodies like the United Nations: a mechanism of urgent measures.<sup>45</sup> In simple terms, instead of filing a case after a human rights abuse has occurred, there could be a preventive action that would be applied urgently to avoid any abuse of rights. In 1980, the process was formalized under a Rules of Procedure that would later be amended through what was known as a “Strengthening Process” in 2009 and 2013.<sup>46</sup> From this very politicized process, during which some States debated the legitimacy of precautionary measures, Article 25 resulted in what we currently understand as the mechanism of precautionary measures—a mechanism that for some, including the States, is a much more transparent and organized process, and that

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<sup>41</sup>“What is the IACHR?” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/mandate/what.asp>. “Mandate and Functions of the Commission,” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/mandate/functions.asp>

<sup>42</sup>Ibid.

<sup>43</sup>Ibid.

<sup>44</sup>Ibid.

<sup>45</sup> Felipe González Morales, “Las medidas cautelares y provisionales en el Sistema Interamericano,” *Fascículo*, n.º 3, julio 20, 2016, 111.

<sup>46</sup> “About Precautionary Measures,” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <https://www.oas.org/en/iachr/decisions/about-precautionary.asp>.

for others, especially members of civil society, has become a weak mechanism plagued by delays and restrictions.<sup>47</sup>

As established by Article 25 of the Rules of Procedure of the IACHR, the mechanism of precautionary measures is a practice where the Commission requests the States to protect persons or group of people in “serious and urgent situations presenting a risk of irreparable harm to persons or to subject matter of a pending petition or case before the organs of the Inter-American system.”<sup>48</sup> In general, precautionary measures are urgent, symbolic, and political tools that human rights defenders use to prevent the harm or death of vulnerable populations, or people in vulnerable conditions.<sup>49</sup> The process from requesting, granting, and implementing a precautionary measures involves different actors.

When a person or group of people faces a grave and imminent risk, the people or allies, in most cases lawyers affiliated with local, national, or international human rights organizations, file a request for a precautionary measure to the IACHR.<sup>50</sup> Once the IACHR receives it, the Secretariat of the IACHR, all lawyers by training, applies three requirements into its decision making process.<sup>51</sup> The request must demonstrate (i) a

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<sup>47</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 32-35.

<sup>48</sup> Inter-American Commission of Human Rights, “Article 25,” *Rules of Procedure of the Inter-American Commission on Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

<sup>49</sup> Felipe González Morales, “Las medidas cautelares y provisionales en el Sistema Interamericano,” *Fascículo*, n.º 3, julio 20, 2016, 111. Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 36-37.

<sup>50</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 41.

<sup>51</sup> Inter-American Commission of Human Rights, “Article 25,” *Rules of Procedure of the Inter-American Commission on Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.



“serious situation” that may have an impact on a protected right, (ii) an “urgent situation” or imminent risk, that leads to (iii) “irreparable harm” or an injury to rights that can’t be restored.<sup>52</sup> The requisites for urgency, gravity, and irreparability must be in place for the IACHR to grant a precautionary measure, and some believe the IACHR applies a rigid interpretation of these requisites.<sup>53</sup> If the IACHR decides to grant the measure, the IACHR publishes a resolution informing the State of its decisions and reasons for granting it.<sup>54</sup>

Once the state has been informed, the State now finds itself with the responsibility of implementing the precautionary measure.<sup>55</sup> In most cases, States limit their implementation of a precautionary measure to security measures: bodyguards, panic buttons, police patrol, armored cars.<sup>56</sup> When a person has been threatened to death and the IACHR requests the state to protect their lives from imminent and irreparable harm, security measures can be helpful but are often limiting and certainly never enough.<sup>57</sup> Other times, the State is willing to supply a medicine to someone who needs it to survive, or takes actions into improving the detention conditions that threaten the life of prisoners.<sup>58</sup> In special cases, like the case of Ayotzinapa in Mexico, there can be a creative implementation of the precautionary measure, which can include repeated visits

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<sup>52</sup> Ibid.

<sup>53</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 61-62.

<sup>54</sup> “Precautionary Measures,” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

<sup>55</sup> Inter-American Commission of Human Rights, “Article 25,” *Rules of Procedure of the Inter-American Commission on Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

<sup>56</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 91.

<sup>57</sup> Ibid.

<sup>58</sup> Felipe González Morales, “Las medidas cautelares y provisionales en el Sistema Interamericano,” *Fascículo*, n.º 3, julio 20, 2016, 111.

from the leaders of the IACHR and the assembly of a group of international human rights experts to investigate the violations like the GIEI.<sup>59</sup> The state has the total responsibility in implementing the measures, but most often their implementation is weak or non-existent resulting in the culmination of the irreparable harm.<sup>60</sup>

## **HUMAN RIGHTS THEORY AND PRAXIS: A LITERATURE REVIEW**

Understanding precautionary measures and the IACHR is a first step. Surveying the literature on human rights in Latin America and its intersections with gender, race, and ethnicity is a more complicated step. The literature on precautionary measures in the IACHR has been limited to studies on jurisprudence or its procedures. Most studies on precautionary measures in the IACHR by scholars and users of the System, including civil society, have focused on the conventionality of the IACHR in granting precautionary measures, or the reforms of the procedures in 2011-2013.<sup>61</sup> Few studies, as we detailed below, have focused on the implementation of a gender or multicultural perspective in the IACHR.

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<sup>59</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 110-114.

<sup>60</sup> *Ibid.*

<sup>61</sup> Felipe González Morales, “Las medidas cautelares y provisionales en el Sistema Interamericano,” *Fascículo*, n.º 3, julio 20, 2016, 111. Oswaldo Ruiz-Chiriboga, *La Convencionalidad de las Medidas Cautelares en el Sistema Interamericano de Derechos Humanos*, published October, 2015, accessed November 20, 2019, [https://www.researchgate.net/publication/282577542\\_La\\_convencionalidad\\_de\\_las\\_medidas\\_cautelares\\_en\\_el\\_Sistema\\_Interamericano\\_de\\_Derechos\\_Humanos](https://www.researchgate.net/publication/282577542_La_convencionalidad_de_las_medidas_cautelares_en_el_Sistema_Interamericano_de_Derechos_Humanos). Katya Salazar, “Reflexiones para el fortalecimiento del Sistema Interamericano de Derechos Humanos,” *Aportes DPLF Revista Fundación para el Debido Proceso (DPLF)*, accessed November 20, 2019, <http://www.dplf.org/sites/default/files/1332509827.pdf>, 16. Centro por la Justicia y el Derecho Internacional (CEJIL), “Apuntes sobre las reformas al reglamento de la comisión interamericana de DDHH: Cambio derivados del Proceso de Reflexión 2011-2013,” *Documento de Coyuntura* (8), accessed November 20, 2019, [https://www.cejil.org/sites/default/files/legacy\\_files/Documento%20de%20Coyuntura%20N%C2%BA%208\\_1.pdf](https://www.cejil.org/sites/default/files/legacy_files/Documento%20de%20Coyuntura%20N%C2%BA%208_1.pdf).

For the purpose of engaging with a lineage of mainly socio-legal scholars on the topics of feminism, multiculturalism, neoliberalism and globalization, the literature review is constructed under the following guiding questions. How can we better understand and improve precautionary measures in the IACHR to serve vulnerable populations in a time of neoliberal globalization that produce a context of human rights abuses and threats to particular vulnerable groups, mainly women, indigenous, and afro-descendant communities, that might seek protection from the IACHR? How do we identify the opportunities and limitations of legal strategies of people in vulnerable situations as part of a larger strategy or counter-hegemonic project and listen to their critiques to reform, from the bottom up, international human rights institutions? In order to build and apply critical language and engage with the relevant literature, the review follows the following structure: (i) A Feminist Critique of International Human Rights: From Androcentrism to Gender-Mainstreaming, and (ii) Multiculturalism in Human Rights in the Age of Neoliberal Globalization.

### **Feminist Critique of International Human Rights: From Androcentrism to Gender-Mainstreaming**

Throughout the history of human rights, from its foundation to its current mechanisms, scholars have relied on several misleading assumptions: androcentrism in the law and ideas of sameness between men and women. This history has been revised by several feminist critiques and proposals towards a gender-mainstreaming of international human rights. It is through this feminist critique and proposal that precautionary measures in the IACHR are analyzed.

The foundation of human rights lies in its founding documents. For the United Nations Systems, it was the *Universal Declaration of Human Rights* in 1948.<sup>62</sup> In the same year, the *American Declaration of the Rights and Duties of Man* resulted in the OAS Charter that created the IACHR.<sup>63</sup> It was not until 1979 that the *UN Convention on the Elimination of Discrimination Against Women* (CEDAW) created an “international bill of women’s rights,” maintaining the principle of equality before the law to secure social, economic and cultural rights and some political and civil liberties of women.<sup>64</sup> Once again in the same year as the UN, the IACHR adopted the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* “*Convention of Belem do Para.*”<sup>65</sup> Why did it take 30 years for women to be acknowledged in foundational documents of human rights systems as individuals with rights?

The work of Laura Parisi “Feminist Perspectives on Human Rights” traces how feminist scholarship has changed over the years when conceptualizing and critiquing human rights regimes. Parisi points out the multiplicity of feminisms and ways of advancing a human rights agenda, rejecting feminism as monolithic.<sup>66</sup> The differences in

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<sup>62</sup> Laura Parisi, “Feminist Perspectives on Human Rights,” *Oxford Research Encyclopedia of International Studies*. DOI: 10.1093/acrefore/9780190846626.013.4, published online november 2017, <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-48?rskey=ikKTTF&result=7>

<sup>63</sup> Laura Parisi, “Feminist Perspectives on Human Rights,” *Oxford Research Encyclopedia of International Studies*. DOI: 10.1093/acrefore/9780190846626.013.4, published online november 2017, <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-48?rskey=ikKTTF&result=7>

<sup>64</sup> Ibid.

<sup>65</sup> Permanent Council of the Organization of American States, *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women* “*Convention of Belem Do Para,*” adopted September 20, 1979, <http://www.oas.org/juridico/english/treaties/a-61.html>.

<sup>66</sup> Laura Parisi, “Feminist Perspectives on Human Rights,” *Oxford Research Encyclopedia of International Studies*. DOI: 10.1093/acrefore/9780190846626.013.4, published online november 2017, <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-48?rskey=ikKTTF&result=7>.

liberal, radical, socialist, and third world feminisms have informed the way these networks have conceived and criticized the state, citizenship, rights, and in relation, the human rights regime.<sup>67</sup>

During the time of the foundation documents, 1948 through 1979, “liberal feminist ideal of ‘sameness’” between men and women informed the institutional arrangements in the United Nations to guarantee women’s international human rights.<sup>68</sup> However, the idea of sameness (to men) has long been critiqued and a point of tension in the women’s human rights movement for erasing the differences in lived experiences between men and women and for eroding the need for special protections.<sup>69</sup> Furthermore, the idea of “equality” under the law lies on a heavily criticized assumption: “the androcentric construction of human rights.”<sup>70</sup> Identifying “androcentrism” in the construction of human rights alerts us to how the international legal order has been created by and for men and how this order claims to be objective and guarantees the “universality” in human rights law (Parisi via Charlesworth (1995:103)).<sup>71</sup> According to Parisi, a feminist critique would reject androcentrism.<sup>72</sup> But what would be the alternative? And how are current scholars engaging in a gender-sensitive or feminist

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<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Laura Parisi, “Feminist Perspectives on Human Rights,” *Oxford Research Encyclopedia of International Studies*. DOI: 10.1093/acrefore/9780190846626.013.4, published online november 2017, <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-48?rskey=ikKTVF&result=7>. Hilary Charlesworth, “Human Rights as Men’s Rights,” In J. Peters and A. Wolper (eds.) *Women’s Rights, Human Rights: International Feminist Perspectives*. London: Routledge, pp. 103–13.

<sup>72</sup> Laura Parisi, “Feminist Perspectives on Human Rights,” *Oxford Research Encyclopedia of International Studies*. DOI: 10.1093/acrefore/9780190846626.013.4, published online november 2017, <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-48?rskey=ikKTVF&result=7>.

critique of international human rights systems, specifically scholars of the Inter-American System?

In *The Path to Gender Justice in the Inter-American Court of Human Rights*, Patricia Palacios Zuloaga analyzes, the Inter-American Court and its case law in their system of individual cases documenting human rights abuses involving women or women's rights issues.<sup>73</sup> Zuloaga identifies that, compared to other international human rights bodies, the Court has lagged behind in gender based justice with a low number of cases involving women and low representation of female or gender sensitive judges.<sup>74</sup> The author argues that the Court has mishandled "gender sensitive human rights violation" relying on gender stereotypes, or uninformed about gender-specific language, in its decisions.<sup>75</sup> In the analysis, the author identifies the androcentrism of national and international law, but, beyond an increase in women representation and leadership, she calls for "gender mainstreaming" in order for domestic and international judicial systems to better respond to women's concerns and develop sensitivity for gendered issues.<sup>76</sup> Despite improvements beginning in 2004, with the acceptance of more cases involving women, gender-specific resolutions, and the appointment of judges who are gender experts, Zuloaga insists that the practices and case law of the Court must continue to improve in order to achieve gender-based justice in the Inter-American System, in

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<sup>73</sup> Patricia Palacios Zuloaga, "The Path to Gender Justice in the Inter-American Court of Human Rights." *Texas Journal of Women and the Law*, 17 (2), accessed November 20, 2019, PDF file, <https://law.utexas.edu/wp-content/uploads/sites/31/2016/11/writing-prize07-zuloaga.pdf>, 227-295.

<sup>74</sup> Patricia Palacios Zuloaga, "The Path to Gender Justice in the Inter-American Court of Human Rights." *Texas Journal of Women and the Law*, 17 (2), accessed November 20, 2019, PDF file, <https://law.utexas.edu/wp-content/uploads/sites/31/2016/11/writing-prize07-zuloaga.pdf>, 227-295.

<sup>75</sup> Patricia Palacios Zuloaga, "The Path to Gender Justice in the Inter-American Court of Human Rights." *Texas Journal of Women and the Law*, 17 (2), accessed November 20, 2019, PDF file, <https://law.utexas.edu/wp-content/uploads/sites/31/2016/11/writing-prize07-zuloaga.pdf>, 227-295.

<sup>76</sup> Patricia Palacios Zuloaga, "The Path to Gender Justice in the Inter-American Court of Human Rights." *Texas Journal of Women and the Law*, 17 (2), accessed November 20, 2019, PDF file, <https://law.utexas.edu/wp-content/uploads/sites/31/2016/11/writing-prize07-zuloaga.pdf>, 227-295.

particular, and the region, in general.<sup>77</sup> Zuloaga's proposal to call for gender-mainstreaming in the cases of the Inter-American Court will be adopted when looking at cases of precautionary measures in the Inter-American Commission. This is a first step to deconstructing the androcentrism that has and continues to permeate human rights mechanisms.

A similar work that explores a gender perspective in the jurisprudence of the Inter-American system is Ariel Dulitzky and Catalina Lagos's article, "Jurisprudencia Interamericana sobre desaparición forzada y mujeres."<sup>78</sup> By analyzing cases of enforced disappearances, either of women directly or women whose family members have disappeared, the authors argue that cases of enforced disappearances can be better understood when a gendered perspective is considered.<sup>79</sup> Dulitzky and Lagos analyze the cases in the Court in relation to the analytical framework proposed by the UN working group, putting into conversation two international systems of human rights.<sup>80</sup> The authors identify how the rights of women victims of enforced disappearance are violated differently than men and their particular plight in search for truth, justice, reparations, memories, and guarantees of non-repetition must be recognized and visibilized.<sup>81</sup> The study incorporates feminist theory to understand gender in all of its intersectional categories, including class, race, ethnicity, sexual orientation and others, and to analyze the effects of enforced disappearances in relation to, and exacerbated by, unequal power relations, stereotypes, and gender violence.<sup>82</sup>

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<sup>77</sup> Patricia Palacios Zuloaga, "The Path to Gender Justice in the Inter-American Court of Human Rights." *Texas Journal of Women and the Law*, 17 (2), accessed November 20, 2019, PDF file, <https://law.utexas.edu/wp-content/uploads/sites/31/2016/11/writing-prize07-zuloaga.pdf>, 227-295.

<sup>78</sup> Catalina Lagos and Ariel Dulitzky, "Jurisprudencia interamericana sobre desaparición forzada y mujeres: la tímida e inconsistente aparición de la perspectiva de género," *Lecciones y Ensayos* (94), 2015, 25-94.

<sup>79</sup> Lagos and Dulitzky, "Jurisprudencia interamericana sobre desaparición forzada y mujeres," 48.

<sup>80</sup> *Ibid.*, 46, 50-57.

<sup>81</sup> *Ibid.*, 46-47.

<sup>82</sup> *Ibid.*, 47.

There are other important works by feminist international law practitioners and academics studying the inclusion of gender perspective in other international legal mechanisms. The work of Julissa Mantilla Falcón identifies the practices and contributions of the Peruvian Truth and Reconciliation Commission (PTRC) to incorporate a gender approach in human rights investigations and to define sexual violence as a human rights violation.<sup>83</sup> Mantilla traces the slow progress of including a gender perspective to recognize women's rights in international law, from declaring the rights of women and girls in the 1993 United Nations Second Conference on Human Rights in Vienna to "gender mainstreaming" UN programs as agreed in the Beijing Declaration of 1995.<sup>84</sup>

The author also reviews the case law in the Inter-American system that slowly implemented a gender perspective to cases involving sexual violence against women during the armed conflict in Peru from 1980 to 2000 and that these cases set precedent for the PTRC to include a gender perspective.<sup>85</sup> Falcón argues that the PTRC has included this gender perspective with successful outcomes in expanding the meaning of sexual violence, incorporating women's voices and their experiences with violence during the armed conflict, training personnel in gender sensitivity, and recommending next steps for the state to investigate and prosecute state violence against women and to offer reparations to women and their children.<sup>86</sup> However, obstacles remain in the aftermath of the PTRC's final report and the implementation of the chapter on gender and sexual

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<sup>83</sup> Julissa Mantilla Falcón, "Gender and Human Rights: Lessons from the Peruvian Truth and Reconciliation Commission," *Feminist Agenda and Democracy in Latin America*, (Duke Press: 2009), 129-141.

Julissa Mantilla Falcón, "The Peruvian Truth and Reconciliation Commission's Treatment of Sexual Violence Against Women," *Human Rights Brief* 12, no. 2, 1-4.

<sup>84</sup> Falcón, "Gender and Human Rights," 129, 131-132.

<sup>85</sup> *Ibid.*, 132.

<sup>86</sup> *Ibid.*, 134-137.



violence against women.<sup>87</sup> Some of these obstacles include the difficulty to identify victims of these cases to grant them reparations, the inaccessibility for women to file complaints in the Peruvian courts, and the absence of national public policies like a rigid criminal code that narrowly defines sexual violence as rape.<sup>88</sup> The PTRC and its aftermath all sets a model for future Truth Commissions and for international law.<sup>89</sup>

After critiquing the androcentrism in human rights regimes, questions of gender-mainstreaming permeate recent studies on the Inter-American System. By analyzing case studies of the Inter-American Court, the Inter-American Commission, and the Peruvian Truth and Reconciliation Commission, these studies demonstrate the benefits that including a gender perspective has in the practice of human rights--albeit the challenges that still remain. The case studies on precautionary measures are analyzed rejecting the androcentric practices that some users of the System might still hold and demanding a gender perspective from the decision to grant a precautionary measure to the implementation of the measure by the State. In that exercise, the limitations of the mechanism might surface in ensuring the safety of women from situations of risk and irreparable harm. And a gender perspective, alone, might not be enough to transform a mechanism to properly address the current context of violence and inequalities in Latin America.

### **Multiculturalism in Human Rights in the Age of Neoliberal Globalization**

To better understand and improve precautionary measures in the IACHR to serve vulnerable populations, women in particular, the context of neoliberal globalization must

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<sup>87</sup> Ibid., 137-138.

<sup>88</sup> Ibid., 137-138.

<sup>89</sup> Ibid., 140-141.

be explored, because this economic, social, and political determines how vulnerable populations access, navigate, and negotiate with international legal institutions to seek protection, rights, and justice.

In the introduction to the book *Law and Globalization from Below*, a book of critical importance for many human rights defenders, Boaventura de Santos and Cesar Rodriguez-Garavito identify “the growing grassroots contestation of the spread of neoliberal institutions and the formulation of alternative legal frameworks by TANs [transnational advocacy networks] and the populations most harmed by hegemonic globalization.”<sup>90</sup> The book and corresponding chapters provides a “bottom-up perspective on law and globalization” exposing the limitations of “law-centered strategies” and proposing an alternative.<sup>91</sup> Santos and Rodríguez-Garavito propose a political-socio-legal project: “subaltern cosmopolitan legality.”<sup>92</sup> The authors recognize that cosmopolitanism emerges from a history “anchored in Western modernity” that is problematic and exclusionary of marginalized peoples.<sup>93</sup> Instead of discarding the term, the authors rescue cosmopolitanism as a way to explore questions of justice through its commitment to “counter-hegemonic projects.”<sup>94</sup>

As a result, “subaltern cosmopolitanism” emerges as a concept that shifts attention to “the community of victims” of globalization and neoliberalism, who have agency and organize transnational to subvert hierarchies, borders, and other, often violent, arrangements of power.<sup>95</sup> And through this conceptual shift, the South is centered: “the South expressing not a geographical location but all forms of subordination

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<sup>90</sup> Boaventura De Sousa Santos & Cesar Rodríguez-Garavito, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press, 2005), 2-3.

<sup>91</sup> Santos & Rodríguez-Garavito, *Law and Globalization from Below*, 4, 94.

<sup>92</sup> *Ibid.*, 5.

<sup>93</sup> *Ibid.* 13.

<sup>94</sup> *Ibid.*, 13.

<sup>95</sup> *Ibid.*, 13-14.

(economic exploitation; gender, racial and ethnic oppression; and so on) associated with neoliberal globalization.”<sup>96</sup> The concept of subaltern cosmopolitanism is helpful in identifying the subaltern voices that are affected by the effects of neoliberal globalization. It is these effects—gender violence, land rights, disappearances from the war on drug—that lead to users of the system, or subaltern voices, to apply for a precautionary measure in the IACHR as they navigate “law centered strategies” and alternatives. The fact that cosmopolitanism is inextricably tied to Western modernity allows us to better understand the limitations and barriers that certain subaltern voices face when accessing these legal strategies, international human rights mechanisms.

The chapter “Indigenous rights, transnational activism, and legal mobilization,” in the same book by Santos and Rodriguez-Garavito, traces the rise of resource extraction, in particular oil extraction, linked to neoliberal globalization (structural adjustment programs, roll back of land reform, including rural property rights and collective indigenous holdings like the ejido system in Mexico) and the resulting struggle of indigenous peoples against the “second conquest of indigenous people,” interested in indigenous land, instead of Indian labor.<sup>97</sup> As a result, the indigenous movement has carefully navigated a coalition of transnational indigenous rights organizations, human rights NGOs, anti-poverty organizations, faith-based coalitions, and environmental organizations and other networks.<sup>98</sup> Most importantly, the land must be understood as a source of cultural reproduction: “territory as identity.”<sup>99</sup> In order to protect it, the

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<sup>96</sup> Ibid., 14.

<sup>97</sup> Cesar Rodríguez-Garavito and Luis Carlos Arenas, L. “Indigenous rights, transnational activism, and legal mobilization: The struggle of the U'wa people in Colombia,” In B. De Sousa Santos & C. Rodríguez-Garavito (Eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press, 2005), 244-245.

<sup>98</sup> Rodríguez-Garavito and Arenas, “Indigenous rights, transnational activism, and legal mobilization,” 241-266.

<sup>99</sup> Ibid.

transnational indigenous movement has “raised a formidable political and legal challenge to Latin American states and TNCs with interest in the region.”<sup>100</sup>

Some of these legal challenges have resulted in “a wave of new constitutions” with specific provisions on indigenous rights that indigenous movements have incorporated in their political struggle.<sup>101</sup> In addition, the transnational indigenous movement has also challenged the international system of human rights through transnational litigation.<sup>102</sup> Particularly relevant is how indigenous rights were incorporated in the Inter-American system with the 2001 landmark decision of the Inter-American Court of Human Rights in the *Awes Tingni v. Nicaragua* case expanding.<sup>103</sup> In this case, the idea of collective entitlement is incorporated and replicated in other mechanisms of the Inter-American System, including the prevalence of collective precautionary measures where whole communities become the beneficiaries and where these movements expose their grievances against neoliberalism.

The rise of a “multicultural redefinition of human rights” is one that consider and explore in throughout the chapters both in the writings and practice of the AICHR. Focusing on the subaltern voices that use legal strategies to fight against extractive industries and other effects of neoliberal globalization allows for a better understanding of the Inter-American System and the current access to justice of vulnerable communities. However, the rise of a “multicultural redefinition of rights” emerges in the context of neoliberal globalization. The mobilization around multicultural rights has been a point of preoccupation for many scholars in Latin America who identify both the opportunities and limitations of this right-based strategy. A “multicultural redefinition of

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<sup>100</sup> Ibid., 246.

<sup>101</sup> Rodríguez-Garavito and Arenas, “Indigenous rights, transnational activism, and legal mobilization,” 247.

<sup>102</sup> Ibid., 247-248.

<sup>103</sup> Ibid., 248, 262.

human rights” is an interesting arch to trace while acknowledging that neoliberalism can co-opt strategies around multiculturalism.

Many scholars have discussed “neoliberal multiculturalism” in Latin America and how people have mobilized in search for cultural, racial, land, and other types of rights during times of great inequality and violence. Anthropologist Charles Hale in *Más Que Un Indio*, explains that “aggressive market-oriented economics” have purposefully been implemented simultaneously with selective “state-sanctioned multiculturalism.”<sup>104</sup> Therefore, as people, especially indigenous and other vulnerable populations, resist against neoliberal establishment, they are subjected into a negotiation with the State and other actors that apply “strategies of exclusion” and that determine which rights to grant or recognize and which ones to not—usually collective rights around cultural or racial lines.<sup>105</sup>

According to Nancy Postero in *Now We Are Citizens*, neoliberal multiculturalism is “seductive cultural project,” where reforms might reward indigenous communities with some rights as long as they conduct themselves as “successful neoliberal subjects,” who are “modern,” “rational,” and embrace the “logic of globalized capitalism.”<sup>106</sup> Neoliberalism multiculturalism is a way to understand the type of political mobilization against the State--Postero uses “postmulticultural citizenship” to describe this type of activism—and other global, or transnational actors.<sup>107</sup> This new form of protagonism allows us to identify the key players that simultaneously negotiate with and challenge

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<sup>104</sup> Charles R. Hale, *Más Que Un Indio = More than an Indian : Racial Ambivalence and Neoliberal Multiculturalism in Guatemala*, (Santa Fe:School of American Research Press, 2006), 34.

<sup>105</sup> Hale, *Más Que Un Indio = More than an Indian*, 35.

<sup>106</sup> Nancy Postero, *Now We Are Citizens: Indigenous Politics in Postmulticultural Bolivia*, (Stanford: Stanford University Press, 2006), 16.

<sup>107</sup> Hale, *Más Que Un Indio = More than an Indian*, 60-65, 73-82.

neoliberalism. However, these mobilizations are not monolithic in their composition and strategies.

Political theorist Juliet Hooker identifies some of the inherent tensions between actors mobilizing around multicultural citizenship.<sup>108</sup> In the 1980s and 1990s, many Latin American states implemented collective rights mainly for indigenous communities.<sup>109</sup> However, in this selective access of collective rights to indigenous people, Hooker argues that Afro-Latinos have been from these multicultural citizenship reforms despite the similar levels of mobilization and experiences with discrimination.<sup>110</sup> In the era of multicultural politics, indigenous inclusion and simultaneous black exclusion is the result of adjudicating collective rights on possessing a distinct cultural group identity rather than addressing the contexts of racial discrimination.<sup>111</sup> This strategy strengthens the political project of neoliberal multiculturalism by subjecting people to narratives of authenticity and cultural distinction, even divide them for a limited amount of rights, while distracting them from confronting racial discrimination and other structures of marginalization.

Despite its limitations, the aftermath of multiculturalism led to important political transformations. Tianna Paschel traces how these political transformations, or “ethno-racial reforms,” in Brazil and Colombia were the result of black social movements organizations negotiating with domestic by using global networks.<sup>112</sup> Unlike the context of Nicaragua discussed by Hooker, Paschel explains the political success for black rights

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<sup>108</sup> Juliet Hooker, “Indigenous Inclusion/Black Exclusion: Race, Ethnicity and Multicultural Citizenship in Latin America,” *Journal of Latin American Studies/Journal of Latin American Studies*, 2005; 37 (2) : 285-310.

<sup>109</sup> Hooker, “Indigenous Inclusion/Black Exclusion,” 285.

<sup>110</sup> Hooker, “Indigenous Inclusion/Black Exclusion,” 285-289.

<sup>111</sup> Hooker, “Indigenous Inclusion/Black Exclusion,” 289-291.

<sup>112</sup> Tianna Paschel, *Becoming Black Political Subjects: Movements and Ethno-Racial Rights in Colombia and Brazil*, (Princeton: Princeton University Press, 2018).

in Colombia and Brazil. For Paschel, ethno-racial reforms brought transformations domestically because these actors mobilized with the “context of consolidated global ethno-racial field oriented around multiculturalism, indigenous rights, and anti-racism.”<sup>113</sup> Paschel argues that after the wave of collective rights, mainly through constitutional reforms, ethno-racial reforms attempted to confront what Hooker was afraid would be missed in the demands: racial discrimination.<sup>114</sup> One of the key actors that Paschel identifies and that are part of what she calls the “global ethno-racial field” are international human rights advocates and conventions, like the United Nation’s Third World Conference Against Racism in Durban, South Africa, where black social movements engaged in discourses that pressured their States domestically.<sup>115</sup> Even though tensions might exist between black and indigenous communities as they negotiate with the State internally for collective rights, transnational networks and international settings allow for an opportunity to pressure domestically for reforms that confront racial discrimination and other structural violence resulting from neoliberalism and globalization.

Neoliberal multiculturalism is a helpful theoretical tool. It is a concept through which to understand how people may be currently organizing for their rights and against both neoliberalism and globalization within their nation-state. But the concept can also be extended to the international human rights regime. People are organizing both locally, nationally, and transnationally to assert their cultural and racial rights and those opportunities, limitations, and the very co-optation of the strategy can be seen when analyzing human rights mechanisms, such as precautionary measures. But how does

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<sup>113</sup> Paschel, *Becoming Black Political Subjects*, 3.

<sup>114</sup> *Ibid.*, 4.

<sup>115</sup> *Ibid.*, 1-4.

gender & neoliberal multiculturalism fit together? In other words, how can we incorporate both perspectives intersectional?

An important genealogy of the feminist literature is that which engages with human rights in the study of gender inequalities and economic globalization. As Parisi synthesizes, feminist human rights scholars have identified how “economic globalization not only produces gender inequalities, but also maintains and relies upon these inequalities in a variety of contexts in order to deepen capitalism, as well as to rearticulate the state.”<sup>116</sup> Neoliberalism accompanies this economic globalization. And the challenge of neoliberalism is that the state shifts responsibility to the markets, and “markets have little accountability and regulation in the human rights regime.”<sup>117</sup> And this is the missing link to how gender fits transversally with our understanding of neoliberalism. Furthermore, multicultural neoliberalism can also center the women and a gender perspective in how women are at the center of many multicultural fights and redefinitions of multicultural rights. Therefore, the question that the following chapters follow is how women and other vulnerable populations successfully advocate for their rights through international human rights mechanisms in this context of neoliberal globalization? Centering this question also forces a reflection on the accessibility and limitations of precautionary measures in the IACHR today.

This literature review traces how socio-political-legal scholars have conceptualized questions of gender, race and ethnicity in the context of neoliberalism,

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<sup>116</sup> Laura Parisi, “Feminist Perspectives on Human Rights,” *Oxford Research Encyclopedia of International Studies*. DOI: 10.1093/acrefore/9780190846626.013.4, published online november 2017, <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-48?rskey=ikKTVF&result=7>

<sup>117</sup> Laura Parisi, “Feminist Perspectives on Human Rights,” *Oxford Research Encyclopedia of International Studies*. DOI: 10.1093/acrefore/9780190846626.013.4, published online november 2017, <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-48?rskey=ikKTVF&result=7>



multiculturalism, and globalization that informs why and how people access international human rights mechanisms. The language of androcentrism, gender mainstreaming, subaltern cosmopolitanism, neoliberal multiculturalism and global-ethnoracial field are helpful in describing the limitations and transformations of precautionary measures in the IACHR. But most importantly using these categories intersectional allows for a nuanced understanding of the violent situations that affect communities in Latin America today.

As the following chapters will explore, gender mainstreaming the cases of precautionary measures is necessary but not enough. Understanding how neoliberalism and globalizations threatens communities, especially women, is a theoretical necessary. I analyze how this plays out in the mechanism of precautionary measures in order to reveal how multicultural neoliberalism together with gender-mainstreaming are theoretical tools when identifying advocacy strategies and their limitations for women, indigenous, and afro-descendant rights. Even though engaging with multi-sited cases of women, indigenous, black and vulnerable communities poses a methodological and theoretical challenge, this thesis attempts to analyze an obscure human rights mechanism as a microcosm of the challenges and opportunities in international human rights regimes.

#### **ROADMAP: ADDRESSING THE GENDERED VIOLENCE IN NEOLIBERAL MULTICULTURALISM**

New iterations of violence have emerged in Latin America as democratic governments replaced old dictatorships. However, human rights abuses have continued as new models of neoliberalism and globalization reinforce old structures of gender, race and ethnicity. The human rights systems, besides its cosmetic procedural changes and new programs, seem to be navigating cautiously and slowly these new iterations and evolving economic models while attempting to monitor and defend the human rights.

This thesis engages in a reflection on how human rights mechanisms, in general, and precautionary measures, in particular, are adequately helping or failing to protect people and communities in vulnerable situations today with a special focus on women.

Gender-mainstreaming has led to a slow, but visible rise in practices around gender sensitivity in the Inter-American System. As a result of multiculturalism in the human rights regimes, the System has celebrated the rise of collective and cultural rights, but the logic of multicultural neoliberalism has presented challenges to communities accessing the System. Where the literature has fallen short and this thesis' contributions lies is that there must be an intersectional analysis of these two trends—gender mainstreaming and multiculturalism—in order to understand many of the advances and challenges confronting the System. The gender violence that results from or exists in the context of multicultural neoliberalism is often silenced but becomes visible in this thesis through a survey of different cases of precautionary measures. Femicides, disappearances, and the assassination of human rights defenders are all on the rise. And these episodes of violence threaten in particular ways the lives of women and indigenous and afro-descendant women.

Therefore, this work attempts to respond the following questions. First, what is the IACHR's commitment, through its various mechanisms of public hearings, cases, and precautionary measures, to provide an appropriate strategy for vulnerable populations, especially women, who demand safety from situations of risk and irreparable harm in the context of neoliberalism? Second, what are the practices and limitations that exist in this body of human rights as it requires States to protect vulnerable populations from the new iterations of violence that results from neoliberalism and globalization? The thesis answers these questions through the following two sections.

The first chapter surveys the key documents of the IACHR to analyze how this system understands and is committed to applying a gender and multicultural perspective in the context of neoliberalism, and how it understands the need for an intersectional application of both perspectives. The hearings, reports, programs, rapporteurships shows the IACHR's commitment to defend vulnerable populations, specifically women, indigenous and afro-descendant communities. This chapter first revisits the literature to identify the need for a gender analysis even in the rise of a multicultural redefinition of rights and that gender and racial violence go hand in hand with neoliberalism. Then, the chapter looks at what the IACHR produces: annual reports, country reports, thematic reports, and other publications. In this survey, the findings reveal that some of the reports center women and key issues that they face, others apply an intersectional analysis of how issues like extractive industries and land rights affect women in particular, and other reports miss the opportunity to apply an intersectional gender and multicultural perspective to issues like security and judicial independence. Through its strategic plan, it is clear, that the IACHR will continue its commitment for gender, equality and diversity applying a transversal analysis to support and protect vulnerable populations. The challenges remain, however, in how these plans translate into reality. In the end, surveying key documents written and published by the IACHR is an exercise that answers the extent to which the IACHR manages a gender and multicultural focus.

The next chapter analyzes the IACHR gender and multicultural perspective by surveying resolutions of precautionary measures, from 2013 through 2017, in which women are the main or co-beneficiaries and in which key issues—women's rights issues (sexual and gender violence, abortion and other sexual rights), land rights and extractive industries, disappearances, etc—emerge as part of the grievance outlined in the request of the precautionary measure. This chapter aims to identify the extent to which gender

mainstreaming and multiculturalism is a practice in the mechanism of precautionary measures. The application process and decision of the IACHR to grant a precautionary measure is an important site of reflection that points to a part of the procedure where issues can arise: are the actors (IACHR, lawyers and potential beneficiaries) applying a gender and multicultural perspective in the application and decision-making process of a precautionary measures? And if so, how is it appropriately guaranteeing these vulnerable groups access to such mechanism and results in protection from harm?

Surveying the resolutions the IACHR granted shows important trends that highlight the need to implement a gender and multicultural practice in the mechanism of precautionary measures. This chapter attempts to analyze the practice of the IACHR when it comes to protecting and advocating for the rights of women beneficiaries, including indigenous, afro-descendant, LGBTI. It is important to reflect on who accesses the mechanism successfully by being protected under a precautionary measure, in what countries and what conditions are these female beneficiaries navigating a situation of seriousness and grave risk. These overarching trends allow for an important reflection on the state of the IACHR mechanism but also on the challenges the human rights system faces when addressing key issues in the region.

It is important to note that each chapter begins with a particular case, Judge Maria Lourdes Afiuni y Paulina Mateo Chic, and that some cases are expanded on more than others. There could be many more cases of precautionary measures to discuss that could highlight different trends from the ones exposed in this work. In fact, one of the biggest limitations of this work was not having more detailed stories, interviews, and bottom-up critics from the beneficiaries of precautionary measures that could reveal more insight into the mechanism and suggest improvements. My shortcoming—due to time and accessibility to key actors—is an opportunity for a future project to reflect and research

the IACHR's mechanism and its commitment and practice to a gender and multicultural perspective.

In general, the study aims to expand on the literature on human rights and engage in a reflection of human rights mechanisms and identify the opportunities and limitations of international human rights systems in achieving gender, multicultural and racial justice as part of transformative, counter-hegemonic projects during a time of neoliberalism.

## **Chapter 2: Gender-Mainstreaming and Multiculturalism in the IACHR: A Slow Commitment in Writing**

On December 11th, 2009, Hugo Chavez Frias, the then-President of Venezuela, sat in front of a portrait of Simón Bolívar demanding for “30 years...30 years for that judge” while speaking during one of his famous chained broadcasts.<sup>118</sup> Chávez was referring to Maria Lourdes Afiuni, a criminal judge in the Poder Judicial (national judicial system), who had granted the day before provisional freedom to “the president’s prisoner” Eligio Cedeño, a Venezuelan businessman with complicated ties to Chavez through a fellow business partner Gustavo Arraiz, and had been detained on corruption charges since 2007.<sup>119</sup> There were political motivations from the very start.

When Maria Lourdes was appointed the case, there were many delays and many personnel from the Public Ministry; this is when she started to realize the political weight of the case.<sup>120</sup> But when the hearing started, the legal team of the defendant, Cedeño, asked Judge Afiuni to decide on the precautionary measure granted on September 1, 2009, by the UN Working Group on Arbitrary Detention establishing the arbitrary detention of Cedeño.<sup>121</sup> The UN measure asked that Dr. Luisa Ortega Díaz, as Attorney General of the Bolivarian Republic of Venezuela, grant the freedom of Eligio Cedeño, after being detained for three years without trial.<sup>122</sup> Immediately after reading Cedeño’s files, Judge Afiuni decided to follow the UN measure and the Venezuela Constitution,

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<sup>118</sup> Francisco Olivares, *Afiuni: La Presa del Comandante* (Caracas: La Hoja del Norte, 2012), 19, 77.

<sup>119</sup> Olivares, *Afiuni: La Presa del Comandante*, 25-27, 33, 65.

<sup>120</sup> *Ibid.*, 42-45.

<sup>121</sup> *Ibid.*, 45, 52-53.

<sup>122</sup> *Ibid.*, 45, 52-53.

and grant conditional liberty.<sup>123</sup> According to Judge Afiuni's pronouncement, Cedeño was expected to check-in every 15 days and was not allowed to leave the country.<sup>124</sup> Instead, Cedeño fled the country and arrived to Miami on December 19th.<sup>125</sup> Afiuni, on the other hand, was detained almost immediately after the hearing on December 10th.<sup>126</sup> She was first detained at the national intelligence SEBIN's headquarters, the infamous Helicoide detention center, and later sent to the Instituto Nacional de Orientación Femenina (INOF, National Institute of Female Orientation).<sup>127</sup>

Chavez's televised hunt for judge Afiuni ironically coincided with the national day celebrating judges and was heard by most Venezuelans causing concern to many.<sup>128</sup> One of the people to hear this was Ligia Bolivar, at the time head of the Human Rights Center at the Universidad Católica Andres Bello (UCAB) in Caracas, Venezuela.<sup>129</sup> Bolivar believed that the independence of the judicial branch was at risk and this case presented an opportunity to defend judges from political entanglements.<sup>130</sup> As a result, Bolivar contacted Judge Afiuni's lawyers and joined other human rights defenders interested in requesting the IACHR a precautionary measure for Judge Afiuni.<sup>131</sup> The strategy was to petition for Afiuni to be detained in a facility where her life wouldn't be in danger and guarantee safe detention conditions; the measure did not request her freedom, because they knew the IACHR wouldn't pronounce itself on the merits of the case.<sup>132</sup> After all, Afiuni was expected and eventually sent to INOF, an all female

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<sup>123</sup> Ibid., 53-54.

<sup>124</sup> Olivares, *Afiuni: La Presa del Comandante*, 54.

<sup>125</sup> Ibid., 106.

<sup>126</sup> Ibid., 55.

<sup>127</sup> Ibid., 70,74.

<sup>128</sup> Ibid.,76-77.

<sup>129</sup> Ligia Bolivar, former Director of Human Rights Center at the Universidad Católica Andrés Bello (UCAB) interviewed by author, June 10, 2018.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

penitentiary where some of the women who Afiuni had convicted were serving their sentences.<sup>133</sup> According to Bolivar and Afiuni's legal team, the detention center presented a serious and urgent situation and risk of irreparable harm, and they filed for a precautionary measure on December 15, 2009.<sup>134</sup>

On January 3, 2010, while Afiuni was detained at INOF, a violent incident occurred. A group of incarcerated women tried to set Afiuni on fire.<sup>135</sup> The attempt on Afiuni's life, in addition to the constant follow-up of Afiuni's legal team, pressured the IACHR into finally granting the precautionary measure on January 11, 2010.<sup>136</sup> The measure asked the Venezuelan state to:

adopt the measures necessary to guarantee the life and physical integrity of the beneficiary; to adopt the measures necessary to transfer the beneficiary to a safe place, and to inform the IACHR about actions taken to investigate through the Judiciary the facts that led to the adoption of precautionary measures.<sup>137</sup>

Afiuni's team applauded the measure but recognized the challenges ahead to move Afiuni out of INOF and protect her life.

As stated in the introduction to precautionary measures, it is the State's responsibility to recognize and implement a precautionary measure of the IACHR.<sup>138</sup> Venezuela under Chavez, like Nicaragua and the United States, was known to be at odds

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<sup>133</sup> Olivares, *Afiuni: La Presa del Comandante*, 97-98. Ligia Bolivar, interviewed by author, June 10, 2018.

<sup>134</sup> Ligia Bolivar, interviewed by author, June 10, 2018.

<sup>135</sup> IACHR, Precautionary Measure 380-09, "María Lourdes Afiuni, Venezuela," published January 11, 2010, <http://www.oas.org/es/cidh/decisiones/cautelares.asp#tab2>. Ligia Bolivar, interviewed by author, June 10, 2018.

<sup>136</sup> IACHR, Precautionary Measure 380-09, "María Lourdes Afiuni, Venezuela," published January 11, 2010, <http://www.oas.org/es/cidh/decisiones/cautelares.asp#tab1>.

Ligia Bolivar, interviewed by author, June 10, 2018.

<sup>137</sup> IACHR, Precautionary Measure 380-09, "María Lourdes Afiuni, Venezuela," published January 11, 2010, <http://www.oas.org/es/cidh/decisiones/cautelares.asp#tab1>.

<sup>138</sup> Inter-American Commission of Human Rights, "Article 25," *Rules of Procedure of the Inter-American Commission on Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.



with the IACHR, and the larger OAS system.<sup>139</sup> Venezuela usually did not follow their recommendations or requests.<sup>140</sup> Usually, States and beneficiaries will set working meetings to talk through the implementation of the precautionary measures.<sup>141</sup> The Venezuelan State did not entertain any working meetings with Afiuni and her legal team. According to Bolivar, “they didn’t set up a meeting because their intention was not to implement the precautionary measures.”<sup>142</sup> However, Bolivar recognized that the precautionary measure had a symbolic weight and very practical purposes.<sup>143</sup>

The precautionary measure for Afiuni served two purposes. Bolivar and the legal team knew that protection would be difficult so they aimed for “contención” (contention).<sup>144</sup> In the words of Bolivar, “we wanted the government to know that we knew what they were doing...they were in the radar.”<sup>145</sup> The other was a practical application of the measure. As Bolivar describes, the INOF only has female guards and in its periphery male guards from the National Guard support the security.<sup>146</sup> One of the male guards came to Afiuni and shared that he had orders from above to protect her if

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<sup>139</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 81-82.

<sup>140</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 81-82. Ligia Bolivar, interviewed by author, June 10, 2018.

<sup>141</sup> Inter-American Commission of Human Rights, “Article 25,” *Rules of Procedure of the Inter-American Commission on Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>. Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 89.

<sup>142</sup> Ligia Bolivar, interviewed by author, June 10, 2018.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid..

anything happened.<sup>147</sup> Even though male guards were not the most ideal to guarantee Afiuni's protection in a female detention center, it was clear that this male guard knew about the precautionary measure from the IACHR.<sup>148</sup>

It's important to note the multiple international mechanisms that advocated for Judge Afiuni. Along with the pressure of the IACHR, there was additional international pressure that came from the United Nations (UN) mechanisms. Just as the legal team applied for a precautionary measure to the IACHR, they sent information to the UN. This two-pronged strategy resulted in three UN mechanisms requesting Afiuni's immediate release on December 16, 2009: the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on the situation of human rights defenders.<sup>149</sup> Unlike the IACHR that took almost a month to grant, the UN measures took only a day, and they demanded the freedom of Judge Afiuni—not just her transfer to another detention facility. This was a rare, urgent, and impactful move by the UN mechanisms to protect the rights and life of Afiuni, and it gives insight into the differences among human rights systems and the international level of the case.

Despite the international pressures, Afiuni remained imprisoned at the INOF. During that time, Afiuni suffered tremendous violence, including sexual violence.<sup>150</sup> Although the public did not know about the details of her assault and subsequent medical consequences until later, the legal team tried to honor Afiuni's privacy while trying to alert the international human rights mechanisms.<sup>151</sup> When Afiuni came forward with her

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<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> "UN experts: President Chávez deals new blow to independence of judges and lawyers in Venezuela," *United Nations Human Rights Office of the High Commissioner*, Press Release, December 16, 2009, <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9677&LangID=E>.

<sup>150</sup> Olivares, *Afiuni: La Presa del Comandante*, 97-98.

<sup>151</sup> Ligia Bolivar, interviewed by author, June 10, 2018.

story of surviving sexual assault, the legal team informed both the UN and the Inter-American System.<sup>152</sup> The UN system made a declaration against the sexual violence suffered by Judge Afiuni, and this time joined by two additional mechanisms, the Special Rapporteur on Violence Against Women and the Special Rapporteur.<sup>153</sup> This added to a total of five declarations from five UN mechanisms.<sup>154</sup> Instead of following up with the IACHR, Afiuni's legal team decided to request provisional measures to the Inter-American Court.<sup>155</sup> The Court is the judicial organ of the Inter-American System, and, although more limited than the Commission, as stated in Article 25 & 76 in the Rules of Procedure, the Commission can request the Court to adopt provisional measures "in cases of extreme seriousness and urgency, when it becomes necessary to avoid irreparable damage to persons."<sup>156</sup> The goal of this strategy was to request the Venezuelan state to allow Afiuni to seek medical attention with a provider of her choice.<sup>157</sup>

After surviving sexual violence, Afiuni was able to receive medical attention and was transferred from the INOF to house arrest after a critical surgery.<sup>158</sup> Afiuni remains

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<sup>152</sup> Ibid.

<sup>153</sup> "Venezuela must release judge who suffered sexual violence in jail UN experts," *UN News*, Press Release, February 14, 2013, <https://news.un.org/en/story/2013/02/432002-venezuela-must-release-judge-who-suffered-sexual-violence-jail-un-experts>

<sup>154</sup> Ligia Bolivar, interviewed by author, June 10, 2018.

<sup>155</sup> "Solicitud de Medidas Provisionales Presentada por la Comisión Interamericana de Derechos Humanos respecto de Venezuela Asunto Maria Lourde Afiuni," *Corte Interamericana de Derechos Humanos*, published December 10, 2010 [http://www.corteidh.or.cr/docs/medidas/Afiuni\\_se\\_01.pdf](http://www.corteidh.or.cr/docs/medidas/Afiuni_se_01.pdf). "Resolución de la Corte Interamericana de Derechos Humanos Medidas Provisionales respecto de Venezuela Asunto Maria Lourde Afiuni," *Corte Interamericana de Derechos Humanos*, published March 2, 2011, [http://www.corteidh.or.cr/docs/medidas/Afiuni\\_se\\_02.pdf](http://www.corteidh.or.cr/docs/medidas/Afiuni_se_02.pdf).

<sup>156</sup> Inter-American Commission of Human Rights, "Article 25," *Rules of Procedure of the Inter-American Commission on Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

<sup>157</sup> "Resolución de la Corte Interamericana de Derechos Humanos Medidas Provisionales respecto de Venezuela Asunto Maria Lourde Afiuni," *Corte Interamericana de Derechos Humanos*, published March 2, 2011, [http://www.corteidh.or.cr/docs/medidas/Afiuni\\_se\\_02.pdf](http://www.corteidh.or.cr/docs/medidas/Afiuni_se_02.pdf). Ligia Bolivar, interviewed by author, June 10, 2018.

<sup>158</sup> Olivares, *Afiuni: La Presa del Comandante*, 97-98.

in house arrest until today, and international organs continue to advocate for Afiuni's release from arbitrary detention after a new sentence on March 21, 2019 extended her sentence to an additional five years.<sup>159</sup> The precautionary measures and provisional measures no longer apply, because Afiuni no longer finds herself at the INOF--house arrests does not present the same risks--and is able to access medical attention of her choice.<sup>160</sup> Even though the case of Afiuni is far from over--a petition to open a case in the IACHR is still a possibility and Afiuni remains under house arrests--her case remains emblematic in many ways. First, the "Effecto Afiuni" (Afiuni Effect) intimidated many judges, and threatened independent jurisprudence and democratic institutionalism.<sup>161</sup> Second, by applying a gender analysis of the case, various disturbing reflections surface.

The case of Afiuni is key because it reveals the complexity of a precautionary measure and accompanying advocacy strategy when the beneficiary is female, a judge—in no particular order—incarcerated, and then becomes a survivor of sexual violence—all under a politicized landscape. For Bolivar, the most important factor in Afiuni's profile was that she was a judge.<sup>162</sup> Afiuni's profile as a female judge would also play a key role in her detention in a women's facility, the INOF, and the sexual violence that she later suffered while detained there. Ironically, as Bolivar points out, Afiuni was sentenced by a female judge and suffered sexual violence under the supervision of a female Director at INOF and a female Attorney General that initially prevented her from seeking medical attention.<sup>163</sup> Obviously, all of them were operating under direct orders of President Chavez. But the case reveals the limitations of female representation in the penitentiary

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<sup>159</sup> "UN expert condemns new sentence for jailed Venezuelan judge as 'another instance of reprisal,'" *UN News*, March 26, 2019, <https://news.un.org/en/story/2019/03/1035451>.

<sup>160</sup> Ligia Bolivar, interviewed by author, June 10, 2018.

<sup>161</sup> Olivares, *Afiuni: La Presa del Comandante*, 81-82.

<sup>162</sup> Ligia Bolivar, interviewed by author, June 10, 2018.

<sup>163</sup> *Ibid.*

and judicial systems. In other words, gender equality through representation doesn't always translate into more gender justice. The lack of gender sensitivity among government officials of the Chavez regime at the time is flagrant. And lastly, the way that the advocacy strategies were implemented always took the lead of the beneficiary in order to protect her privacy as Afiuni decided what to do in the aftermath of the sexual assault.<sup>164</sup>

The Afiuni case was one that I stumbled across when I was conducting research for my undergraduate thesis on women's sexual and reproductive rights debates during the Bolivarian Revolution—Afiuni's case is one of those sore topics among feminist, socialist movements and other women's circles in Venezuela. And it is a case that very much accompanied me during my time as student at the UT Human Rights Clinic when conducting the report on precautionary measures. It is a case that helped me frame part of the focus of this chapter: gender mainstreaming precautionary measures in the IACHR.

Judges, politicians, journalists, witnesses, and many other different individuals petition for a precautionary measure in a serious and urgent situation that present a risk of irreparable harm.<sup>165</sup> But often, these individuals or groups of people face a situation of risk not only because they are judges, journalists, or politicians but also, and in particular, because they are women. The situation of initial risk—for example, the potential to suffer sexual violence as in the case of Afiuni—calls for a gender analysis about the multiple ways that women are vulnerable to a serious and urgent situation presenting a risk of irreparable harm. Expanding the IACHR's understanding of harm is key. And the Commission must recognize these cases and grant requests by gender mainstreaming

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<sup>164</sup> Ibid.

<sup>165</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 74-75.

their processes: training their lawyers, requiring government officials to recognize these dynamics, and working with civil society who use the system and make these requests for precautionary measures so that all actors involved recognize the particular and multiple intersections women face in order to protect individuals seeking a precautionary measure.

One way that the IACHR implements gender mainstreaming is through its publications and guiding documents. Therefore, what is the IACHR's commitment, to provide an appropriate strategy for vulnerable populations, especially women, who demand safety from situations of risk and irreparable harm in the context of neoliberalism? The following section surveys key documents to analyze how this system understands and is committed to applying a gender and multicultural perspective in the context of neoliberalism, and an intersectional analysis of both. The commitment in the strategic report, the focus and analysis the published reports, and the sentences in the case law all speak to the IACHR's commitment to center women and vulnerable populations and address the issues that affect them. Surveying key documents written and published by the IACHR is an exercise that answers the extent to which the IACHR manages a gender and multicultural focus.

#### **SEARCHING FOR A GENDER AND MULTICULTURAL PERSPECTIVE IN THE DOCUMENTS OF THE IACHR**

As explained in the previous chapter, the history of human rights carries with it the legacy of androcentrism in the law and ideas of sameness between men and women.<sup>166</sup> From the late 1940s to the late 1970s, it took 30 years for women to be acknowledged in the foundational documents of human rights systems as individuals with

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<sup>166</sup> Parisi, "Feminist Perspectives on Human Rights," <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-48?rskey=ikKTVF&result=7>

rights.<sup>167</sup> The Inter-American System took from 1948, when the OAS Charter created the IACHR, to 1979 when the IACHR adopted the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* “*Convention of Belem do Para.*”<sup>168</sup> In recent history, we have seen a feminist critique of the human rights order.<sup>169</sup> However, ideas of androcentrism and “sameness” between men and women still inform many institutional arrangements.

The move towards a gender-mainstreaming of international human rights, in general, and the Inter-American System, in particular, has been a slow process in writing and in practice. Compared to other international human rights bodies, especially the United Nations system, the Inter-American System has lagged behind in gender-based justice.<sup>170</sup> In reviewing the case law of the Inter-American System, the lack of gender sensitivity has been flagrant due to a low number of cases involving women, low representation of female or gender sensitive judges, cases of enforced disappearances, especially those where women are the victims of disappearances or at risk when a family member is disappeared, and even cases involving sexual violence against women during the armed conflict in Peru from 1980 to 2000.<sup>171</sup> Gender mainstreaming in the Inter-

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<sup>167</sup> Ibid.

<sup>168</sup> Permanent Council of the Organization of American States, *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women* “*Convention of Belem Do Para,*” adopted September 20, 1979, <http://www.oas.org/juridico/english/treaties/a-61.html>. “What is the IACHR?” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/mandate/what.asp>.

<sup>169</sup> Parisi, “Feminist Perspectives on Human Rights,” <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-48?rskey=ikKTVF&result=7>

<sup>170</sup> Zuloaga, “The Path to Gender Justice in the Inter-American Court of Human Rights,” <https://law.utexas.edu/wp-content/uploads/sites/31/2016/11/writing-prize07-zuloaga.pdf> Lagos and Dulitzky, “Jurisprudencia interamericana sobre desaparición forzada y mujeres,” 25-94. Falcón, “Gender and Human Rights,” 129-141.

<sup>171</sup> Zuloaga, “The Path to Gender Justice in the Inter-American Court of Human Rights,” <https://law.utexas.edu/wp-content/uploads/sites/31/2016/11/writing-prize07-zuloaga.pdf> Lagos and Dulitzky, “Jurisprudencia interamericana sobre desaparición forzada y mujeres,” 48. Falcón, “Gender and Human Rights,” 132.

American System--that includes both the Inter-American Court and the subject of this study, the Inter-American Commission—has been a slow, often inadequate process.

However, the commitment of the Inter-American System, at least in paper, has been a growing trend in the last decade. The case law—meaning the system of cases in the Inter-American Commission and Court—has revealed some advancements by accepting more cases involving women, gender-specific resolutions, appointing judges who are gender experts;<sup>172</sup> in cases of armed conflicts, a topic less associated as a stereotypical women’s issue but where women are victims and protagonists nonetheless, the case law reveals improvements by expanding the meaning of sexual violence, incorporating women’s voices and their experiences with violence during the armed conflict, training personnel in gender sensitivity, and recommending next steps for the State to investigate and prosecute State violence against women, offer reparations to women and their children.<sup>173</sup> These improvements, mainly seen in the decisions and resolutions of these legal bodies, are something to celebrate while assertively identifying its limitations.

But women, their identities and experiences with violence, are not monolithic. In the process of gender mainstreaming the IACHR mechanism of precautionary measures, it is important to not only center women, in general, but indigenous and afro-descendant women, in particular. This is where the gender and multicultural perspective intersect.

In the rise of a “multicultural redefinition of rights,” most scholars have focused on how it emerged in the context of neoliberal globalization and the limitations these rights-centered strategies pose for indigenous and black communities.<sup>174</sup> Others have

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<sup>172</sup> Zuloaga, “The Path to Gender Justice in the Inter-American Court of Human Rights,” <https://law.utexas.edu/wp-content/uploads/sites/31/2016/11/writing-prize07-zuloaga.pdf>

<sup>173</sup> Falcón, “Gender and Human Rights,” 134-137.

<sup>174</sup> Hooker, “Indigenous Inclusion/Black Exclusion,” 289-291; Hale, *Más Que Un Indio = More than an Indian*, 60-65, 73-82; Postero, *Now We Are Citizens*, 16.



focused on how social movements--black and indigenous--have navigated and negotiated with international human rights organizations to achieve political transformations domestically and challenge the international system of human rights through transnational litigation.<sup>175</sup> For example, the *Awás Tingni v. Nicaragua* case transformed the way the Inter-American system defines and recognizes indigenous rights, including the idea that land must be understood as a source of cultural reproduction, “territory as identity.”<sup>176</sup>

Few have reflected on how gender inequalities are a result of neoliberal globalization and how women have been central in leading the mobilizations against the state, neoliberalism, and even multicultural neoliberalism.<sup>177</sup> Indigenous and Afro-descendant women are both part of “the community of victims” of globalization and neoliberalism, who have agency and organize transnationally to subvert hierarchies, borders, and other, often violent, arrangements of power.<sup>178</sup> These women are also confronting racial discrimination and other structures of marginalization, and they engage in discourse with the “global ethno-racial field” of international human rights advocates and conventions.<sup>179</sup> But where are they in the record of these fights for rights and law-centered strategies? Their recognition is essential in the study of multicultural neoliberalism and human rights systems.

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<sup>175</sup> Tianna Paschel, *Becoming Black Political Subjects*, 4; Rodríguez-Garavito and Arenas, “Indigenous rights, transnational activism, and legal mobilization,” 247.

<sup>176</sup> Rodríguez-Garavito and Arenas, “Indigenous rights, transnational activism, and legal mobilization,” 241-266.

<sup>177</sup> Laura Parisi, “Feminist Perspectives on Human Rights,” *Oxford Research Encyclopedia of International Studies*. DOI: 10.1093/acrefore/9780190846626.013.4, published online november 2017, <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-48?rskey=ikKTVF&result=7>

<sup>178</sup> Santos & Rodríguez-Garavito, *Law and Globalization from Below*, 4, 94.

<sup>179</sup> Hooker, “Indigenous Inclusion/Black Exclusion,” 289-291; Tianna Paschel, *Becoming Black Political Subjects*, 4.

The trend towards a gender and multicultural perspective seen in case law also appears, separately and transversally, in other written documents of the IACHR. In recent years, it has advanced agendas towards gender equality and implemented initiatives centering women, or with a focus on gender and some intersectionality. The IACHR produces annual reports, country reports, thematic reports, and other publications.<sup>180</sup> While the country reports look at the overall state of human rights in a particular country and annual reports are explicitly to update member states of the OAS of the IACHR activities, the thematic reports look at different issues either across countries, regions, or populations.<sup>181</sup> There are some country reports that might contain a focus on gender in their assessment of the state of human rights of a country. For example, the IACHR published in 2015 the *The Human Rights Situation in Mexico*. In the chapter on “Violence and Citizen Security,” they focused on the disappearances and forced disappearances of women and the impact of state violence on women, indigenous peoples, LGBTI persons, and other vulnerable groups.<sup>182</sup> This reveals some intersectional analysis and sensitivity in the focus of country reports.

Many of the thematic reports of the IACHR explicitly contain a gender and multicultural focus. From 2013-2017, for example, the IACHR has published thematic reports on various topics: ending the institutionalization of girls and boys in the

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<sup>180</sup> “Annual Reports,” *Inter American Commission of Human Rights*, accessed November 20, 2019, website, <http://www.oas.org/en/iachr/reports/annual.asp>; “Country Reports,” *Inter American Commission of Human Rights*, accessed November 20, 2019, website, <http://www.oas.org/en/iachr/reports/country.asp>; “Thematic Reports,” *Inter American Commission of Human Rights*, accessed November 20, 2019, website, <http://www.oas.org/en/iachr/reports/thematic.asp>; “Reports and Other Documents on Situations or Specific Topics in Countries,” *Inter American Commission of Human Rights*, accessed November 20, 2019, website, <http://www.oas.org/en/iachr/reports/other.asp>.

<sup>181</sup> *Ibid.*

<sup>182</sup> Inter American Commission of Human Rights, “Situation of Human Rights in Mexico,” *Country Report Mexico*, December 31, 2015, <http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf>. 90, 112-126. Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 14.

Americas, indigenous women, women's rights in the Inter-American System, and violence against women. Between 2013 and 2017, there have been 8 reports identified that have a gender focus, a multicultural focus, or both. Four reports contain a gender focus.<sup>183</sup> "The Right of Girls and Boys to a Family" report calls for an end to the institutionalization of children and offers recommendations for raising children in alternative care while calling on States to support and strengthen family-based environments.<sup>184</sup> Throughout the report, the vulnerability of girls to situations of violence in, for example, care institutions or in difficult households.<sup>185</sup> The report titled "Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas" shows a focus on gender and sexuality that seeks to protect vulnerable LGBTI population from the multiple violence they suffer and the laws that criminalize and endanger their lives.<sup>186</sup>

The other two reports, "Legal Standards: Gender Equality and Women's Rights" and "Access to Information, Violence against Women, and the Administration of Justice in the Americas," focus on the traditional issues that affect women and that feminist movements have mobilized around: Gender Equality and Violence against Women

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<sup>183</sup> Inter-American Commission of Human Rights, "The Right of Girls and Boys to a Family. Alternative Care: Ending Institutionalization in the Americas," October 17, 2013, <http://www.oas.org/en/iachr/children/docs/pdf/Report-Right-to-family.pdf>. Inter-American Commission of Human Rights, "Legal Standards: Gender Equality and Women's Rights," January 26, 2015, <http://www.oas.org/en/iachr/reports/pdfs/LegalStandards.pdf>. Inter-American Commission of Human Rights, "Access to Information, Violence against Women, and the Administration of Justice in the Americas," March 27, 2015, <http://www.oas.org/en/iachr/reports/pdfs/Access-information.pdf>. Inter-American Commission of Human Rights, "Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas," November 12, 2015, <http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf>.

<sup>184</sup> Inter-American Commission of Human Rights, "The Right of Girls and Boys to a Family. Alternative Care: Ending Institutionalization in the Americas," October 17, 2013, <http://www.oas.org/en/iachr/children/docs/pdf/Report-Right-to-family.pdf>.

<sup>185</sup> Ibid.

<sup>186</sup> Inter-American Commission of Human Rights, "Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas," November 12, 2015, <http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf>.

(VAW).<sup>187</sup> But more importantly, these two reports survey in detail the challenges States in the Americas face and must overcome when implementing international legal standards to eradicate VAW and discrimination against women, or when gathering and making information available to the public on violence and discrimination against women in the region.<sup>188</sup> All of these four reports show the IACHR's deep and nuanced understanding and analysis of key and intersecting gender issues in the region. The hope is that this understanding applies to their decision making process of precautionary measures.

Between 2013 and 2017, the IACHR has published four reports with a multicultural focus.<sup>189</sup> Two of them advocate for the rights of indigenous communities in voluntary isolation and the other for the rights of indigenous and afro-descendant communities that are being displaced, poisoned and assassinated for their lands as a result of private actors pursuing extractive and developmental projects.<sup>190</sup> Throughout the

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<sup>187</sup> Inter-American Commission of Human Rights, "Legal Standards: Gender Equality and Women's Rights," January 26, 2015, <http://www.oas.org/en/iachr/reports/pdfs/LegalStandards.pdf>. Inter-American Commission of Human Rights, "Access to Information, Violence against Women, and the Administration of Justice in the Americas," March 27, 2015, <http://www.oas.org/en/iachr/reports/pdfs/Access-information.pdf>.

<sup>188</sup> Ibid.

<sup>189</sup> Inter-American Commission of Human Rights, "Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights," December 30, 2013, <http://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf>. Inter-American Commission of Human Rights, "Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities," December 31, 2015, <http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf>. Inter-American Commission of Human Rights, "Missing and Murdered Indigenous Women in British Columbia, Canada," December 21, 2014, <http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>. Inter-American Commission of Human Rights, "Indigenous Women and Their Human Rights in the Americas," April 17, 2017, <http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>.

<sup>190</sup> Inter-American Commission of Human Rights, "Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights," December 30, 2013, <http://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf>. Inter-American Commission of Human Rights, "Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities," December 31, 2015, <http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf>.

report, ““Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities,” a gender analysis reveals the multiple layers of violence indigenous and afro-descendant women face, including the use of sexual violence to intimidate communities and the effect that extractive industries have on the land and resources that women use to provide for their families.<sup>191</sup>

The other two reports reveal a more explicit and intersecting gender and multicultural focus: “Missing and Murdered Indigenous Women in British Columbia, Canada” and ““Indigenous Women and Their Human Rights in the Americas.”<sup>192</sup> Both reports center the experiences of indigenous women with discrimination and violence and make specific recommendations to the States, including Canada, to protect these women’s rights and lives.<sup>193</sup> The report “Indigenous Women and Their Human Rights in the Americas” surveys indigenous women’s experiences with violence in different contexts—development and extractive projects, militarization of indigenous lands, domestic violence, violence in urban settings and with displacement, economic, social and cultural rights, indigenous women human rights defenders and defenders of indigenous women’s rights—and engages in a holistic approach to expand their access to justice in light of the barriers that exist.<sup>194</sup> The focus of these reports suggest a conscious effort to investigate matters that center women at the local level, including indigenous

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<sup>191</sup> Inter-American Commission of Human Rights, “Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities,” December 31, 2015, <http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf>, 62, 165, 167-169.

<sup>192</sup> Inter-American Commission of Human Rights, “Missing and Murdered Indigenous Women in British Columbia, Canada,” December 21, 2014, <http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>. Inter-American Commission of Human Rights, “Indigenous Women and Their Human Rights in the Americas,” April 17, 2017, <http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>.

<sup>193</sup> Ibid.

<sup>194</sup> Inter-American Commission of Human Rights, “Indigenous Women and Their Human Rights in the Americas,” April 17, 2017, <http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>.

and afro-descendant women, and reveal an intersecting gender and multicultural sensitivity at the international scope.

There are other thematic reports that explicitly reveal neither a gender nor a multicultural focus. For example, the report published in 2013 titled *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas*. The report addresses the current situation that government officials face when performing their functions without guarantees for their individual independence and the independence of the institutions in which they serve, the report identifies the international obligations that States must ensure to protect justice operators so that they discharge their functions independently.<sup>195</sup> However, the report missed on the opportunity to reflect on how women judges, including afro-descendant and indigenous judges, are affected or how judges, who are gender experts, can be key players in strengthening access to justice and overall rule of law efforts.<sup>196</sup> As the next chapter reveals, there is a case of a female judge belonging to the Garifuna, both black and indigenous, community that shows the importance of a gender and multicultural perspective when analyzing the independence of justice operators. Similar intersectional perspectives are needed in other reports.

From all the reports published by the IACHR, the most important publications to understand the IACHR periodic commitments and priorities are the strategic plans. For a five year period, the IACHR sets out to publish an executive level plan and engage in a

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<sup>195</sup> Inter American Commission of Human Rights, “Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas,” December 5, 2013, <http://www.oas.org/es/cidh/defensores/docs/pdf/Justice-Operators-2013.pdf>.

<sup>196</sup> Inter American Commission of Human Rights, “Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas,” December 5, 2013, <http://www.oas.org/es/cidh/defensores/docs/pdf/Justice-Operators-2013.pdf>.

process of institutional strengthening.<sup>197</sup> The last three periods of strategic planning have been 2005-2010, 2011-2016, and 2017-2020.<sup>198</sup> During the 2005-2010 process, the Commission identified key challenges, mainly securing financial resources, reorganizing the Executive Secretary, and even amending the Rules of Procedure.<sup>199</sup> Through the 2011-2016 first, published Plan, the IACHR navigated the 2013 “Strengthening Process,” where many member states came together to amend the Rules of Procedure of the IACHR.<sup>200</sup> This had an effect on the precautionary measures that continues to be debated among experts of the IACHR.<sup>201</sup> The IACHR claims that during this period there was an increase in the requests of precautionary measures, the publishing of required resolutions for granted precautionary measures, an increase in visits and meetings, the strengthening of thematic Rapporteurships, in particular the Rapporteurship on human rights defenders and the Rapporteurship on lesbian, gay, bisexual, trans and intersex (LGBTI) persons.<sup>202</sup> The IACHR also celebrates “the mechanisms created by the States for individuals at risk and beneficiaries of precautionary measures.”<sup>203</sup> These are all points of progress that

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<sup>197</sup> IACHR, “Executive Summary,” *Strategic Plan 2011-2015*, accessed November 20, 2019, <https://www.oas.org/en/iachr/docs/pdf/IACHRStrategicPlan20112015.pdf>. IACHR, *Strategic Plan 2017-2021*, published on March 20, 2017, <https://www.oas.org/en/iachr/mandate/StrategicPlan2017/docs/StrategicPlan2017-2021.pdf>.

<sup>198</sup> Ibid.

<sup>199</sup> IACHR, “Executive Summary,” *Strategic Plan 2011-2015*, accessed November 20, 2019, <https://www.oas.org/en/iachr/docs/pdf/IACHRStrategicPlan20112015.pdf>.

<sup>200</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 32-35. “About Precautionary Measures,” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <https://www.oas.org/en/iachr/decisions/about-precautionary.asp>.

<sup>201</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 32-35.

<sup>202</sup> IACHR, *Strategic Plan 2017-2021*, published on March 20, 2017, <https://www.oas.org/en/iachr/mandate/StrategicPlan2017/docs/StrategicPlan2017-2021.pdf>, 19-20.

<sup>203</sup> Ibid. 19.

involve precautionary measures and vulnerable populations, but they are also accompanied by remaining challenges.

The *Strategic Plan 2017-2020* set out 5 strategic objectives, and 21 programs through which to implement them.<sup>204</sup> The main objectives that either explicitly focused on strengthening the mechanism of precautionary measures or included a gender-focus were Strategic Objective 1.<sup>205</sup> Objective 1 sets out to:

To contribute to the development of more effective and accessible inter-American justice in order to overcome practices of impunity in the region and achieve comprehensive reparation for victims through decisive measures for the strengthening to the petition and case system, friendly settlements and precautionary measures.<sup>206</sup>

The emphasis on strengthening the effectiveness of precautionary measures is a specific way that the IACHR plans to improve on inter-American justice, and it shows just how important the mechanism is to the System—just as much as the petition and case system and friendly settlements. Furthermore, Program 8 explicitly sets out to improve the mechanism of precautionary measures in light of the accelerated growth of requests and use of the mechanism.<sup>207</sup>

The rest of the objectives include more institutional strengthening focused on the IACHR monitoring capabilities, decreasing procedural delays of their mechanisms, strengthening relationships with States and civil society through training on the System, the universalization of the System, specifically closely working the other human rights agencies, and efficient management of human resources, infrastructure, technology and

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<sup>204</sup> Ibid., 5.

<sup>205</sup> Ibid., 44.

<sup>206</sup> Ibid., 48.

<sup>207</sup> IACHR, *Strategic Plan 2017-2021*, published on March 20, 2017, <https://www.oas.org/en/iachr/mandate/StrategicPlan2017/docs/StrategicPlan2017-2021.pdf>, 52.



budget.<sup>208</sup> These strategic objectives and accompanying programs show the commitment of the IACHR to be transparent, accountable, efficient, and collaborative in the upcoming years. However, these are commitments working in conjunction with its other stated priority populations and themes.

In the Strategic Plan 2017-2020, the IACHR prioritizes certain populations and themes in addition to them being addressed through the system of Rapporteurships. The IACHR commits to a “multidimensional strategy” on the issues and recognizes the “intersection of identities and risks that can accentuate human rights violations against diverse persons, groups, and collectivities in the hemisphere.”<sup>209</sup> Among the listed populations, and directly relevant to this chapter, are women.<sup>210</sup> The report explains the creation of the Rapporteurship on the Rights of Women in 1994 and its mission to monitor the States’ legislation and practices around women’s rights and their obligations to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará).<sup>211</sup> The IACHR expresses its support of the Rapporteurship of Women to focus on:

- (i) the prevalence of forms of extreme violence against women in the region, including physical, psychological, sexual, economic, spiritual, obstetric, institutional and other forms;
- (ii) failure of States to act with due diligence including to prevent, investigate, punish, and provide reparations in cases of human rights violations against women and to guarantee timely access to justice and information held by state entities that is key for the exercise of their human rights;
- (iii) multiple forms of discrimination that affect women, which generate increased vulnerability for indigenous, Afro-descendant and disabled women, women living with HIV/AIDS, children, lesbians and trans women among others;
- (iv) challenges in the protection and exercise of the sexual and reproductive rights of women;
- (v) the triple condition of risk that women human rights defenders face

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<sup>208</sup>Ibid., 49.

<sup>209</sup> Ibid., 31.

<sup>210</sup> Ibid., 31-32.

<sup>211</sup>IACHR, *Strategic Plan 2017-2021*, published on March 20, 2017, <https://www.oas.org/en/iachr/mandate/StrategicPlan2017/docs/StrategicPlan2017-2021.pdf>, 31-32.

because of their work as leaders, the cases they handle and their sex and gender; and (vi) obstacles for the exercise of economic, social and cultural rights by women in areas such as healthcare, education, labor and access to and control of economic resources.<sup>212</sup>

The IACHR excels in identifying the multiple forms of violences and forms of discrimination different women—including indigenous, Afro-descendent, women with disabilities—face. A poignant example cited in the report is the “triple condition” female human rights defenders face. In addition to their work as human rights defenders, a type of work that is already criminalized in the region, they are female human rights defenders face additional risks. This focus and emphasis in the *Strategic Plan 2017-2020* is promising at least in written form.

In this multidimensional strategy, the IACHR also recognizes as priority population indigenous people, Afro-Descendants, Human Rights Defenders, Persons Deprived of Liberty, and LGBTI persons.<sup>213</sup> This list not only demonstrates the gender sensitivity of an IACHR that, in its 5 year plan, commits to supporting the Rapporteurships focused on these vulnerable populations but also reveals an intersectional understanding of that women are not monolithic and experience multiple forms of discrimination and violence. One would expect that the Commission would apply this nuanced understanding when assessing a serious and urgent situation that presents a risk of irreparable for these priority populations—in other words, when granting a precautionary measure.

A similar multidimensional strategy is applied when the IACHR lists their crosscutting themes in the *Strategic Plan 2017-2020*. The IACHR monitors States are

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<sup>212</sup> Ibid., 31-32.

<sup>213</sup> Ibid., 34-35.

meeting their international obligations and inter-American human rights standards on the following six issues: “democratic institutionalism,” “judicial independence of the public prosecutor’s office and access to justice,” “institutionality in human rights,” “security and violence,” “development and human rights,” and “gender, equality and diversity.”<sup>214</sup> Out of these six, the one with an explicit focus on gender and centering women is the theme of gender, equality and diversity. From this, it is evident that IACHR recognizes the structural violence women and girls continue to face in different areas, the “acute” situation that “women who are indigenous or of African descent, and women who are part of LGBTI communities” face.<sup>215</sup> And they explicitly commit by stating: “The Commission intends to fully incorporate the transversal perspective of gender, diversity and intercultural respect that should guide all the work oriented towards the respect and guarantee of the advancement of human rights in the Americas.”<sup>216</sup> The transversal understanding of women’s experiences in the region not only satisfies the plea for the IACHR to apply gender-mainstreaming but it goes beyond gender to fully include categories, or important identity markers, of race, ethnicity, sexuality that inform the work of the IACHR.

While this transversal understanding of the issue of gender, equality and diversity is to be celebrated, the hope is that the multidimensional strategy applies this transversal understanding to the rest of the themes. For example, the theme of “Security and Violence” identifies the police, other state security forces, criminal groups, but the IACHR falls short in identifying those particularly affected by this issue: women and girls. The value of reflection on how women not only experience sexual and gender

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<sup>214</sup> IACHR, *Strategic Plan 2017-2021*, published on March 20, 2017, <https://www.oas.org/en/iachr/mandate/StrategicPlan2017/docs/StrategicPlan2017-2021.pdf>, 39-41.

<sup>215</sup> *Ibid.*, 41.

<sup>216</sup> *Ibid.*, 41.

violence but how they navigate issues of security, development, democratic institutionality is key in expanding the understanding and practice of human rights. The Strategic Plan 2017-2020 is a written commitment in the right direction of implementing a gender and multicultural perspective and proving a complex understanding of how women's rights are threatened and could be protected in the region. However, to what degree does this Plan translate into reality?

The commitment in the strategic report, the focus and analysis the published reports, and the sentences in the case law all speak to the IACHR's commitment to center women and vulnerable populations and address the issues that affect them, and implement. Surveying key documents written and published by the IACHR is an exercise that answers the extent to which the IACHR manages a gender and multicultural focus. There are some country and thematic reports that might just focus on general themes of access to justice or dominant narratives of human rights defenders. But there are other reports that center women, indigenous and afro-descendant communities and LGBTI persons. There are even those reports that not only focus on Violence Against Women but those also reveal the gendered violence in extractive industries and development projects. While the IACHR's does not necessarily engage in either a critique of neoliberalism or multicultural neoliberalism against the State or its own practices, or even how gender plays a key role in the logic of neoliberalism, it does demonstrate to have a very intersectional focus on gender, race, and ethnicity.

The IACHR's commitment in writing has been a slow achievement but one that reveals certain opportunities to implement in the practice of its mechanisms and programs. Therefore, how does the IACHR implement a gender and multicultural focus in the mechanism of precautionary measures? More generally, besides the slow trends in the written materials of the IACHR, what's the practice? The story of the Judge Maria

Lourdes Afiuni and the process and eventual implementation of her precautionary measure was my catalyst to investigate the extent of the practice of gender mainstreaming in the mechanism of precautionary measures. But the case of Judge Afiuni reveals certain limitations both in her profile and process. As the following chapter will explore, there are many other cases that reveal certain challenges and opportunities for the IACHR.

### **Chapter 3: Implementing a mechanism for the gendered violence in neoliberal multiculturalism: an imperfect practice**

Women experience multiple types of violence, and women find themselves in different situations of vulnerability: indigenous women, afro-descendent women, LGBTI women, and women with disabilities. The case of Paulina Mateo Chic illustrates how different issues, violence, and identities intersect all in one. Furthermore, the process of requesting and implementing a precautionary measure reveals the possibilities and limitations when implementing both a gender and multicultural perspective.

On October 20, 2017, the Washington-based organization Robert F. Kennedy Human Rights and the local, Guatemalan-based organization Consejo de Comunidades Étnicas Runujel (CERJ), the petitioners, requested a precautionary measure 782-17 to protect the life and integrity of Paulina Mateo Chic.<sup>217</sup> In 1989 during the armed conflict in Guatemala, Macario Pu Chivalan, husband of Paulina Mateo Chic, and three other indigenous, community defenders of the Maya-Quiché communities of Pacho, in the Santa Cruz del Quiché and Poteo Viejo municipalities, were detained and disappeared by the Guatemalan military.<sup>218</sup> This case of enforced disappearances was filed with the Inter-American Court, and Paulina Mateo Chic is identified as an alleged victim in this case.<sup>219</sup> At the time of the request of the precautionary measure in 2017,

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<sup>217</sup> IACHR, Precautionary Measure 782-17, “Paulina Mateo Chic respecto de Guatemala,” published December 1, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>.

<sup>218</sup> Precautionary Measure 782-17, <https://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>.

<sup>219</sup> IACHR, “Petition 843-07, Admisibilidad, Nicolas Mateo y otros,” *Informe No. 92/13*, published november 4, 2013, <http://www.oas.org/es/cidh/decisiones/2013/GTAD843-07ES.doc>.

case 12.932 was in the merits stage, and the petitioners of the precautionary measures wanted to guarantee that Paulina Mateo Chic would be alive when the case was decided.<sup>220</sup>

Since the disappearance of her husband, Paulina Mateo Chic has lived in extreme poverty.<sup>221</sup> As the resolution identifies, Macario Pu Chivalan was the main breadwinner, and since his disappearance, Paulina Mateo Chic has deteriorated psychologically and physically.<sup>222</sup> The beneficiary's medical conditions include chronic malnutrition, osteoporosis, degenerative arthritis, and these conditions threaten her life.<sup>223</sup> A month after the initial request, the IACHR granted the measure for the state of Guatemala to protect Paulina Mateo Chic.<sup>224</sup> As shown in Image 3, an excerpt of the resolution, the IACHR requests the state of Guatemala to focus on Paulina Mateo Chic's medical condition and to:

- (i) conduct necessary medical exams, (ii) provide medical attention that is culturally adequate, according to her pathologies, and following international standards, (iii) guarantee she has access to an adequate diet with nutritional values and culturally appropriate while following the guidelines of international organizations like the World Health Organization (WHO) or the Pan American Health Organization (PAHO).<sup>225</sup>

These measures not only are detailed in scope but also fulfill the requests of the petitioners who consulted with experts and the family of the beneficiary. As Angelita Baeyens, Director of Advocacy and Litigation for Robert F Kennedy Human Rights,

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<sup>220</sup> Precautionary Measure 782-17, <https://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>. Angelita Baeyens, Director of Advocacy and Litigation for Robert F Kennedy Human Rights, interviewed by author, June 14, 2018.

<sup>221</sup> Precautionary Measure 782-17, <https://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>. Angelita Baeyens, interviewed by author, June 14, 2018.

<sup>222</sup> Precautionary Measure 782-17, <https://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

shares, Amilcar Méndez Urizar, founder of CERJ, has a long relationship with Paulina Mateo Chic's family and the indigenous communities in the area.<sup>226</sup> He often travels the long distances from Guatemala City to the communities of Pchoj to check on the families of the disappeared and from these visits, Paulina Mateo Chic was the first request of a precautionary measure they decided to pursue.<sup>227</sup> There are other families of the disappeared, but Paulina Mateo Chic's condition is the worst.<sup>228</sup>

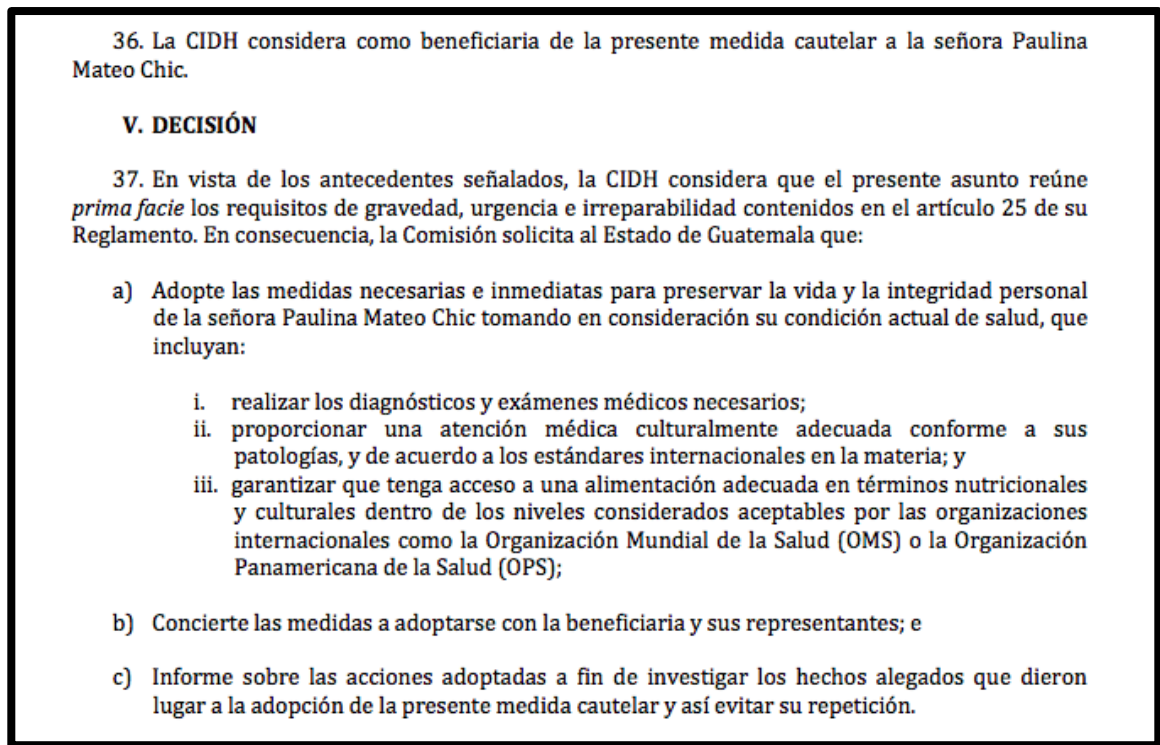


Image 3: Resolution 49/2017 of PM 782-17 “Paulina Mateo Chic respecto de Guatemala<sup>229</sup>

<sup>226</sup> Angelita Baeyens, interviewed by author, June 14, 2018.

<sup>227</sup> Angelita Baeyens, interviewed by author, June 14, 2018.

<sup>228</sup> Ibid.

<sup>229</sup> Precautionary Measure 782-17, <https://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>.



The request of the measure for Paulina Mateo Chic was successful, but the implementation has not been as successful according to Angelita Baeyens as she reflects on the implementation period. The Guatemalan government acted quickly in this case but has not followed through, and the medical examinations and nutritional aid has been insufficient, as she calls the rations: “son migajas.”<sup>230</sup> While Baeyens understands the structural problems for accessing medical treatments and medicines in rural areas and the political crisis that has further weakened the presence of public services in rural areas, Baeyens laments that Paulina Mateo Chic’s condition has deteriorated even more after her initial exams.<sup>231</sup>

When asked about the gender and multicultural perspective that the measures incorporated through the language in the resolutions, Baeyens applauds it but acknowledges the limitations. For example, there are language barriers when visiting the families and other indigenous areas where Maya-Quiche is spoken.<sup>232</sup> Instead of providing culturally sensitive medical attention, the State has only provided basic medical examinations. The petitioners did not insist in accessing traditional medicine, because neither the family nor Mrs. Paulina Mateo Chic requested it initially.<sup>233</sup> And according to Baeyens, the problem has not been if it is culturally adequate but instead its accessibility—Paulina lives in a remote area.<sup>234</sup> Baeyens admits that through the process of requesting and implementing the precautionary measure, they did not explicitly pursue but acknowledge the reality of indigenous women in Guatemala: “zero state support, head of families in light of the disappearances of their male partners, and other types of violence

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<sup>230</sup> Angelita Baeyens, interviewed by author, June 14, 2018.

<sup>231</sup> Ibid.

<sup>232</sup> Angelita Baeyens, interviewed by author, June 14, 2018.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

we have not explored.”<sup>235</sup> The discrimination and sexual violence that Paulina Mateo Chic and other indigenous women have experienced is “una olla que no hemos destapado pero que si se destapa va a salir de todo” (*a pot that has not been uncovered but if it was, everything will come out*).<sup>236</sup> Precautionary measures present an opportunity to protect the current conditions affecting a beneficiary like Paulina Mateo Chic, but the causes of those conditions, like the unknown violence experienced during the armed conflict coupled with the known effects of the disappearance of her husband, present challenges when navigating the mechanism.

Paulina Mateo Chic is but one case that illustrates the context of multiple violence many vulnerable women face and the opportunities and limitations that precautionary measures present. Through the analysis of the resolution and the interview with one of the petitioners, several key topics arise and intersect: indigenous women, enforced disappearance, medical conditions, victim of a case in the Inter-American Court, and the context of armed conflict. But there are many other cases demonstrating different and similar context of violence. Despite the limitation of legal strategies in addressing these contexts, human rights defenders still access the mechanism of precautionary measures.

The next section analyzes the IACHR gender and multicultural perspective by analyzing case studies of precautionary measures, from 2013 through 2017, in which women are the main or co-beneficiaries and in which key issues--women’s rights issues (sexual and gender violence, abortion and other sexual rights), land rights, disappearances, etc—emerge as part of the grievance outlined in the request of the precautionary measure. This chapter aims to identify the extent to which gender mainstreaming and multiculturalism is a practice in the mechanism of precautionary

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<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

measures. The application process and decision of the IACHR to grant a precautionary measure is an important site of reflection that points to a part of the procedure where issues can arise: are the actors (IACHR, lawyers and potential beneficiaries) applying a gender and multicultural perspective in the application and decision-making process of a precautionary measures? And if so, how is it appropriately guaranteeing these vulnerable groups access to such mechanism?

Both of these questions connect to a larger reflection on how are these actors from the IACHR understanding women's current experiences with multiple contexts of violence and how are women being protected from a serious and urgent situation presenting the risk of irreparable harm—especially black and indigenous women—in the region? I recognize that IACHR has committed to a gender and multicultural perspective through many of its initiatives designed in its documents, but it can and must do more in strengthening the mechanism of precautionary measures through gender-mainstreaming and multicultural practices of human rights.

#### **GENDER MAINSTREAMING AND MULTICULTURALISM IN PRECAUTIONARY MEASURES: CALLING ON AN INTERSECTIONAL PRACTICE**

Precautionary measures have been one of the many tools in the Inter-American System to protect the basic rights of people for over 30 years.<sup>237</sup> In those years the mechanism has undergone changes. The most recent was the 2013 amendment of the Rules of Procedures, where one of the biggest changes was the IACHR's requirement to publish resolutions that substantiated their reasoning for granting a precautionary measure.<sup>238</sup> The practice of publishing resolutions of the precautionary measures that the

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<sup>237</sup>“About Precautionary Measures,” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <https://www.oas.org/en/iachr/decisions/about-precautionary.asp>.

<sup>238</sup> Ibid.

IACHR grants begins in 2013, even though there is no resolution of those denied precautionary measures.<sup>239</sup> These resolutions are helpful in understanding the IACHR’s way of thinking about a request, issues and situations, and applying the requisites of granting a measure: seriousness, urgency, and irreparable harm.<sup>240</sup> When analyzing the resolutions from 2013 to 2017—range of fieldwork for the project—key trends are visible.

In the resolutions, we can analyze who are the beneficiaries, and the individuals helping them fill out the petitions—i.e. the petitioners--the key issues that give rise to a serious and urgent situation that presents a risk of irreparable harm, and even different decision periods and processes that inform the mechanism: date requested, date granted, information provided by the state in response to the IACHR’s request, information provided by petitioners, and the scope of the request.<sup>241</sup> In most cases, the resolution will be general in scope containing vague language and usually requesting the state to “adopt the necessary measures to preserve the life and personal integrity,” to “agree on how the measures will be implemented with the beneficiary and their representative,” and to “inform about the process of investigating the alleged facts that led to the adoption of the resolution in order to avoid repetition.”<sup>242</sup> There are some resolutions that are more

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<sup>239</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 77.

<sup>240</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 59-61.

<sup>241</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 42-44.

<sup>242</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November,

creative and detailed specifically asking for certain follow-up steps to address the particular situation of risk: provide medical attention, finding the whereabouts of those disappeared, and guaranteeing better conditions in penitentiary centers.<sup>243</sup> The Paulina Mateo Chic case is an example of the IACHR requesting very detailed measures that are directly requested by the petitioners and written in the resolution.<sup>244</sup> Among users of the system there is great debate if the resolutions should be vague in order for the beneficiaries to be more involved in meeting with the States and making their demands, or if the resolutions should be more specific in order for the measures to better serve the beneficiaries.<sup>245</sup>

For the scope of this chapter, the following trends are analyzed from the resolutions between 2013 and 2017.<sup>246</sup> First, what is the percentage of women beneficiaries, either as sole beneficiaries or part of a group, who are explicitly identified in the resolutions? What are the main issues that affect the women beneficiaries seeking precautionary measures? How does the IACHR address these issues in the resolution--

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2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 76.

<sup>243</sup>Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 76. Examples of precautionary measures on medical conditions, better detention conditions, and disappearances: IACHR, Precautionary Measure 440-16, “Zaheer Seepersad regarding Trinidad and Tobago,” published August 4, 2017, <https://www.oas.org/en/iachr/decisions/pdf/2017/28-17MC440-16-TT-EN.pdf>; IACHR, Precautionary Measure 161-17, “Centros Juveniles de Privación de Libertad respecto de Guatemala,” published June 12, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/17-17MC161-17-GU.pdf>; IACHR, Precautionary Measure 17-17, “Juan respecto de Argentina,” published April 7, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/11-17MC17-17-AR.pdf>.

<sup>244</sup>Precautionary Measure 782-17, <https://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>.

<sup>245</sup>Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 76.

<sup>246</sup>It is important to note that this analysis only focuses on granted precautionary measures; there is no publicly accessible information about the types of petitions that were not granted, or denied by the IACHR.

vague language or specific demands for the states to follow? These are the types of patterns that begin a reflection on the need for gender-mainstreaming the mechanism of precautionary measures. When the analysis deepens, issues that affect indigenous and afro-descendant women surface and require an intersectional lens that applies a multicultural perspective in addition to just the gender perspective. The resolutions show some of the practices of the IACHR and its expectations on the States. Through these practices, the actors' understanding of the beneficiaries and their situation of risks, more generally, is illustrated.

Out of the 191 granted precautionary measures between 2013 and 2017, there are 79 resolutions of precautionary measures where women are explicitly mentioned as beneficiaries--either as a sole individual, as an individual belonging to a group or community, or as the mentioned family member of a male beneficiary.<sup>247</sup> Because the IACHR is not consistent with the online filing of extensions—precautionary measures that are extended to other beneficiaries in later resolutions--these are not included in our total count.<sup>248</sup> In addition, many resolutions that made mention of a male

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<sup>247</sup> Database of resolutions 2013-2017 analyzed by author: "Precautionary Measures," *Inter-American Commission of Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/decisions/precautionary.asp>. "Statistics," *Inter-American Commission of Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/multimedia/statistics/statistics.html>.

<sup>248</sup> The extensions that include female beneficiaries but are not part of our analyzed resolutions from 2013 through 2017: IACHR, Precautionary Measure 393-15, "Detenidos en 'Punta Coco' con respecto a Panamá," published March 22, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/10-17MC393-15-PN.pdf>; IACHR, Precautionary Measure 505-15, "Lottie Cunningham respecto de Nicaragua," published June 11, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/16-17MC505-15-NI.pdf>; IACHR, Precautionary Measure 271-05, "Asunto comunidad de la Oroya con respecto a Peru," published May 3, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC271-5-Es.pdf>; IACHR, Precautionary Measure 452-13, "Ampliación de beneficiarios Lauro Baumea Mora y otros respecto de Mexico," published March 2, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC452-13-Es.pdf>. And there is a double extension with two resolutions: IACHR, Precautionary Measure 51-15, "Personas mayores pertenecientes a la Asociación Shipia Wayúu de la Comunidad indígena Wayúu en los municipios de Manaure, Riohacha y Uribí respecto de Colombia," published December 1, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/51-17MC51-15-CO.pdf>. IACHR, Precautionary Measure 51-15, "Ampliación de beneficiarios a favor de las mujeres gestantes y lactantes de la Comunidad Indígena

beneficiary and his family members were not counted if they did not explicitly mention a female member.<sup>249</sup> The methodology when analyzing resolutions rejects assumptions of heterosexual and heteronormative definitions of a nuclear family, and only those resolutions in which the family members were identified and a female beneficiary was mentioned were counted.<sup>250</sup> The age range of the beneficiaries includes those who are minors; there are many resolutions with girls who are the main beneficiaries, but their identity is kept anonymous.<sup>251</sup>

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Wayúu en los municipios de Manaure, Riohacha y Uribía respecto de Colombia,” published January 26, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/3-17MC51-15-CO.pdf>.

<sup>249</sup> An example of a resolution identifying a male beneficiary and his family is IACHR, Precautionary Measure 410-13, “Matter of José Luis Zubmaguera Miranda and his family regarding Cuba,” published November 21, 2013, [https://www.oas.org/en/iachr/decisions/pdf/Resolution9-13\(MC-410-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution9-13(MC-410-13).pdf); in the resolution, there is not way of identifying the members composing Miranda’s family, and there is no way of verifying who was listed in the “documents produced.” Similar cases were there is a male beneficiary and “his family” as beneficiaries: IACHR, Precautionary Measure 338-13, “Matter of Lorenzo Santos Torres and his family regarding México,” published November 8, 2013, [https://www.oas.org/en/iachr/decisions/pdf/Resolution7-13\(MC-338-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution7-13(MC-338-13).pdf); IACHR, Precautionary Measure 573-15, “X et al., Mexico;” IACHR, Precautionary Measure 293-15, “Asunto Rony Alejandro Fortín Pineda y otros respecto de Honduras,” published July 27, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC293-15-ES.pdf>; IACHR, Precautionary Measure 468-16, “Asunto Daniel Pascual y otros respecto de Guatemala,” published December 6, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC468-16-ES.pdf>; IACHR, Precautionary Measure 994-16, “Asunto Lorenzo Mendoza y familia respecto de Venezuela,” published January 20, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/2-17MC994-16-VE.pdf>.

<sup>250</sup> IACHR, Precautionary Measure 336-14, “Gener Jhonathan Echeverry Ceballos y familia respecto de la Republica de Colombia,” published October 21, 2014, <https://www.oas.org/en/iachr/decisions/pdf/2014/MC336-14-EN.pdf>;

<sup>251</sup> Some of the cases of minors, where girls were explicitly identified: IACHR, Precautionary Measure 409-13, “Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos;” IACHR, Precautionary Measure 137-13: “Girls Deprived of Liberty in adult detention centres, Jamaica;” IACHR, Precautionary Measure 178-15, “Asunto niña Mainumby respecto de Paraguay,” published June 8, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC178-15-ES.pdf>; IACHR, Precautionary Measure 376-15, “Irene respecto de Argentina,” published July 7, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC376-15-ES.pdf>; IACHR, Precautionary Measure 161-17, “Centros Juveniles de Privación de Libertad respecto de Guatemala,” published June 12, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/17-17MC161-17-GU.pdf>; IACHR, Precautionary Measure 958-16, “Hogar Seguro Virgen de la Asunción” respecto de Guatemala,” published March 12, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/8-17MC958-16-GU.pdf>; IACHR, Precautionary Measure 68-17, “Asunto Panambi respecto de Paraguay,” published March 2, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/7-17MC68-17-PY.pdf>; IACHR, Precautionary Measure 51-15, “Asunto niñas, niños y adolescentes de las comunidades de Uribía, Manaure, Riohacha, y Maicao

There are other cases, like those of detention conditions and migrant shelters, where women, including transgender women, are not explicitly mentioned in the resolution but could be assumed to be part of the protected group.<sup>252</sup> I do not include these cases in our total count but I bring these cases as a key example of the need to explicitly identify women who are at risk, in need of protection, and at greater risk when invisibilized. In addition, collective measures involving rural, indigenous, or afro-descendent communities where the resolutions did not explicitly mention women--just the word community--were not counted, even though women are assumed to be part of these communities.<sup>253</sup> In all of these cases, male leaders were explicitly mentioned and their communities were generalized as extended beneficiaries. The exercise to analyze the resolutions was to reflect on the specific language used, and overall practice, to identify and describe beneficiaries in the resolutions.

As Graph 1 “Female Beneficiaries in Resolutions 2013-2017” shows, the percentage of resolutions between 2013-2017 where female beneficiaries are explicitly

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del Pueblo Wayú asentados en el departamento de la Guajira, respecto de Colombia,” published December 11, 2015,

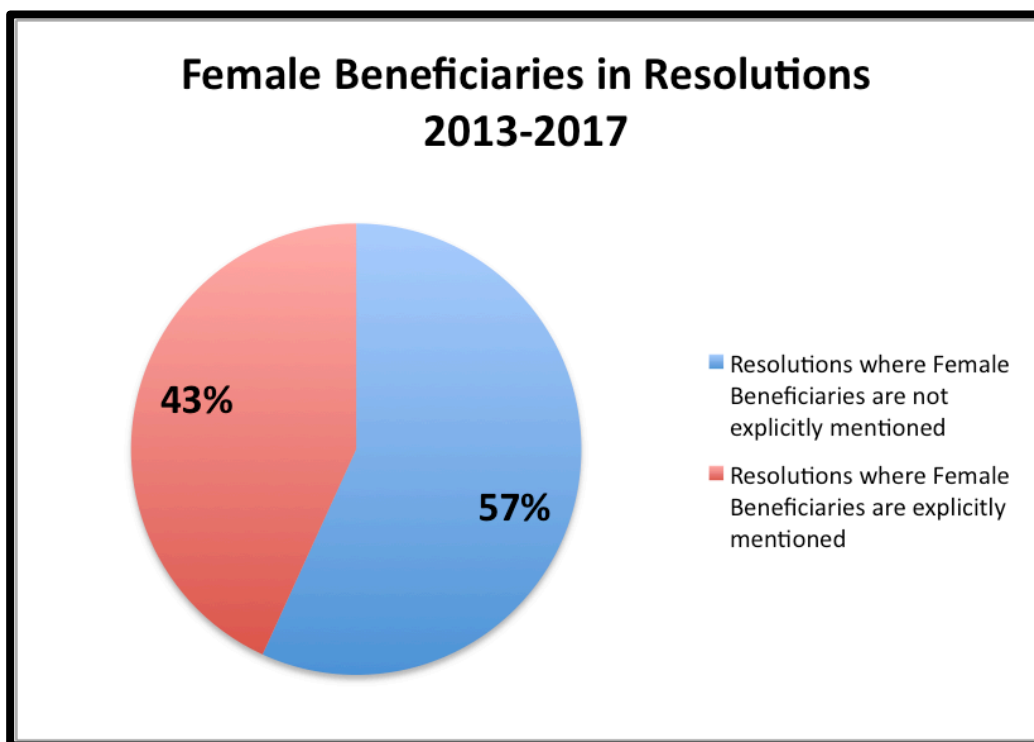
<https://www.oas.org/es/cidh/decisiones/pdf/2015/MC51-15-Es.pdf>;

<sup>252</sup> IACHR, Precautionary Measure 273-11, “Fray Tomás González Castillo, Ruben Figueroa, staff Home-Shelter migrants 'La 72' and others, Mexico;” IACHR, Precautionary Measure 8-13, “Matter of Persons Deprived of Liberty at the Central Penitentiary of Porto Alegre regarding Brasil,” published December 30, 2013, [https://www.oas.org/en/iachr/decisions/pdf/Resolution14-13\(MC-8-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution14-13(MC-8-13).pdf); IACHR, Precautionary Measure 367-13, “Matter of Persons Deprived of Liberty at the Penitentiary Complex of Pedrinhas regarding Brazil,” published December 16, 2013, [https://www.oas.org/en/iachr/decisions/pdf/Resolution11-13\(MC-367-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution11-13(MC-367-13).pdf).

<sup>253</sup> IACHR, Precautionary Measure 106-15, “Asunto Cruz Sanchez Lagarda y otros respecto de Mexico,” published April 27, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC106-15-ES.pdf>; IACHR, Precautionary Measure 54-13, “Asunto comunidades en aislamiento voluntario del Pueblo Ayoreo Totobiegosode respecto de Paraguay,” published February 3, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC54-13-Es.pdf>; IACHR, Precautionary Measure 178-17, “Julio César Vélez Restrepo y otros respecto de Colombia,” published August 14, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/30-17MC178-17-CO.pdf>; IACHR, Precautionary Measure 21-05, “Pueblo Indígena Wiwa de la Sierra Nevada de Santa Marta respecto de Colombia (Ampliación en relación con la situación del señor Manuel Enrique Vega Sarmiento),” published June 14, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/18-17MC21-05-CO.pdf>.



identified results in 43% (79 total) of the total resolutions (191 total). 57% are either resolutions where male beneficiaries are identified or where “neutral” language invisibilizes the female members of a community or organization, or assumes a nuclear family between a male and a female. Whether this percentage reveals an intentional practice of gender sensitivity is not entirely clear. What is clear is that even out of the 79 cases where females were the part of the beneficiaries, a much smaller number of cases were women the main beneficiary.



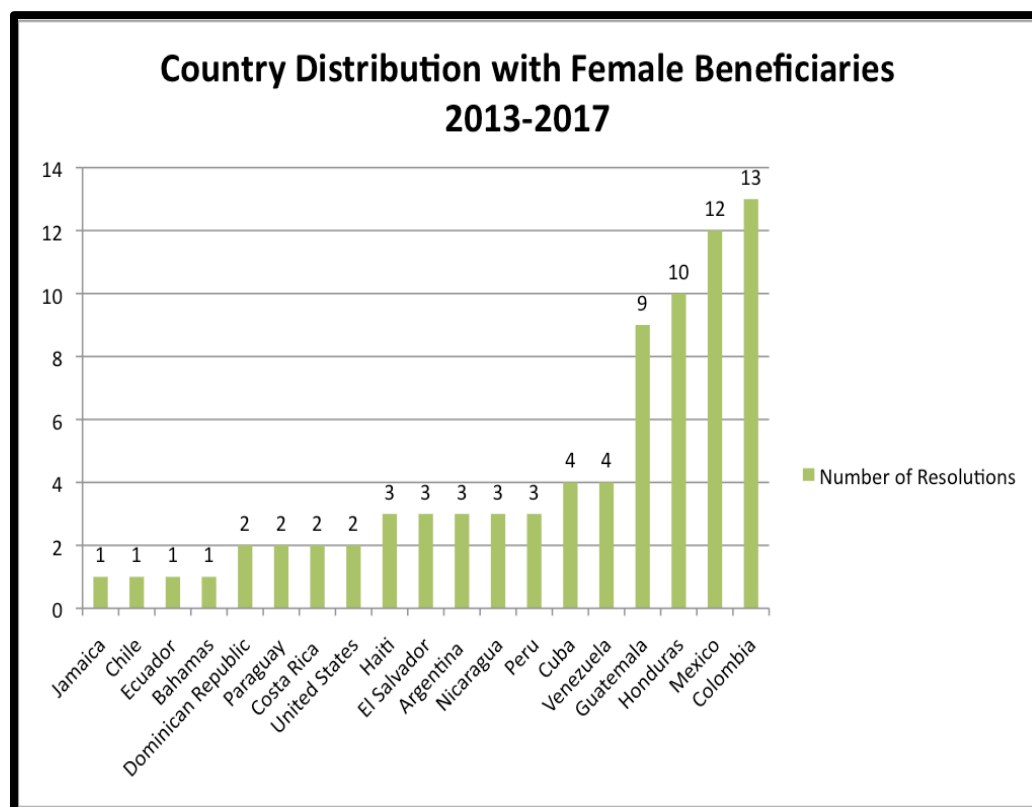
Graph 1: Source IACHR Website<sup>254</sup>

<sup>254</sup> Database of resolutions 2013-2017 analyzed by author: “Precautionary Measures,” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

Throughout the resolutions, there some key patterns worth analyzing. First, precautionary measures with women beneficiaries are granted to different countries. As Graph 2: “Country Distribution with Female Beneficiaries” demonstrates, Colombia (13), Mexico (12), Honduras (10) and Guatemala (9), respectively hold the most amount of precautionary measures with female beneficiaries. These countries, especially Colombia and Mexico are also the countries with the most number of precautionary measures, in general, between 2007-2017 as analyzed by the report I helped publish with the Human Rights Clinic at UT Law.<sup>255</sup> According to Graph 2, Venezuela and Cuba are tied with four each; Argentina, El Salvador, Peru, Nicaragua, and Haiti have three each; United States, Costa Rica, Paraguay and Dominican Republic each have two precautionary measures; and Bahamas, Ecuador, Chile and Jamaica have the least with one case each. These numbers do not necessarily translate into the level of risk for women in each country or the gender sensitivity practiced in those states; instead, it is a point of reflection on what type of beneficiaries and from what countries is the IACHR granting precautionary measures.

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<sup>255</sup> Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 70 and 72.

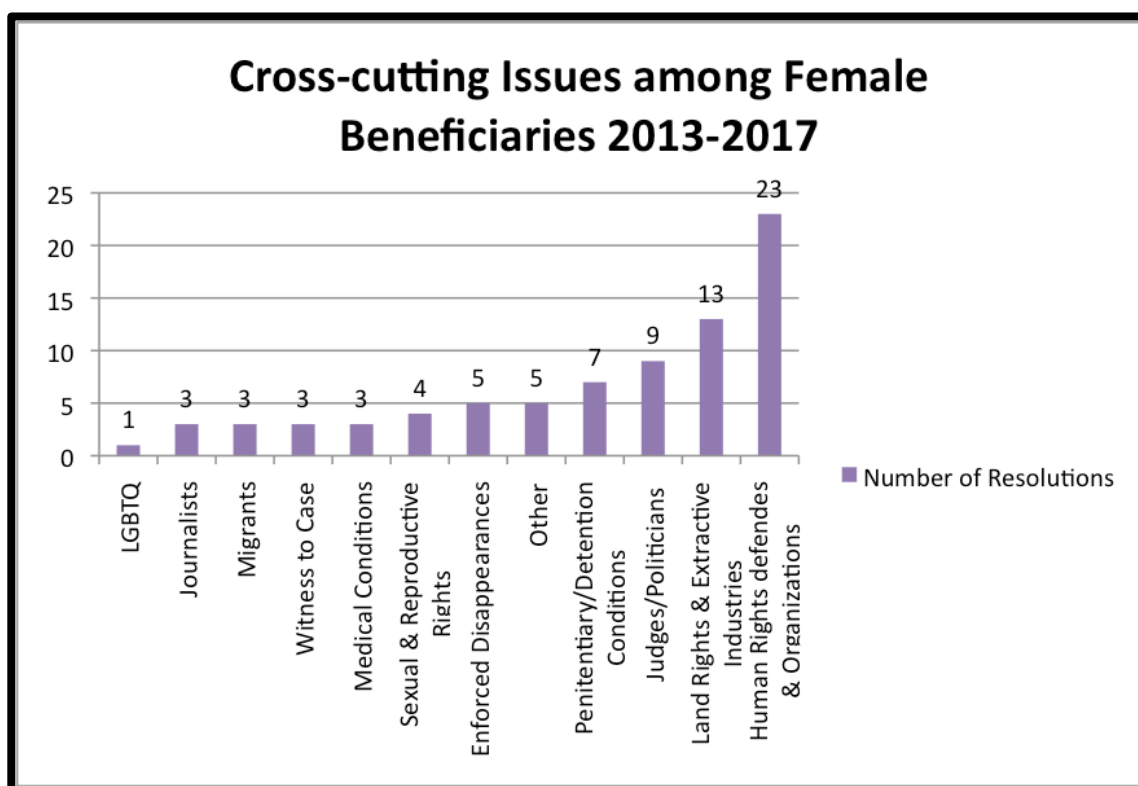


Graph 2: Source IACHR Website<sup>256</sup>

In addition to the type of beneficiaries and the country profile, the resolutions show some cross-cutting profiles of women, their race and ethnicity, and some of the issues that led to the serious and urgent situation that poses a risk of irreparable harm--the reason they requested a precautionary measure. As Graph 3 “Cross-cutting Issues among Female Beneficiaries 2013-2017” shows, out of the 79 cases with women as explicitly the main beneficiary or part of a group of beneficiaries, the most prevalent issues are Human Rights Defenders and organizations (23 resolutions), Land Rights & Extractive Industries (13), Judges/Politicians (9), Penitentiary/Detention Conditions (7), Other (5), Enforced

<sup>256</sup> Database of resolutions 2013-2017 analyzed by author: “Precautionary Measures,” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

Disappearances (5), Sexual & Reproductive Rights (4), Medical Conditions (3), Witness to Case (3), Migrants (3), Journalists (3) and LGBTI (1).<sup>257</sup>The categories are arbitrary--some resolutions could be placed under multiple categories—but this division is intended to trace and reflect on important trends. The categories and corresponding trends are explained as follows.



Graph 3: Source IACHR Website<sup>258</sup>

<sup>257</sup> The difference in numbers lies with what is recorded in the resolutions. If you count the resolutions that grant extensions of initial precautionary measures, then the number is 87. If you only count first original resolutions of precautionary measures, then the number is 85. This discrepancy also lies with the changing practice of the IACHR to publish extension resolutions with the original resolutions or not.

<sup>258</sup> Database of resolutions 2013-2017 analyzed by author: “Precautionary Measures,” *Inter-American Commission of Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

Most of the resolutions with women included as beneficiaries fell under the category of Human Rights Defenders and Organizations with a total of 23 resolutions. In these cases, the IACHR identified that a human rights defender or individuals belonging to a human rights organizations were under threat due to, in part or directly, their work defending human rights in their countries.<sup>259</sup> Within these cases, there are human rights

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<sup>259</sup> IACHR, Precautionary Measure 34-13, “X, Cuba;” IACHR, Precautionary Measure 264-13, “Topic Ladies in White regarding the Republic of Cuba,” published October 28, 2013, [https://www.oas.org/en/iachr/decisions/pdf/Resolution6-13\(MC-264-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution6-13(MC-264-13).pdf); IACHR, Precautionary Measure 195-13, “Matter of leaders and human rights defenders of the Community of Nueva Esperanza and the Regional Board of Florida Sector regarding Honduras,” published December 24, 2013, [https://www.oas.org/en/iachr/decisions/pdf/Resolution13-13\(MC-195-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution13-13(MC-195-13).pdf); IACHR, Precautionary Measure 416-13, “Matter 18 members of Movimiento Amplio por la Dignidad y la Justicia and their families. Honduras,” published December 19, 2013, [https://www.oas.org/en/iachr/decisions/pdf/Resolution12-13\(MC-416-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution12-13(MC-416-13).pdf); IACHR, Precautionary Measure 304-13, “Regarding the Republic of Haiti,” published November 27, 2013, [https://www.oas.org/en/iachr/decisions/pdf/Resolution10-13\(MC-304-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution10-13(MC-304-13).pdf); IACHR, Precautionary Measure 409-13, “Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos;” IACHR, Precautionary Measure 157-13, “Republic of Haiti,” published September 23, 2013, [https://www.oas.org/en/iachr/decisions/pdf/Resolution2-13\(MC-157-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution2-13(MC-157-13).pdf); IACHR, Precautionary Measure 60-14, “Asunto Prudencio Ramos Ramos y otros respecto de Mexico,” published October 6, 2014, <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC60-14-ES.pdf>; IACHR, Precautionary Measure 218-14, “Matter of Y.C.G.M. and her immediate family regarding the Republic of Colombia,” published June 20, 2014, <https://www.oas.org/en/iachr/decisions/pdf/2014/PM218-14-EN.pdf>; IACHR, Precautionary Measure 42-14, “Matter of Nydia Erika Bautista and others regarding Colombia,” published May 28, 2014, <https://www.oas.org/en/iachr/decisions/pdf/2014/PM42-14-EN.pdf>; IACHR, Precautionary Measure 408-14, “Matter of members of the “Movimiento Reconocido” from the Dominican Republic,” published January 30, 2014, <https://www.oas.org/en/iachr/decisions/pdf/2014/PM408-14-EN.pdf>; IACHR, Precautionary Measure 77-15, “Asunto defensoras E y K y sus familiares respecto de México,” published April 27, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC77-15-ES.pdf>; IACHR, Precautionary Measure 96-15, “Asunto Miembros de Cubalex con respecto a Cuba,” published April 22, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC96-15-ES.pdf>; IACHR, Precautionary Measure 65-15, “Asunto Martha Ligia Arnold Dubond e hijos con respecto a Honduras,” published April 7, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC65-15-ES.pdf>; IACHR, Precautionary Measure 13-15, “Asunto Norma Mesino Mesino y otros con respecto a México,” published February 25, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC13-15-ES.pdf>; IACHR, Precautionary Measure 382-12, “Asunto miembros de la Junta de Acción Comunal de la vereda Rubiales respecto de Colombia,” published December 17, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC382-12-ES.pdf>; IACHR, Precautionary Measure 705-16, “Asunto Esteban Hermelindo Cux Choc y otros respecto de Guatemala,” published December 6, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC705-16-ES.pdf>; IACHR, Precautionary Measure 658-16, “Asunto Erlendy Cuero Bravo y otros respecto de Colombia,” published December 6, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC658-16-ES.pdf>; IACHR, Precautionary Measure 331-17, “Francisca Ramírez y familiares respecto de Nicaragua,” published August 22, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/33-17MC331-17-NI.pdf>; IACHR, Precautionary Measure 688-16, “Asunto Erick Pérez y otros respecto de Honduras,” published February 20, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/6-17MC688-16-HO.pdf>; IACHR,

defenders working on women's and immigrant rights, like the "Movimiento Reconocido" in Dominican Republic defending the rights of Dominicans of Haitian descent, or like the members of the "Nydia Erika Bautista Foundation" that work "to protect the rights of women and family members' victims of forced disappearances."<sup>260</sup> Some of the precautionary measures request the protection of women human rights defenders and their families.<sup>261</sup> The case of Norma Mesino Mesino in Mexico, for example, points out, in addition to her formal work in organizations, her role as a mother and matriarch through which she mobilized to find justice for the assassination and disappearance of her family members.<sup>262</sup> And then some of these cases protect some or all of the members of a human rights organization or social movements, like the organization "Damas de Blanco" defending the rights of political dissidents in Cuba or the "Union of Consequent Citizens for the Respect of Human Rights" working human rights more broadly in Haiti.<sup>263</sup> And some of these cases intersect even with each other and with later categories, like the case

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Precautionary Measure 522-14, "Asunto Alberto Yepes Palacio y su hija respecto de Colombia," published February 10, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/5-17MC522-14-CO.pdf>;

Precautionary Measure 112-16, 5, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-ES.pdf>; Precautionary Measure 336-14, <https://www.oas.org/en/iachr/decisions/pdf/2014/MC336-14-EN.pdf>.

<sup>260</sup> Precautionary Measure 218-14, <https://www.oas.org/en/iachr/decisions/pdf/2014/PM218-14-EN.pdf>;

Precautionary Measure 408-14, <https://www.oas.org/en/iachr/decisions/pdf/2014/PM408-14-EN.pdf>;

Precautionary Measure, <https://www.oas.org/en/iachr/decisions/pdf/2014/PM42-14-EN.pdf>;

<sup>261</sup> Precautionary Measure 77-15, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC77-15-ES.pdf>; <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC13-15-ES.pdf>; Precautionary Measure 218-14,

<https://www.oas.org/en/iachr/decisions/pdf/2014/PM218-14-EN.pdf>; Precautionary Measure 65-15,

<https://www.oas.org/es/cidh/decisiones/pdf/2015/MC65-15-ES.pdf>; Precautionary Measure 13-15,

<https://www.oas.org/es/cidh/decisiones/pdf/2015/MC13-15-ES.pdf>; Precautionary Measure 658-16,

<https://www.oas.org/es/cidh/decisiones/pdf/2016/MC658-16-ES.pdf>; Precautionary Measure 331-17,

<https://www.oas.org/es/cidh/decisiones/pdf/2017/33-17MC331-17-NI.pdf>.

<sup>262</sup> Precautionary Measure 13-15: <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC13-15-ES.pdf>.

<sup>263</sup> Precautionary Measure 409-13: "Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos;"

Precautionary Measure 57-13, [https://www.oas.org/en/iachr/decisions/pdf/Resolution2-13\(MC-157-](https://www.oas.org/en/iachr/decisions/pdf/Resolution2-13(MC-157-13).pdf)

[13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution6-13(MC-264-13).pdf); Precautionary Measure 264-13, [https://www.oas.org/en/iachr/decisions/pdf/Resolution6-13\(MC-](https://www.oas.org/en/iachr/decisions/pdf/Resolution6-13(MC-264-13).pdf)

[264-13\).pdf](https://www.oas.org/es/cidh/decisiones/pdf/2017/6-17MC688-16-HO.pdf); Precautionary Measure 688-16, [\[16-HO.pdf\]\(https://www.oas.org/es/cidh/decisiones/pdf/2015/MC96-15-ES.pdf\); Precautionary Measure 96-15, \[\\[ES.pdf\\]\\(https://www.oas.org/en/iachr/decisions/pdf/2014/PM408-14-EN.pdf\\); Precautionary Measure 408-14, \\[\\\[EN.pdf\\\]\\\(https://www.oas.org/en/iachr/decisions/pdf/2014/PM408-14-EN.pdf\\\).\\]\\(https://www.oas.org/en/iachr/decisions/pdf/2014/PM408-14-</a></p></div><div data-bbox=\\)\]\(https://www.oas.org/es/cidh/decisiones/pdf/2015/MC96-15-</a></p></div><div data-bbox=\)](https://www.oas.org/es/cidh/decisiones/pdf/2017/6-17MC688-</a></p></div><div data-bbox=)

of Erlendy Cuero Bravo: Afro-Colombian human rights defender, Vice-President of the “Asociación Nacional de Afrocolombianos Desplazados,” whose family and herself had been repeatedly threatened by paramilitaries in Colombia. These cases show not only the dangerous trend of criminalizing and threatening human rights defenders but also the role of women in many of the leading social movements in the region.

In fact, some of these cases protect human rights defenders who belong to indigenous and afro-descendent communities and work on defending these communities.<sup>264</sup> Two of these cases protect women human rights defenders: the family members of Berta Cáceres and the organization Berta worked for, COPINH, who were under threat after Berta’s assassination, and Erlendy Cuero Bravo, the Afro-Colombian defender previously mentioned.<sup>265</sup> The other three cases protect groups of people that explicitly protect their female leaders, or “lideresas,” or the female family members who often suffer or are threatened due to the work of their father or husband: leaders of the Raramari and Tarahumara communities named “Choareachi” in Chihuahua, Mexico, Locomapa indigenous leaders and human rights defenders protecting land in Honduras, protecting Esteban Hermelindo Cux Choc, maya Q’eqchi’ leader, and his family for his work defending the rights of indigenous and rural communities in Guatemala.<sup>266</sup> Recognizing the racial and ethnic identities and the particular risk they suffer in addition

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<sup>264</sup> Precautionary Measure 416-13: [https://www.oas.org/en/iachr/decisions/pdf/Resolution12-13\(MC-416-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution12-13(MC-416-13).pdf); Precautionary Measure 60-14: <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC60-14-ES.pdf>; Precautionary Measure 705-16: <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC705-16-ES.pdf>; Precautionary Measure 658-16: <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC658-16-ES.pdf>; Precautionary Measure 112-16: <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-Es.pdf>.

<sup>265</sup> Precautionary Measure 658-16: <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC658-16-ES.pdf>; Precautionary Measure 505-15: <https://www.oas.org/es/cidh/decisiones/pdf/2017/16-17MC505-15-NI.pdf>; Precautionary Measure 112-16: <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-Es.pdf>.

<sup>266</sup> Precautionary Measure 416-13: [https://www.oas.org/en/iachr/decisions/pdf/Resolution12-13\(MC-416-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution12-13(MC-416-13).pdf); Precautionary Measure 60-14: <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC60-14-ES.pdf>; Precautionary Measure 705-16: <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC705-16-ES.pdf>.

to their fight as defenders is important in understanding how the mechanism can best protect them.

The second category with 13 resolutions is the category of “Land Rights & Extractive Industries.” These cases include mostly afro-descendant and indigenous communities, all of them rural communities, whose people and land are threatened by contamination, malnutrition, displacement and extractive industries.<sup>267</sup> In Colombia, there are two Afro-Colombian communities seeking protecting against armed and illegal groups in the Chocó region, and one indigenous community threatened by contamination

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<sup>267</sup> IACHR, Precautionary Measure 152-14, “Familias Afrocolombianas que residen en el denominado espacio humanitario del barrio ‘La Playita’ respecto de la República de Colombia,” published September 15, 2014, <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC152-14-ES.pdf>; IACHR, Precautionary Measure 51-15, “Asunto niñas, niños y adolescentes de las comunidades de Uribí, Manaure, Riohacha, y Maicao del Pueblo Wayú asentados en el departamento de la Guajira, respecto de Colombia,” published December 11, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC51-15-Es.pdf>; IACHR, Precautionary Measure 140-14, “Yomaira Mendoza y Otros respecto de la República de Colombia,” published August 13, 2014, <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC140-14-ES.pdf>; IACHR, Precautionary Measure 50-14, “Asunto líderes y lideresas campesinas del Bajo Aguan respecto de la República de Honduras,” published May 8, 2014, <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC50-14-ES.pdf>; IACHR, Precautionary Measure 452-11, “Líderes y lideresas de comunidades campesinas y rondas campesinas de Cajamarca respecto de la República de Perú,” published May 5, 2014, <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC452-11-ES.pdf>; IACHR, Precautionary Measure 589-15, “Ana Mirian Romero y Otros respecto de Honduras,” published November 24, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC589-15-Es.pdf>; IACHR, Precautionary Measure 46-14, “Asunto Juana Calfunao y otros respecto de Chile,” published October 26, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC46-14-ES.pdf>; IACHR, Precautionary Measure 505-15, “Lottie Cunningham respecto de Nicaragua,” published June 11, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/16-17MC505-15-NI.pdf>; IACHR, Precautionary Measure 321-12, “Pueblo Indígena Teribe y Bribri de Salitre respecto de Costa Rica,” published April 30, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC321-12-ES.pdf>; IACHR, Precautionary Measure 277-13, “Miembros de la comunidad indígena Otomí-Mexica de San Francisco Xochicuautla respecto de México,” published May 11, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC277-13-ES.pdf>; IACHR, Precautionary Measure 120-16, “Pobladores de la Comunidad de Cuninico y otra respecto de Perú,” published December 2, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/52-17MC120-16-PE.pdf>; IACHR, Precautionary Measure 113-16, “Comunidad Nativa ‘Tres Islas’ de Madre de Dios respecto de Perú,” published September 8, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/38-17MC113-16-PE.pdf>; IACHR, Precautionary Measure 412-17, “Pobladores desalojados y desplazados de la Comunidad Laguna Larga respecto de Guatemala,” published September 8, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/36-17MC412-17GU.pdf>.



due to mining projects in the Guajira region.<sup>268</sup> Peru also has three cases of indigenous and peasants' communities each threatened by a mining project, an oil spill, and mercury poisoning from another mining project.<sup>269</sup> There are other individuals and indigenous and peasants communities protected for their fight against extractive industries and for their land rights in Honduras, Chile, Nicaragua, Costa Rica, Mexico, and Guatemala.<sup>270</sup>

The IACHR takes very seriously death threats from private actors against individuals and communities organizing against extractive projects. They also request the State act urgently to address the health effects of contamination on communities by having them follow-up with medical examinations and proper water and food sources.

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<sup>268</sup> IACHR, Precautionary Measure 152-14, "Familias Afrocolombianas que residen en el denominado espacio humanitario del barrio 'La Playita' respecto de la República de Colombia," published September 15, 2014, <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC152-14-ES.pdf>; IACHR, Precautionary Measure 51-15, "Asunto niñas, niños y adolescentes de las comunidades de Uribí, Manaure, Riohacha, y Maicao del Pueblo Wayú asentados en el departamento de la Guajira, respecto de Colombia," published December 11, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC51-15-Es.pdf>; IACHR, Precautionary Measure 140-14, "Yomaira Mendoza y Otros respecto de la República de Colombia," published August 13, 2014, <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC140-14-ES.pdf>;

<sup>269</sup> IACHR, Precautionary Measure 452-11, "Lideres y lideresas de comunidades campesinas y rondas campesinas de Cajamarca respecto de la República de Perú," published May 5, 2014, <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC452-11-ES.pdf>; IACHR, Precautionary Measure 120-16, "Pobladores de la Comunidad de Cuninico y otra respecto de Perú," published December 2, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/52-17MC120-16-PE.pdf>; IACHR, Precautionary Measure 113-16, "Comunidad Nativa 'Tres Islas' de Madre de Dios respecto de Perú," published September 8, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/38-17MC113-16-PE.pdf>.

<sup>270</sup> IACHR, Precautionary Measure 50-14, "Asunto lideres y lideresas campesinas del Bajo Aguan respecto de la República de Honduras," published May 8, 2014, <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC50-14-ES.pdf>; IACHR, Precautionary Measure 589-15, "Ana Mirian Romero y Otros respecto de Honduras," published November 24, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC589-15-Es.pdf>; IACHR, Precautionary Measure 46-14, "Asunto Juana Calfunao y otros respecto de Chile," published October 26, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC46-14-ES.pdf>; IACHR, Precautionary Measure 505-15, "Lottie Cunningham respecto de Nicaragua," published June 11, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/16-17MC505-15-NI.pdf>; IACHR, Precautionary Measure 321-12, "Pueblo Indígena Teribe y Bribri de Salitre respecto de Costa Rica," published April 30, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC321-12-ES.pdf>; IACHR, Precautionary Measure 277-13, "Miembros de la comunidad indígena Otomí-Mexica de San Francisco Xochicuautla respecto de Mexico," published May 11, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC277-13-ES.pdf>; IACHR, Precautionary Measure 412-17, "Pobladores desalojados y desplazados de la Comunidad Laguna Larga respecto de Guatemala," published September 8, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/36-17MC412-17GU.pdf>.

However, the IACHR fails on two fronts. First, the IACHR has no power over private actors--the limitations of the human rights regime as private actors gain more power in the context of privatization under neoliberalism. And second, the IACHR requires the State to protect the communities without necessarily stopping the development projects. In addition, the IACHR should be very aware of the most important feature I attempt to highlight in these cases is the prevalence of women leaders among these communities. In addition to a multicultural understanding of the communities and consideration to protect against the discrimination and violence these communities face, gender sensitivity must apply in these cases as well to better protect all members of the communities.

For example, the collective precautionary measure and the multiple extensions protecting the pueblo Wayú is exemplary. On December 11, 2015, the IACHR granted precautionary measure 51-15 for the Colombian government to protect “the live and personal integrity of the community members in Uribía, Manaure, Riohacha, y Maicao of the Pueblo Wayú” against malnutrition and barriers to potable water.<sup>271</sup> Specifically, the measure protected the boys, girls, and teenagers of the community after the death of 4770 of them in the last eight years.<sup>272</sup> The measures were specific in asking the Colombian state to investigate the business of carbon mining and the effect it had on the Guajira region and population.<sup>273</sup>

A little over a year later, on January 26, 2017, the IACHR extended the measure to include around 9,000 expecting and lactating mothers to receive access to medical

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<sup>271</sup> IACHR, Precautionary Measure 51-15, “Asunto niñas, niños y adolescentes de las comunidades de Uribía, Manaure, Riohacha, y Maicao del Pueblo Wayú asentados en el departamento de la Guajira, respecto de Colombia,” published December 11, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC51-15-Es.pdf>.

<sup>272</sup> Ibid.

<sup>273</sup> Ibid.

attention due to the lack of nutrition and water.<sup>274</sup> The initial measure focused on the children and the extension included vulnerable women. On December 1, 2017, the measure added another vulnerable segment of the Wayú population: the elders.<sup>275</sup> This measure reveals an important strategy to keep the IACHR and the Colombian state engaged on the matter: to specify the different segments of the population within a community so that a collective measure can identify the particular ways these individuals are at risk and the specific measures to protect them. However, the limitation is that no matter who is affected the source of risk is the same: the mining project. Failing to tackle the source of the risk, in this case stopping the mining project, reduces precautionary measures into bandages—curated to fit the different sizes of children, women, and elders but still insufficient to fix the problem.

A key category that circles back to the Judge Afiuni case in Venezuela in the previous chapter are the nine cases under “Judges/Politicians.”<sup>276</sup> This category includes

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<sup>274</sup> IACHR, Precautionary Measure 51-15, “Ampliación de beneficiarios a favor de las mujeres gestantes y lactantes de la Comunidad Indígena Wayú en los municipios de Manaure, Riohacha y Uribí respecto de Colombia,” published January 26, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/3-17MC51-15-CO.pdf>.

<sup>275</sup> IACHR, Precautionary Measure 51-15, “Personas mayores pertenecientes a la Asociación Shipia Wayú de la Comunidad indígena Wayú en los municipios de Manaure, Riohacha y Uribí respecto de Colombia,” published December 1, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/51-17MC51-15-CO.pdf>.

<sup>276</sup> IACHR, Precautionary Measure 125-13: “Iris Yasmín Barrios Aguilar et al., Guatemala;” IACHR, Precautionary Measure 433-14: “Claudia Escobar and others, Guatemala;” IACHR, Precautionary Measure 497-16, “Asunto Thelma Esperanza Aldana Hernández y familia respecto de Guatemala,” published July 22, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC497-16-ES.pdf>; IACHR, Precautionary Measure 431-17, “Gloria Patricia Porras Escobar y familia respecto de Guatemala,” published August 29, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/34-17MC431-17-GU.pdf>; IACHR, Precautionary Measure 52-16, “Asunto María Dolores López Godoy, Nelly Lizeth Martínez Martínez y familia respecto de Honduras,” published December 6, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC52-16-ES.pdf>; IACHR, Precautionary Measure 121-16, “Asunto Carlos Humberto Bonilla Alfaro y otros respecto de Nicaragua,” published March 24, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC121-16-Es.pdf>; IACHR, Precautionary Measure 449-17, “Luisa Ortega Díaz y familia respecto de Venezuela” published August 3, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/27-17MC449-17-VE.pdf>; IACHR, Precautionary Measure 475-15, “Miembros del partido Voluntad Popular respecto de Venezuela,” published January 14, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/1-17MC475-15-VE.pdf>.

cases where female and male politicians, along with their families, female judges and attorney generals, or a group of politicians, including women, are persecuted and under risk for their political activities or government position.<sup>277</sup> Out of the 5 cases that have women who are judges, 4 of them are from Guatemala.<sup>278</sup> The other case is a Garifuna judge, Nelly Lizeth Martínez Martínez, from Honduras.<sup>279</sup> Government officials or those participating in political parties should be protected and not criminalized, but the IACHR and the State must recognize that women, just like human rights defenders, are at the center. As female representation grows in the echelons of political power so must the ability to guarantee their lives and personal integrity.

A category that also circles back to Judge Afuni's case is the "Penitentiary/Detention Conditions" with eight cases that seek to protect the life of children and adolescents—both female and male—in detention and improve conditions of penitentiary centers.<sup>280</sup> This category includes the case of the Carmichael Road Detention

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<sup>277</sup> Ibid.

<sup>278</sup> Precautionary Measure 125-13, "Iris Yasmín Barrios Aguilar et al., Guatemala;" Precautionary Measure 433-14: "Claudia Escobar and others, Guatemala;" Precautionary Measure 497-16, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC497-16-ES.pdf>; Precautionary Measure 431-17, <https://www.oas.org/es/cidh/decisiones/pdf/2017/34-17MC431-17-GU.pdf>.

<sup>279</sup> Precautionary Measure 52-16, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC52-16-ES.pdf>.

<sup>280</sup> IACHR, Precautionary Measure 137-13, "Girls Deprived of Liberty in adult detention centres, Jamaica;" IACHR, Precautionary Measure 535-14, "Matter of persons in immigration detention at Carmichael Road Detention Center Commonwealth of the Bahamas," published February 13, 2015, <https://www.oas.org/en/iachr/decisions/pdf/2015/PM535-14-EN.pdf>; IACHR, Precautionary Measure 455-13, "Matter Nestora Salgado García concerning México," published January 28, 2015, <https://www.oas.org/en/iachr/decisions/pdf/2015/PM455-13-EN.pdf>; IACHR, Precautionary Measure 496-14 and Precautionary Measure 37-15 (combined into one resolution), "Asunto sobre seis comisarias ubicadas en el departamento de Lomas de Zamora y la Matanza de la Matanza respecto de Argentina," published May 12, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC496-14MC37-15-ES.pdf>; IACHR, Precautionary Measure 25-16, "Milagro Amalia Ángela Sala respecto de Argentina," published July 27, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/23-17MC25-16-AR.pdf>; IACHR, Precautionary Measure 161-17, "Centros Juveniles de Privación de Libertad respecto de Guatemala," published June 12, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/17-17MC161-17-GU.pdf>; IACHR, Precautionary Measure 393-15, "Detenidos en 'Punta Coco' con respecto a Panamá," published March 22, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/10-17MC393-15-PN.pdf>; IACHR, Precautionary Measure 958-16, "Hogar Seguro Virgen de la Asunción" respecto de Guatemala," published March 12, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/8-17MC958-16-GU.pdf>.

Center where Haitian migrants and Bahamians of Haitian descent are held in deplorable conditions.<sup>281</sup> In addition to the lack of basics, like hygiene, food, water, overcrowding, minors in detention, poor medical attention, even for expecting women, and physical violence, the incidences of *reported* sexual violence threaten those in detention. For example, the tragic case of “Hogar Seguro Virgen de la Asunción” in Guatemala includes evidence of a female adolescent, who was sexually assaulted, and various cases that indicated a network of human trafficking.<sup>282</sup> These cases alert us to the larger conditions of incarceration and the particular vulnerabilities and risk that women and children face in these conditions.

The category labeled “Other” includes 12 different topics where women are affected either as sole beneficiaries or as the family member of the main beneficiary. These are cases where the beneficiary is a victim of state violence after protesting, holding a government position, organizing as a union leader and their families, including wife and daughters, are also at risk.<sup>283</sup> Under “Other,” there is also a case to improve the living and safety conditions at Grace Village shelter for internally displaced people after the 2010 earthquake in Haiti.<sup>284</sup> These are all cases that did not fall into other categories or had enough cases to analyze on their own.

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<sup>281</sup> Precautionary Measure 535-14: <https://www.oas.org/en/iachr/decisions/pdf/2015/PM535-14-EN.pdf>.

<sup>282</sup> Precautionary Measure 958-16: <https://www.oas.org/es/cidh/decisiones/pdf/2017/8-17MC958-16-GU.pdf>.

<sup>283</sup> IACHR, Precautionary Measure 186-13, “Topic Carlos Eduardo Mora and family regarding Colombia,” published October 3, 2013, [https://www.oas.org/en/iachr/decisions/pdf/Resolution3-13\(MC-186-13\).pdf](https://www.oas.org/en/iachr/decisions/pdf/Resolution3-13(MC-186-13).pdf); IACHR, Precautionary Measure 641-02, “Matter of SINALTRAINAL regarding Colombia,” published July 18, 2014, <https://www.oas.org/en/iachr/decisions/pdf/2014/PM641-02-EN.pdf>; IACHR, Precautionary Measure 251-15, “Asunto Alejandro y otros respecto de México,” published June 30, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC251-15-ES.pdf>; IACHR, Precautionary Measure 253-14, “Asunto Hector Orlando Martinez y su familia respecto de Honduras,” published May 18, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC253-14-ES.pdf>.

<sup>284</sup> IACHR, Precautionary Measure 52-13, “Families Living in Grace Village, Haiti.”

The majority of the five cases under the category of “Enforced Disappearances” are family members, often mothers and sisters, whose lives are threatened for searching for their disappeared family members or whose mental and physical health are affected as a result of the disappearance.<sup>285</sup> Four out of the five cases are from Mexico, a country with mounting disappearances and impunity.<sup>286</sup> The other case is from Guatemala, and it was the case of Paulina Mateo Chic after her husband’s disappearance, initially shared at the beginning of this chapter.<sup>287</sup> All of these cases demonstrate what the United Nations Committee on Enforced Disappearances denounced as part of the file of the precautionary measure: the worrisome situation that family members of the disappeared endure as they go through investigative processes to find their loved ones.<sup>288</sup>

The cases that are most associated with female beneficiaries are only four resolutions, and they are categorized under “Sexual & Reproductive Rights.”<sup>289</sup> In PM

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<sup>285</sup> IACHR, Precautionary Measure 391-12, “Toribio Jaime Muñoz Gonzalez and others, Mexico;” IACHR, Precautionary Measure 185-13, “Matter of Sofia Lorena Mendoza Martinez and others concerning Mexico,” published December 1, 2014, <https://www.oas.org/en/iachr/decisions/pdf/2014/PM185-13-EN.pdf>;

IACHR, Precautionary Measure 561-15, “Zenaida Candia Espinobarros y otros respecto de Mexico,” published November 10, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC561-15es.pdf>; IACHR, Precautionary Measure 29-16, “Asunto Margarita Marin Yan y otros respecto de Mexico,” published April 15, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC29-16-Es.pdf>; IACHR, Precautionary Measure 782-17, “Paulina Mateo Chic respecto de Guatemala,” published December 1, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>.

<sup>286</sup> Precautionary Measure 391-12: “Toribio Jaime Muñoz Gonzalez and others, Mexico;” Precautionary Measure 185-13, <https://www.oas.org/en/iachr/decisions/pdf/2014/PM185-13-EN.pdf>; Precautionary Measure 561-15: <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC561-15es.pdf>; Precautionary Measure 29-16: <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC29-16-Es.pdf>.

<sup>287</sup> Precautionary Measure 782-17: <https://www.oas.org/es/cidh/decisiones/pdf/2017/49-17MC782-17-GU.pdf>.

<sup>288</sup> Precautionary Measure 561-15, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC561-15es.pdf>.

<sup>289</sup> IACHR, Precautionary Measure 114-13: “B, El Salvador;” IACHR, Precautionary Measure 391-12, “Toribio Jaime Muñoz Gonzalez and others, Mexico;” IACHR, Precautionary Measure 178-15, “Asunto niña Mainumby respecto de Paraguay,” published June 8, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC178-15-ES.pdf>; IACHR, Precautionary Measure 617-15, “Asunto Gómez Murillo y otros respecto de Costa Rica,” published January 29, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC617-15-Es.pdf>; IACHR, Precautionary Measure 876-17, “X, Y y familia respecto de Colombia,” published December 25, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/53-17MC876-17-CO.pdf>.

114-13: “B, El Salvador,” the IACHR ventures into reproductive rights by recommending the state of El Salvador to give the female patient the “recommended medical treatment,” allowing her the right to an abortion.<sup>290</sup> In PM 617-15, the IACHR requires the Costa Rican state to allow several couples to have access In-Vitro-Fertilization.<sup>291</sup> In the last two cases, there is a family and a minor, respectively, that have been victims of sexual violence and that the violence has escalated to death threats.<sup>292</sup> All of the cases maintain the beneficiary’s identity anonymous with the exception of the In-Vitro-Fertilization case in Costa Rica.

Even though sexual violence and reproductive rights are one of the main focuses in these four cases, these issues arise in other cases involving human rights defenders and judges who have suffered sexual assault, access to reproductive health is lacking from detention and penitentiary centers. An important reflection is that considering the issue of sexual violence as gendered is not to exclude male as victims of this type of violence, but instead, it calls on a reflection about the ways this type of violence affects people and play a logic meant to control bodies in particular ways; a logic that is gendered. Improving the penitentiary system—excluding the possibility of prison abolition that unfortunately still is absent from human rights debates—would be to call not only on the end of physical violence but also sexual violence. Similar cross-cutting reflections among the different cases would also be productive in strengthening the mechanism and, most importantly, protecting the lives of beneficiaries under precautionary measures.

The last five categories are “Medical Conditions,” “Witness to Case,” “Migrants,” “Journalists,” and “LGBTI.” These categories possess a small number of cases but reveal

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<sup>290</sup> Precautionary Measure 114-13: “B, El Salvador.”

<sup>291</sup> Precautionary Measure 617-15, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC617-15-Es.pdf>.

<sup>292</sup> Precautionary Measure 876-17, <https://www.oas.org/es/cidh/decisiones/pdf/2017/53-17MC876-17-CO.pdf>; Precautionary Measure 178-15, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC178-15-ES.pdf>.

key profiles of vulnerable populations. The three cases under “Medical Conditions” are specific about describing the medical condition and identifying the required medical examinations or treatment that the beneficiary needs, like Jessica Liliana Ramirez Gaviria suffering from a life threatening skin condition in Colombia (PM 445-14), and communities, like the Community of de la Oroya poisoned by a metallurgical plant in Peru (PM 217-05) with threatening conditions in need of medical help.<sup>293</sup> The cases under the category “Witness to Case” are beneficiaries who are witness, victims, or subjects to a pending petition or case in the Inter-American System.<sup>294</sup> This is an explicit condition for granting a precautionary measure according to Article 25 in the Rules of Procedures.<sup>295</sup> The category of “Migrants” also has three cases where the beneficiaries are at risk of being deported, and where their rights as asylum seekers or residents are being denied.<sup>296</sup> All of these cases have also filed a petition to the Commission revealing the crosscutting nature of these cases with the previous category “Witness to Case.”

In the category of “Journalists,” there are three cases where members of a journalistic medium were threatened by members of the State and force to limit their

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<sup>293</sup> IACHR, Precautionary Measure 445-14, “Asunto Jessica Liliana Ramirez Gaviria respecto de Colombia,” published November 4, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC445-14-ES.pdf>; IACHR, Precautionary Measure 76-15, “IreneI respecto de Argentina,” published July 7, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC376-15-ES.pdf>.

<sup>294</sup> IACHR, Precautionary Measure 423-14, “Matter of Clara Gómez González and others regarding Mexico,” published October 10, 2014, <https://www.oas.org/en/iachr/decisions/pdf/2014/MC423-14-En.pdf>; IACHR, Precautionary Measure 530-15, “Asunto Alicia Cahulya respecto de Ecuador,” published October 24, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC530-15-ES.pdf>; IACHR, Precautionary Measure 448-17, “Ms. Z and family, Honduras” (No published resolution).

<sup>295</sup> “serious and urgent situations presenting a risk of irreparable harm to persons or to subject matter of a pending petition or case before the organs of the Inter-American system;” In Inter-American Commission of Human Rights, “Article 25,” *Rules of Procedure of the Inter-American Commission on Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

<sup>296</sup> PM 297-16: <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC297-16-Es.pdf>; PM 152-16: <https://www.oas.org/en/iachr/decisions/pdf/2016/MC152-16-EN.pdf>; PM 279-12 “Luisa Fransua, Rafael Toussaint, et al., Dominican Republic.”



freedom of expression.<sup>297</sup> In these cases, women were explicitly mentioned as beneficiary recognizing the contribution women give to the profession but also the risk they take in practicing journalism. The case of Gener Jhonathan Echeverry Ceballos is of a journalist and human rights defender in Colombia, but his case was included under “Human Rights Defenders,” not journalists.<sup>298</sup> This is because the case of threat stems from his advocacy work on the armed conflict and armed groups. The lines are blurred but an intersectional analysis of these crosscutting themes is important to point out.

Lastly, the category of “LGBTI” only houses one case protecting a member of the human rights of lesbian, gay, bisexual, trans and intersex people (LGBTI) community in Cuba.<sup>299</sup> Both beneficiaries, Mario José Delgado González and Juana Mora Cedeño, are considered human rights defenders, but it is important to acknowledge their particular fight for LGBTI rights. This case is the only LGBTI case explicitly mentioning a woman beneficiary. There are two other precautionary measures where male beneficiaries working for LGBTI rights are identified.<sup>300</sup> In the 191 cases from 2013 through 2017, there has only been three total cases with an LGBTI focus. This shows either some distrust, inaccessibility, or lack of knowledge of the IACHR among people of the LGBTI

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<sup>297</sup> IACHR, Precautionary Measure 678-17, “Periodistas de la ‘Revista Factum’ respeto de El Salvador,” published October 27, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/43-17MC678-17-ES.pdf>; IACHR, Precautionary Measure 179-15, “Miguel Henrique Otero y otros respeto de Venezuela,” published November 9, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC43-2015-es.pdf>; IACHR, Precautionary Measure 252-14, “Matter of members of the Contralinea Magazine regarding Mexico,” published July 18, 2014, <https://www.oas.org/en/iachr/decisions/pdf/2014/PM252-14-EN.pdf>.

<sup>298</sup> IACHR, Precautionary Measure 336-14, “Gener Jhonathan Echeverry Ceballos y familia respeto de la Republica de Colombia,” published October 21, 2014, <https://www.oas.org/en/iachr/decisions/pdf/2014/MC336-14-EN.pdf>;

<sup>299</sup> IACHR, Precautionary Measure 236-16, “Asunto Juana Mora Cedeño y otro respeto de Cuba,” published on July 3, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC236-16-ES.pdf>.

<sup>300</sup> Precautionary Measure 155-13 “Caleb Orozco, Belize” and IACHR Precautionary Measure 457-13, “Matter of “members of the Association for a Better Life” in Honduras,” published on January 22, 2014, <https://www.oas.org/en/iachr/decisions/pdf/2014/PM457-13-EN.pdf>.

community. Therefore, this case presents an opportunity for the IACHR to engage in outreach and training among these vulnerable communities.

Surveying the resolutions the IACHR granted shows some really important trends that highlight the need to implement a gender and multicultural practice in the mechanism of precautionary measures. Beyond the IACHR's strategic plans and reports, this chapter attempted to analyze the practice of the IACHR when it comes to protecting and advocating for the rights of women beneficiaries, including indigenous, afro-descendant, LGBTI. It is important to reflect on who accesses the mechanism successfully by being protected under a precautionary measure, in what countries and what conditions are these female beneficiaries navigating a situation of seriousness and grave risk. These overarching trends allow for an important reflection on the state of the IACHR mechanism but also on the challenges the human rights system faces when addressing key issues in the region.

The case of Paulina Mateo Chic is but one example of the structural poverty, medical needs, and trauma indigenous women face as a result of the armed conflict of the 1980s. Those scenes of violence still haunt communities today and it is the responsibility of the State to respond as a way of guaranteeing justice for those human rights abuses. And many more cases shows the reality and actors of human rights abuses today: the criminalization of human rights defenders, judges, and journalists even in the context of democratic governments, the displacement and disappearance of community leaders by illegal, armed groups, the contamination of land resources by extractive industries and the deplorable conditions of the penitentiary systems threaten the health and lives of many, and the lives of migrants, indigenous, afro-descendant and LGBTI communities are not only affected by discrimination—they are in grave danger.

Throughout these cases, the IACHR seems to transfer their analysis of gender, race and ethnicity to the practice in the precautionary measure mechanism. These cross-cutting issues demonstrate the importance of the IACHR to apply a transversal understanding of women's different identities that inform their particular experience as beneficiaries. Questions still remain about the implementation process of precautionary measures. Whether these issues inform the scope of the measures requested by the IACHR or how they are implemented is unclear and would require a case by case follow-up that future investigations should consider.

## **Conclusion**

Throughout the chapters, this thesis engaged in a reflection on how human rights mechanisms, in general, and precautionary measures, in particular, are adequately helping or failing to protect people and communities in vulnerable situations today with a special focus on women and the context of neoliberalism.

Gender-mainstreaming has led to a slow, but visible rise in practices around gender sensitivity in the Inter-American System. As a result of multiculturalism in the human rights regimes, the System has celebrated the rise of collective and cultural rights, but the logic of multicultural neoliberalism has presented challenges to communities accessing the System. Where the literature has fallen short and this thesis' contributions lies is that there must be an intersectional analysis of these two trends—gender mainstreaming and multiculturalism—in order to understand many of the advances and challenges confronting the System. The gender violence that results from or exists in the context of multicultural neoliberalism is often silenced but becomes visible in this thesis through a survey of different cases of precautionary measures. Femicides, disappearances, and the assassination of human rights defenders are all on the rise. And these types of violence threaten in particular ways the lives of women and indigenous and afro-descendant women.

Therefore, this work attempted to respond the following questions. First, what is the IACHR's commitment, through its various mechanisms of public hearings, cases, and precautionary measures, to provide an appropriate strategy for vulnerable populations, especially women, who demand safety from situations of risk and irreparable harm in the context of neoliberalism? Second, what are the practices and limitations that exist in this

body of human rights, as it requires States to protect vulnerable populations from the new iterations of violence that result from neoliberalism and globalization? The thesis answers these questions through the following two sections.

The first chapter surveyed the key documents of the IACHR to analyze how this system understands and is committed to applying a gender and multicultural perspective in the context of neoliberalism, and how it understands the need for an intersectional application of both perspectives. The commitment in the strategic report and the detailed analysis in the published reports demonstrate the IACHR's commitment to center women and vulnerable populations and address the issues that affect them. There are some country and thematic reports that might just focus on general themes of access to justice or dominant narratives of human rights defenders. But there are other reports that center women, indigenous and afro-descendant communities and LGBTI persons. There are even those reports that not only focus on Violence Against Women but also reveal the gendered violence in extractive industries and development projects.

While the IACHR's does not necessarily engage in either a critique of neoliberalism or multicultural neoliberalism against the State or its own practices, or even how gender plays a key role in the logic of neoliberalism, it does demonstrate to have a very intersectional focus on gender, race, and ethnicity. The IACHR's commitment in writing has been a slow achievement but one that reveals certain opportunities to implement in the practice of its mechanisms and programs. In the chapter titled "Gender-Mainstreaming and Multiculturalism in the IACHR: A Slow Commitment in Writing," surveying key documents written and published by the IACHR is an exercise that answers the extent to which the IACHR manages a gender and multicultural focus.

The next chapter, "Implementing a mechanism for the gendered violence in neoliberal multiculturalism: an imperfect practice," analyzed the IACHR gender and

multicultural perspective by surveying resolutions of precautionary measures, from 2013 through 2017. In these resolutions, women are the main or co-beneficiaries and key issues--women's rights issues (sexual and gender violence, abortion and other sexual rights), land rights and extractive industries, disappearances, etc—emerge as part of the grievance outlined in the request of the precautionary measure. This chapter aims to identify the extent to which gender mainstreaming and multiculturalism is a practice in the mechanism of precautionary measures. The application process and decision of the IACHR to grant a precautionary measure is an important site of reflection that points to a part of the procedure where key issues and trends arise, and these resolutions show the important trends that highlight the need to implement a gender and multicultural practice in the mechanism of precautionary measures.

The case of Paulina Mateo Chic is but one example of the structural poverty, medical needs, and trauma indigenous women face as a result of the armed conflict of the 1980s. Those scenes of violence still haunt communities today and it is the responsibility of the State to respond as a way of guaranteeing justice for those human rights abuses. And many more cases shows the reality and actors of human rights abuses today: the criminalization of human rights defenders, judges, and journalists even in the context of democratic governments, the displacement and disappearance of community leaders by illegal, armed groups, the contamination of land resources by extractive industries and the deplorable conditions of the penitentiary systems threaten the health and lives of many, and the lives of migrants, indigenous, afro-descendant and LGBTI communities are not only affected by discrimination—they are in grave danger. In the end, the IACHR seems to transfer their analysis of gender, race and ethnicity to the practice in the precautionary measure mechanism with certain limitations.

In general, this study aims to expand on the literature on human rights and engage in a reflection of human rights mechanisms and identify the opportunities and limitations of international human rights systems in achieving gender, multicultural and racial justice as part of transformative, counter-hegemonic projects during a time of neoliberalism. However, the shortcomings of this work present opportunities for future projects.

One of the biggest limitations of this work was not having more detailed stories, interviews, and bottom-up critics from the beneficiaries of precautionary measures that could reveal more insight into the mechanism and suggest improvements. Another shortcoming is how the writings and practice of the IACHR educate its users—civil society, especially the lawyers accompanying the beneficiaries during the process, and government officials—in understanding and implementing a gender and multicultural perspective. This understanding and practice must inform the types of protections and resulting implementation of precautionary measures. And this is exactly the last shortcoming of this study: the need to reflect on how the commitment and practice of a gender and multicultural focus is applied during the implementation process of precautionary measures.

After a precautionary measure is granted by the IACHR, it is the State's responsibility to implement it.<sup>301</sup> Most precautionary measures are reduced to security mechanisms—bodyguards, panic buttons, security cameras, or armored cars.<sup>302</sup> But the reliance on policing is not necessarily the most effective approach to guarantee the safety and grant protection from harm for beneficiaries of precautionary measures. These

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<sup>301</sup>Inter-American Commission of Human Rights, "Article 25," *Rules of Procedure of the Inter-American Commission on Human Rights*, accessed November 20, 2019, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>.

<sup>302</sup>Human Rights Clinic at The University of Texas School of Law, *Prevenir Daños Irreparable: Fortalecer las Medidas Cautelares de la Comisión Interamericana de Derechos Humanos*, November, 2018, <https://law.utexas.edu/wp-content/uploads/sites/11/2018/12/2018-12-HRC-IACHR-Report-ES.pdf>, 91.

security measures certainly have other unintended consequences that affect, and at times, harm women beneficiaries in particular ways. For example, think of the additional risk women take when they are assigned male bodyguards to protect them while secluded and under surveillance in their homes. The intended implementation of a precautionary measure is to protect the beneficiary. The users of the system should reflect on the limitations of security measures and search for creative implementations of precautionary measures that actually addresses the situation of risk and potential harm that the precautionary measure seeks to avert. Applying a gender and multicultural focus to the implementation of precautionary measures can strengthen the mechanism, in one part, and, most importantly, better protect the beneficiaries, on the other.



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