

## **Schedule 1**

### **State of the art on women's rights in sports spaces**

#### **1) Pronouncements and normative provisions on women's rights to have their own space**

##### **a) Inter-American Human Rights System**

In the Inter-American Human Rights System, the importance of recognizing women's ability to have safe and private spaces to guarantee their dignity and autonomy has been acknowledged. The main outcomes regarding (i) the normative framework of the Inter-American Human Rights System; (ii) the Inter-American Court of Human Rights (IACHR); and (iii) the Inter-American Commission on Human Rights (IACHR) are presented.

The Inter-American Convention to Prevent, Punish, and Eradicate Violence against **Women "Convention of Belém do Pará"**

This instrument aims to provide comprehensive protection for women based on a gender perspective, ensuring that Member States take measures to prevent new acts of violence against women and reduce their vulnerability due to factors such as race, age, economic status, migratory status, among others.

Specifically, Article 7 establishes the State's obligation to take all necessary measures and adopt policies to modify legal and customary situations that may lead to scenarios of violence against women. Hence, it may be considered a State party's obligation to create differentiated spaces for women in various contexts.

Moreover, the Inter-American Court of Human Rights (IACHR) in the case of Vicky Hernández and others vs. Honduras, sentence of March 26, 2021<sup>1</sup>, considered that the scope of application of the Belém do Pará Convention could also apply to situations of gender-based violence against transgender women.

#### **Advisory Opinion OC 29/22 regarding differentiated approaches for certain groups of persons deprived of liberty**

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<sup>1</sup> Corte Interamericana de Derechos Humanos, Caso Vicky Hernández y otras Vs. Honduras, sentencia del 26 marzo de 2021.

The Court considered that all women deprived of liberty must have accommodation physically separated from men, with sufficient space to meet their specific needs. Similarly, it determined that states should regulate and implement differentiated accommodation spaces adapted to the needs of pregnant women, postpartum and lactating women, as well as primary caregivers with children living in prison, allowing them access to the activities offered by the prison establishment<sup>2</sup>.

Furthermore, the Inter-American Commission on Human Rights (IACHR), in its report on women deprived of liberty, highlighted the concern that men and women are housed within the same infrastructure in mixed prison facilities, where effective separation cannot be ensured. Hence, it reiterated that gender separation in detention centers is a fundamental guarantee to be implemented by States for the protection of the life and personal integrity of women deprived of liberty. Additionally, it emphasized the need for states to adapt penitentiary infrastructure to ensure that women are housed in centers that not only guarantee effective separation but also allow them to meet their specific needs, adopting a gender perspective. Finally, it stated that exclusive spaces for the accommodation of transgender women should be provided, and practices resulting in their accommodation with men or other LGBT individuals without differentiation, or involving their isolation or restriction of access to facilities, should be discontinued<sup>3</sup>.

## **b) Universal Human Rights System**

The findings of the relevant Human Rights Treaty Bodies of the United Nations (UN) will be presented. The Human Rights Committee established in its General Comment No. 28 on the equality of rights between men and women (art. 3 of the International Covenant on Civil and Political Rights - ICCPR) that, under articles 7 (prohibition of torture) and 10 (human rights of persons deprived of liberty) of the Covenant, women have the right to be separated from men in prisons. They also have the right to be "supervised only by female guards" and to separate young women from adult women deprived of liberty<sup>4</sup>.

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<sup>2</sup> Corte Interamericana de Derechos Humanos, Opinión Consultiva OC-29 de 2022, del 30 de mayo de 2022, solicitada por la Comisión Interamericana de Derechos Humanos. Párr. 54.

<sup>3</sup> CIDH, Informe de la Comisión Interamericana de Derechos Humanos sobre mujeres privadas de libertad en las américas adoptado el 8 de marzo de 2023, párr.295

<sup>4</sup> Comité De Derechos Humanos de la ONU. (29 de Marzo del 2000). Observación General 28, contenida en el documento HRI/GEN/1/Rev.9 (Vol.I). parra. 15. p. 3.

The Committee on the Elimination of Discrimination against Women (CEDAW) recognized, in its General Recommendation No. 30<sup>5</sup>, the importance of safe environments where women who have been victims of gender-based crimes can confront their past to promote reconciliation. This same Committee emphasized the importance of having shelters and refuge centers for women, their children, and other family members when there are threats of gender-based violence against them. In its General Recommendation No. 35<sup>6</sup>, they urge States Parties to the Convention to take effective measures to make public places safe and accessible for women and girls<sup>7</sup>.

The Committee Against Torture (CAT) recalled the importance of ensuring that when women are detained in immigration detention facilities, they have their own facilities, separated from men during periodic review<sup>8</sup>. It also urged the State Party to improve prison infrastructure so that detention conditions are consistent with the Bangkok Rules<sup>9</sup>, which establish, among other things, that women should not be confined in male annexes<sup>10</sup> and should be examined by female health professionals as far as possible<sup>11</sup>.

Schools and their surroundings should be "safe, welcoming places for girls and conducive to their optimal performance," according to the Committee on the Rights of the Child. This, taking into consideration that the low educational level of girls is related to the prevalence of harmful practices against women, so schools should be safe and conducive places for minors<sup>12</sup>.

## **2) A recount of women's rights in sports within the framework of international human rights law**

### **a) Inter-American Human Rights System**

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<sup>5</sup> CEDAW. (18 de Octubre de 2013). Recomendación General No. 30. párr. 78.

<sup>6</sup> CEDAW. ( 26 de Julio de 2017). Recomendación General No. 35. parra. 31, literal a, numeral (iii).

<sup>7</sup> Idem, párr. 30, literal c.

<sup>8</sup> CAT. (11 de diciembre del 2012). Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its 49th Session)

<sup>9</sup> Idem, para. 19, literal b.

<sup>10</sup> Regla 43.

<sup>11</sup> Regla 10.

<sup>12</sup> CEDAW y CRC. (14 de noviembre de 2014). Recomendación general núm. 31 del Comité para la Eliminación de la Discriminación contra la Mujer y observación general núm. 18 del Comité de los Derechos del Niño sobre las prácticas nocivas, adoptadas de manera conjunta. Párr. 62.

## **Inter-American Human Rights System Instruments**

### ● **American Convention**

"1. All persons have the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or any other purposes." (Article 16)

### ● **Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.**

"a) Measures to progressively eliminate and promote integration by government authorities and/or private entities in the provision or supply of goods, services, facilities, programs, and activities, such as employment, transportation, communications, housing, recreation, education, sports, access to justice and police services, and political and administrative activities." (Art. III, 1.a)

### ● **Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women**

For the purposes of this Convention, violence against women shall be understood as any action or conduct, based on their gender, that causes death, harm, or physical, sexual, or psychological suffering to women, whether in the public or private sphere. (Art.1)

### ● **Inter-American Convention on the Rights of Older Persons**

The elderly have the right to recreation, physical activity, leisure, and sports. Member States will promote the development of recreation services and programs, including tourism, as well as recreational and sports activities that take into account the interests and needs of the elderly, particularly those receiving long-term care services, in order to improve their health and quality of life in all dimensions and promote their self-realization, independence, autonomy, and inclusion in the community. The elderly may participate in the establishment, management, and evaluation of such services, programs, or activities. (Art. 22)

### ● **Ibero-American Convention on the Rights of Youth**

## Right to sports.

Youth have the right to physical education and sports practice. The promotion of sports will be guided by values of respect, personal and collective improvement, teamwork, and solidarity. In all cases, Member States undertake to promote these values, as well as the eradication of violence associated with sports practice.

Member States undertake to promote, on an equal opportunities basis, activities that contribute to the development of youth in physical, intellectual, and social areas, guaranteeing the human resources and necessary infrastructure for the exercise of these rights. (Art. 33)

### ● **American Declaration of the Rights and Duties of Man**

Every person has the right to rest, honest recreation, and the opportunity to use leisure time beneficially for their spiritual, cultural, and physical improvement. (Art. XV)

### ● **Principles and Good Practices on the Protection of Persons Deprived of Liberty in the Americas adopted by the IACHR**

Education and cultural activities

Persons deprived of liberty shall have the right to education, which shall be accessible to all persons, without discrimination, and shall take into account cultural diversity and their special needs.

Primary or basic education shall be free for persons deprived of liberty, in particular for children and adults who have not received or completed the full cycle of primary education.

Member States of the Organization of American States shall promote secondary, technical, professional, and higher education in places of deprivation of liberty, progressively and according to the maximum availability of their resources, equally accessible to all, according to their capacities and aptitudes.

Member States shall ensure that education services provided in places of deprivation of liberty operate in close coordination and integration with the public education system; and shall encourage cooperation from society through the participation of civil associations, non-governmental organizations, and private education institutions.

Places of deprivation of liberty shall have libraries, with sufficient books, newspapers, and educational magazines, with appropriate equipment and technology, according to available resources.

Persons deprived of liberty shall have the right to participate in cultural, sports, and social activities, and to have opportunities for healthy and constructive recreation. Member States shall encourage the participation of family, community, and non-governmental organizations in such activities, in order to promote reform, social readaptation, and rehabilitation of persons deprived of liberty. (Principle XIII)

● **IACHR, Report No. 48/96, Case 11.553 on Admissibility, Costa Rica, October 16, 1996. (Request rejected)**

The petition alleges that municipal organizers of athletics competitions in Costa Rica discriminated against female athletes, particularly the petitioner, Emérita Montoya González, by arbitrarily establishing lower prizes for female athletes compared to male athletes, despite regulations stipulating that categories and prizes should be equal. Since the event was organized by the municipality, the State is held responsible. The petitioner argues that the authorities established lower categories for women and that prizes for them were lower than those for men in the same category in the competition. In particular, Mrs. Montoya, on August 28, 1993, expressed her desire to participate in the marathon organized by the municipality of Heredia, for which the regulations for the twelve-kilometer race established categories for "juveniles" and "veterans" men, which were not established for women. Costa Rican national legislation, particularly Decree Law 191189-c, stipulates that all sports competitions must establish equal prizes for men and women. The petitioner argues that Costa Rican law promotes equality between the sexes and does not allow arbitrary discrimination on grounds of sex. The petitioner also argues that in practice, this law is not observed, as evidenced by the activities of state authorities, such as the municipality of Heredia, which organize discriminatory marathons."

"28. However, it should not be interpreted that the liberality of the inter-American system in this regard allows the filing of an action in abstracto before the Commission. An individual cannot bring an *actio popularis* and challenge a law without establishing certain active legitimacy justifying their recourse to the Commission. The petitioner must present themselves as a victim of a violation of the Convention or must appear before the Commission as a representative of a putative victim of a violation of the Convention by a State Party. It is not enough for

a petitioner to argue that the mere existence of a law violates the rights granted to them by the American Convention, but it is necessary for that law to have been applied to their detriment. If the petitioner does not establish active legitimacy, the Commission must declare its incompetence *ratione personae* to consider the matter.

<https://cidh.oas.org/annualrep/96span/costarica11553.htm>

● **IACHR. Annex 1 Main standards and recommendations on violence and discrimination against women, girls, and adolescents. 2019**

"40. Finally, concerning adolescents, the Commission recalls the link between women's inequality within the family sphere and their limited participation in the country's public and work life, due to stereotypical conceptions of their social role as women and as mothers<sup>72</sup>. In adolescence, discrimination, inequality, and the establishment of stereotypes against girls often intensify and result in more serious violations of their rights because, among other aspects, cultural norms that assign an inferior status to girls can increase the likelihood of confinement to the home, lack of access to secondary and tertiary education, limited opportunities for recreation, sports, and leisure, and income generation, lack of access to art and cultural life, heavy household chores, and responsibility for childcare."

<https://www.oas.org/es/cidh/informes/pdfs/violencia-discriminacion-mujeres-Anexo1-es.pdf>

**Violence and discrimination against women, girls, and adolescents: Good practices and challenges in Latin America and the Caribbean. 2019**

275. (...) These programs must respect the minimum age established at the national level, in line with international standards and the age of compulsory education, duly respecting their rights to education and to rest, recreation, play, and recreational activities. To achieve this, schooling must be coordinated with the introduction to dignified work to facilitate the presence of both in the lives of adolescents, according to their age.

<https://www.oas.org/es/cidh/informes/pdfs/ViolenciaMujeresNNA.pdf>

● **IACtHR. Case Blanco Romero and others vs. Venezuela. Merits, Reparations and Costs. Judgment of November 28, 2005. Series C, No. 138, para. 42.a.1.**

"107. The representatives requested that the State be ordered to issue a certificate to facilitate the departure of Aleoscar Russeth Blanco Iriarte from Venezuela, with the prior consent of her mother, Mrs. Alejandra Josefina Iriarte de Blanco, since she currently must carry out a judicial procedure for that purpose, in which she has to remember again the events that occurred to her father, Mr. Oscar José Blanco Romero, which distresses her. In this sense, the Court deems it necessary for the State to adopt the indispensable measures to facilitate the departure of Aleoscar Russeth Blanco Iriarte from Venezuela when she wishes to travel.  
[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_138\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_138_esp.pdf)

● **IACtHR. Case Xákmok Kásek Indigenous Community vs. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C, No. 214, para. 178 footnote 190.**

"178. Mr. Maximiliano Ruíz indicated that religion and culture "almost completely disappeared." Witness Rodrigo Villagra Carron exposed the difficulties that members of the Community have for their male and female initiation rites [...] There were sports competitions, there were also games [...] indoor games, sports games, specific dances that allowed not only integration with other villages but also gender integration between men and women."  
[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_214\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_214_esp.pdf)

Standard on Sport and Prisons

● **IACtHR. Case "Institute of Juvenile Reeducation" vs. Paraguay. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C, No. 112, paras. 166 and, similarly, para. 301.**

"166. To these conditions of overcrowding and overcrowding, it is added, as has been proven in the present case (supra para. 134.4), that the inmates were poorly nourished, had very few opportunities for exercise or recreational activities, and did not have adequate and timely medical, dental, and psychological care (supra paras. 134.6 and 134.7)."

"301. In this sense, the inmates at the Institute suffered inhuman detention conditions, which included, inter alia, overcrowding, violence, overcrowding, poor nutrition, lack of adequate medical attention, and torture. Likewise, they were confined in unhealthy cells with few hygienic facilities and had very few opportunities for recreational activities."



[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_112\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_112_esp.pdf)

• **IACtHR. Case Fermín Ramírez vs. Guatemala. Merits, Reparations and Costs. Judgment of June 20, 2005. Series C, No. 126, para. 54.57**

"54.57 The Escuintla High Security Center presents poor hygiene conditions and lacks water and ventilation, especially during the summer<sup>73</sup>. The sector where Mr. Fermín Ramírez is located is approximately 20 meters by 6 and 8 meters and has 40 cement slabs. In the sector, there are about 40 inmates, some of them sentenced to death and others to sentences of 30 to 50 years in prison. There are no adequate educational or sports programs. Medical and psychological assistance is deficient<sup>74</sup>."

[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_126\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_126_esp.pdf)

• **Case Rodríguez Revolorio and others vs. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 14, 2019. Series C, No. 387, paras. 86**

"86. The Court observes, first, that this Tribunal has had the opportunity to analyze in the case Fermín Ramírez Vs. Guatemala the physical conditions of the "El Infiernito" prison during the period in which Mr. Rodríguez Revolorio and Mr. López Calo were also imprisoned<sup>109</sup>, where it observed the following: (...)"

[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_387\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_387_esp.pdf)

• **IACtHR. Case Raxcacó Reyes vs. Guatemala. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C, No. 133, para. 99; Case Chinchilla Sandoval and others vs. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of February 29, 2016. Series C, No. 312, para. 174; Case Hernández vs. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2019. Series C, No. 395, para. 87.**

On several occasions, it has referred to the United Nations Minimum Rules for the Treatment of Prisoners, in order to interpret the content of the right of prisoners to humane and dignified treatment, which prescribe basic rules regarding physical exercise, among others.

- **IACtHR. Resolution of the Inter-American Court of Human Rights of July 3, 2007. Provisional Measures regarding the Bolivarian Republic of Venezuela. Matter of the Monagas Juvenile Internment Center ("La Pica").**

"b) regarding the necessary measures to: a) substantially reduce overcrowding in the Monagas Juvenile Internment Center ("La Pica"), b) confiscate weapons held by inmates, c) separate accused inmates from convicted ones, d) adjust the detention conditions of the Internment Center to international standards on the subject, and e) provide necessary medical care to inmates, in such a way that their right to personal integrity is guaranteed: (...)

ix. formal continuity of sports and cultural activities must be guaranteed since the activities mentioned by the State are carried out informally and infrequently;"

[https://www.corteidh.or.cr/docs/medidas/lapica\\_se\\_03.pdf](https://www.corteidh.or.cr/docs/medidas/lapica_se_03.pdf)

- **IACtHR. Case Hermanos Landaeta Mejías and others vs. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C, No. 281, paras. 316 and 317.**

"316. The representatives requested that the State build a library, a multi-purpose sports field, and a cafeteria at the "Rosa Amelia Flores" school, attended by the Landaeta Mejías brothers, and that these works bear the names of the Landaeta Mejías brothers. According to the representatives, this project will contribute to the development of the children who attend this educational institution, so that they can coexist in spaces that also foster their physical and intellectual development. Neither the Commission nor the State referred to this reparative measure.

The Court observes that the requested measure lacks a causal connection with the violations found in the present case, and considers that the issuance of this Judgment and the reparations ordered in this chapter are sufficient and adequate to preserve the memory of the victims. Based on the above, the Court does not consider it appropriate to order the requested reparative measure."

[https://corteidh.or.cr/docs/casos/articulos/seriec\\_281\\_esp.pdf](https://corteidh.or.cr/docs/casos/articulos/seriec_281_esp.pdf)

- **IACtHR. Case Álvarez Ramos vs. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2019. Series C, No. 380, para. 123.**

"123. In this regard, the Court understands that criminal offenses against honor in the case of journalistic reports require careful interpretation. In this sense, it is necessary to highlight that from each criminal offense, a prohibitive norm can be deduced, as a logical exercise that allows determining a prohibited social scope. However, it is not enough with the mere norm deduced from the offense to establish this scope, because prohibitive norms are part of a normative order or, at least, it is imposed that they be understood in this way by judges. An elementary principle of interpretative rationality demands that a norm cannot prohibit what another orders, because in such a case the citizen lacks legal guidance. But it cannot be ignored either that there are multiple norms that encourage behaviors, as is the case with the practice of sport or the exercise of medicine, which may collide with other norms that prohibit activities harmful to integrity or health (...)."

[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_380\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_380_esp.pdf)

● **IACtHR. Case Furlan and relatives vs. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C, No. 246, paras. 98 and 286.**

"98. On April 6, 2000, the plaintiff's lawyer presented his arguments on the merits of the evidence produced and requested compensation that took into account his physical and psychological incapacity, and provided for the implementation of the treatments advised by the professionals who acted as experts<sup>187</sup>. Likewise, in said arguments it was stated that "[t]he important and irreversible injuries and incapacities of the plaintiff have been proven, as well as that before the accident he was a minor [underage] who carried out (like any child) all his school as well as sports activities, and that after the accident he could not do as before". On April 11, 2000, the EMGE's lawyer presented her arguments on the merits of the evidence produced, requesting the dismissal of the lawsuit<sup>188</sup>. On April 18, 2000<sup>189</sup>, May 23, 2000<sup>190</sup>, and August 22, 2000<sup>191</sup>, the plaintiff's lawyer filed motions with the judge requesting the issuance of a judgment."

[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_246\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_246_esp.pdf)

**Corte IDH. Caso de la "Panel Blanca" (Paniagua Morales y otros) vs. Guatemala. Reparaciones y Costas. Sentencia de 25 de mayo de 2001. Serie C, núm. 76, párr. 65.g).**

"g) Testimony of María Elizabeth Chinchilla de González, widow of Manuel de Jesús

González López (...) Her husband had a very good relationship with their children and was very affectionate; he also played and did sports with them (...)."

**Corte IDH. Caso Carpio Nicolle y otros vs. Guatemala. Fondo, Reparaciones y Costas. Sentencia de 22 de noviembre de 2004. Serie C, núm. 117, párr. 69.d).**

"69. On July 5 and 6, 2004, the Court received the testimonies of the witnesses proposed by the Inter-American Commission and by the representatives, as well as the opinion of the expert proposed by the representatives. The Court then summarizes the relevant parts of said testimonies: (...) On the other hand, the work of his father should be recognized, naming a street, a well, a school, a sports center with the name of Mr. Carpio Nicolle, since each of the towns of Guatemala owes their independence to him (...)."

**Corte IDH. Caso Guerrero, Molina y otros vs. Venezuela. Fondo, Reparaciones y Costas. Sentencia de 3 de junio de 2021. Serie C, núm. 424, párr. 185.**

"185. The Court considers that the issuance of this Judgment and the satisfaction measures and guarantees against repetition already ordered, together with the rest of the reparations provided for in this Judgment, are sufficient and adequate to remedy the violations suffered by the victims. Therefore, it does not deem it necessary to order measures consisting of carrying out a public act of responsibility or assigning the name of Ramón Molina or Jimmy Guerrero to sports facilities, a dining hall, or a square, nor to establish a Truth Commission."

**Corte IDH. Caso Bayarri vs. Argentina. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 30 de octubre de 2008. Serie C, núm. 187, párr. 131.**

"131. As compensation for 'medical expenses incurred', the representatives requested compensation for the expenses (...) In their final written arguments, the representatives also requested the sum of US \$2,000,000.00 [two million United States dollars] 'for the locomotor incapacity, with definitive loss of the ability to walk normally, to engage in sports activities, to support loads, to jump, and/or to make long displacements, and/or to stand for prolonged periods'."

**Corte IDH. Caso Escher y otros vs. Brasil. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 6 de julio de 2009. Serie C, núm. 200, párr. 88.**

"88. Arlei José Escher, Dalton Luciano de Vargas, Delfino José Becker, Pedro Alves Cabral, and Celso Aghinoni, at the time of the events, were members of the social organizations ADECON and COANA. The former aimed at community development and the integration of its associates through cultural, sports, and economic activities, while the latter sought to integrate farmers in the promotion of common economic activities and the sale of products. The two organizations had some factual relationship with the MST, with which they shared the common goal of promoting agrarian reform."

**Corte IDH. Caso Masacre de Santo Domingo vs. Colombia. Excepciones Preliminares, Fondo y Reparaciones. Sentencia de 30 de noviembre de 2012. Serie C, núm. 259, párr. 60.**

"60. On December 12, 1998, a 'bazaar' was taking place in the village of Santo Domingo, during which various sports events were held. Therefore, the representatives specified, without being disputed by the State, that in addition to the locals, visitors from nearby towns were also present."

**Corte IDH. Caso Masacre de la Aldea Los Josefinos vs. Guatemala. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 3 de noviembre de 2021. Serie C, núm. 442, párr. 36.**

"36. On the morning of April 29, 1982, guerrilla members entered the village and summoned its inhabitants to the soccer field. There they held a rally and carried out an 'enforcement action,' killing two men who, according to the guerrilla, were linked to the Guatemalan Army."

**Corte IDH. Caso Véliz Franco y otros vs. Guatemala. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 19 de mayo de 2014. Serie C, núm. 277, párr. 112.c**

"c) On April 10, 2002, the technicians submitted an extension of their report and pointed out that one of the suspects with the alias 'the Cuban' was a young wrestler and that, according to the Technical Director of the Wrestling Federation, he bore

resemblance to the 'composite sketch' shown to him. In addition, based on an analysis of the relationship between María Isabel and the suspect and the indications that could suggest his responsibility for [her] murder (...) suggested capturing him due to the danger of his escape."

**Corte IDH. Caso Osorio Rivera y familiares vs. Perú. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 26 de noviembre de 2013. Serie C, núm. 274, párr. 66.**

"66. In the morning hours of April 28, 1991, Mr. Jeremías Osorio Rivera went to the town of Nunumia to participate in a sports event. Once the event ended, in the evening hours, while a celebration was taking place in the communal hall of Nunumia, an explosion and/or shots were heard, and as a result, members of the military patrol, under the orders of Lieutenant Tello Delgado, surrounded the installation."

**Corte IDH. Caso Valencia Hinojosa y otra vs. Ecuador. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 29 de noviembre de 2016. Serie C, núm. 327, párr. 55.**

"55. The police officers went to the Tennis Club sports complex where they found Mr. Valencia Hinojosa hiding in the caretakers' dormitories. Mr. Valencia Hinojosa died in said dormitories from a gunshot to the head. However, the facts regarding the circumstances of his death are disputed."

**b) Universal Human Rights System**

The Committee on Economic, Social and Cultural Rights classified women as subjects requiring special protection<sup>13</sup>. This implies that the enjoyment of their economic, social, and cultural rights must be guaranteed by States on equal terms with men. In this same General Comment, the Committee established that sports are part of "cultural life," and therefore access to them must be protected<sup>14</sup>.

As subjects requiring special protection due to being exposed to greater discrimination, women's access to sports must be specially safeguarded and protected by States parties. The positive duty of States to ensure that women enjoy

<sup>13</sup> CESCR. (21 de diciembre de 2009). Comentario general no. 21: derecho de todos a tomar parte de la vida cultural (art. 15). Párr.25.

<sup>14</sup> Idem, párr.. 13.

their cultural, economic, and social rights on equal terms with men, taking into account the historical discrimination they have faced, was also emphasized by the Committee in its General Comment No. 20<sup>15</sup>.

Moreover, the CEDAW argued in its General Recommendation No. 25 that sports are imbued with cultural practices and stereotypical attitudes that discriminate against women. Therefore, it called on States parties to take temporary special measures to accelerate the modification and elimination of these practices in sports and recreation<sup>16</sup>.

On the other hand, the UN Human Rights Council issued Resolution 40/5 in March 2019, aimed at eliminating discrimination against women and girls in sports. In this resolution, the Council maintains that race and sex have historically been used as factors to discriminate against women, especially in sports. For the Council, this is particularly problematic because sports are a "universal language" that contribute to educating people in the values of respect, dignity, diversity, equality, tolerance, and equity.

The resolution criticizes measures taken by the International Association of Athletics Federations, which require women and girls with different i) sexual development, ii) sensitivity to androgens, or iii) testosterone levels to reduce their testosterone levels in their blood, considering it violates the human rights of athletes to equality, non-discrimination, and the right to sexual and reproductive health, among others<sup>17</sup>. Through the resolution, the Council requested a specialized report on the issue from the High Commissioner for Human Rights.

In its report, the High Commissioner points out that race and sex are elements that intersect in the discrimination against women in sports. In that sense, while all women suffer some level of rejection and discrimination in sports, those belonging to minority ethnic or racial groups are even more excluded. This is contrary to Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women, according to which States must ensure that women have the same opportunities as men to participate actively in sports. The High Commissioner agrees with the Council regarding the illegitimacy of regulations and tests on female

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<sup>15</sup> CESCR. (2 de julio de 2009). Comentario general no. 20: no discriminación en los derechos económicos, sociales y culturales. ). Párr. 20.

<sup>16</sup> CEDAW. (2004). Recomendación General No. 25 (sobre el artículo 4, párrafo 1 de la Convención). Párr. 38.

<sup>17</sup> Human Rights Council. (March, 2019). Res. 40/5/2019: Elimination of discrimination against women and girls in sport.

eligibility, rejecting this practice and expressing concern about discrimination based on race and/or gender<sup>18</sup>.

### **3) Problematic Pronouncements Regarding Women's Rights in Latin America**

#### **a) Inter-American Human Rights System**

#### **IACHR, Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA), Report on Trans and Gender Diverse Persons and their Economic, Social, Cultural and Environmental Rights.**

Regarding the IAHRs, the IACHR prepared a report on the status of ESCER of transgender people. Here are its most relevant quotes:

That is to say, social prejudice, which creates a series of obstacles to the educational and professional formation of transgender women throughout their lives, ultimately consolidates the spiral of exclusion, with the apparent "inevitability" of occupying only certain spaces, to which they are usually reduced. According to some opinions, that "expectation" even causes transgender women to end up constructing their bodies to meet the demands of those environments.

This leads to the context of what is called the limited inclusion of queer people. Later, in the development of the report on the right to education, reference is made to:

Educational institutions at all levels must review their regulations, protocols, or guidelines and repeal those that create unjustified differentiation based on gender identity. In this sense, the use of clothing or school uniforms regarding the gender of individuals must be allowed, as well as facilitating the use of sanitary bathrooms from a gender perspective.

Finally, in its positive aspect and by way of conclusion, the IACHR makes some recommendations regarding ensuring spaces for transgender people:

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<sup>18</sup> Alto Comisionado de Derechos Humanos de la ONU. (15 de junio del 2020). Intersección de raza y género en la discriminación en los deportes.



Regarding the above, it is clear that States must advance in overcoming primarily the circumstances that de facto limit the real possibility of transgender and gender diverse people to participate, have access, and contribute to the cultural life of their societies. The IACHR reminds that States have an obligation to generate a comprehensive policy for the promotion, access, and enjoyment of cultural, sports, artistic, community, and academic spaces that actively include transgender and gender diverse people. Participation is one of the principles that guide the design of public policies with a human rights approach.

Currently, as a result of these "advancements," transgender men who identify or self-perceive as women are occupying our public spaces in many Western countries and displacing us in sports, jobs, political positions, etc.