EXECUTIVE REPORT

Violence against girls and adolescents in Latin America. The role of High Courts[1]

I. Introduction.

This comparative study of the emerging case law trends in Mexico, Colombia, Argentina, Peru, And Brazil, aims to develop a basic framework that could serve as a starting point for further investigations on how violence against girls and adolescents is currently being tackled in the region. This vast continent is hugely diverse in multiple aspects that challenge over-simplistic accounts that lump together legal systems with important structural differences and a vast diversity of underlying socio-political realities. It is beyond the scope of this study to delve into the issue of whether Latin American legal systems actually belong to the same 'legal family' or not. What has to be highlighted here, is that the identification of emerging case law trends on the issue of violence against girls and adolescents, represents a question that is interlinked with the material background of each country, as well as their underlying legal framework and structure of the judiciary. As such, aspects relating to the political organisation of each country ranging from whether it is a federal state as opposed to a unitary one, to the existence of special provisions that are only applicable to individuals belonging to an indigenous community, one can see that there is a wide range of factors that explain specific challenges faced by each of the analysed jurisdictions. However, there are also undeniable similarities, as for example the relatively rapid expansion of new trends, such as integrating a gender perspective to the interpretation and application of the law, as well as incipient signs of an intersectional analysis that acknowledges that girls and adolescents are not only disproportionately vulnerable to violence because of their age, or purely because of their gender, but it is a combination of these that places them in such a position of disadvantage, as well as accounting for other factors such as disability, economic deprivation, and being part of an indigenous community, among others.

A set matrix of analysis guided the analysis by researchers in each one of the chosen jurisdictions. This facilitates the task of identifying emerging patterns and also provides the background for a comparative exercise of the selected jurisdictions. The country reports focus on key or landmark judicial decisions adopted by high courts, preferably those with constitutional competence (Constitutional Courts or Supreme Courts, depending on how domestic law organises competence internally). Where relevant decisions in one or more of the topics identified in the

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matrix of analysis has been adopted by criminal, civil or family tribunals and there is no case law arising from higher courts, the former may be documented.

The function of **Part I** will be to set the basis for a comparative analysis of the chosen jurisdictions with a brief characterisation of the institutional and structural differences between the chosen jurisdictions. For this purpose, **Sub-section 1** will outline the main theoretical challenges posed by a comparative analysis of case law. **Sub-section 2** will address the structural differences between these jurisdictions and define the scope of this analysis in terms of the courts that have been chosen for the purpose of this report. This part of the report will close with **Sub-section 3**, where some statistics and background characterisation of the problem of violence against girls and adolescents will contextualise the material reality against which the legal framework has to be assessed.

In its turn **Part II** will address the substantive development of the case law in what pertains violence against women and adolescents in each country. It will identify emerging trends following the matrix of analysis that covers ten topics and was distributed among researchers. The report will finish with a set of **Comparative conclusions**.

II. Institutional background and structural differences

1. Comparing case law trends from a general perspective

The exercise of comparing case law trends in different jurisdictions can be seen, from a more general perspective, as an inquiry into the sources of the law. In the context of this study, the expression 'source of law' (*fuente del derecho*) is understood as the institutions creating the law, which in this particular case will be the higher courts of the chosen Latin American legal systems, and more specifically it refers to the judicial decisions rendered by these courts.[2] From the perspective of the doctrinal development of comparative law methodology, it has been remarked that there is little or no theorisation on a 'case law method', which in its turn results from a relative lack of development of a broader 'case law theory' in civilian jurisdictions.[3] Therefore, the main theoretical difficulty relates to establishing whether a specific case law trend is *de facto* going to be followed by lower courts, or whether it is an isolated ruling which cannot be taken as authoritative. However, what does make the comparative inquiry relatively easier in the context of the present study is that all the above-mentioned legal systems share some structural and historical features and can be broadly speaking characterised as belonging to the civilian tradition. This means that when we face the question of whether a particular and isolated case by the Colombian Supreme Court is likely to be followed by lower courts, it is highly likely that a similar question will arise in other of the analysed jurisdictions, such as for example Peru or Argentina. In that sense,

[2] Vogenauer, Stefan, 'Sources Of Law and Legal Method in Comparative Law', in Mathias Reimann, and Reinhard Zimmermann (eds), The Oxford Handbook of Comparative Law, 2nd edn, Oxford Handbooks (2019) 844.
[3] Vogenauer (n 1 above) 898.

here we do not face the problem of comparing vastly different approaches to the basic structure of the law, which would have been the case, had one of the jurisdictions been a common law or mixed legal system.

Furthermore, a second question relates to the methodological approach to comparative procedural law. For instance, one of the topics addresses by the matrix of analysis explores the legal barriers faced by girls and adolescents in terms of access to justice, such as rules on statutes of limitations (*prescripción*) or the need to have legal representation to submit a complaint. Another topic developed in the matrix of analysis that was distributed as part of this study explicitly deals with the procedural guarantees to prevent secondary victimization. Because this is a pilot study, a brief characterisation of the main features of the judiciary in each legal system has been included, but there is a clear limitation in terms of the depth one can achieve from such characterisation, as a larger-scale project would require a fuller inquiry into the intersection between substantive rules on protection of girls and adolescents from all forms of violence, and specific procedural rules. The latter cannot be studied in isolation of the rest of the procedural apparatus and a full analysis would mean that the interaction between these barriers and the rest of the legal system would become necessary. For instance, if the aim is to understand the legal barriers faced by the users of a given legal system and compare it to what happens elsewhere, one would need to address issues such as the expansion of information technologies and its integration within those types of legal processes. Moreover, access to legal aid and funding, especially in what relates to civil procedures will also impact the outcomes and to some extent dilute the boundaries between procedural and substantive rules.

Lastly, despite clear similarities, Latin America is a vast continent and differences in the subjacent legal cultures should not be overlooked simply because of a similar technical vocabulary that derives from the widespread use of Spanish as an official language in all the studies jurisdictions, apart from Brazil, and their broader historical similarities. As exposed in the sections below, while the demographic composition of each Latin American country is hugely diverse, and there are indigenous populations in all of them, the legal recognition of these varies across jurisdictions, with countries such as Brazil having an indigenous justice system, while others focus on indigenous cultural identities at a Constitutional level and what that means for the interpretation of criminal law norms. A larger scale project could of course develop a robust analysis of the differences between jurisdictions in terms of how substantive and procedural norms interact with broader issues of an overlap between an indigenous justice system coexisting with an ordinary justice system.

2. Scope of the study and structural differences.

2.1. The analysed courts and the organisation of the judiciary

The structure of the judiciary in each country impacts the legal alternatives available to users. This means that even to a specialist, some legal systems are more complex to navigate, and their internal structures may erect unintended barriers in

the access to justice. In this study, it is possible to identify several countries whose judicial system reflect political and administrative decisions that affect the ability of the users to choose the right court for their claim to be heard.

For instance, the structure of the Mexican court system is notoriously complex. This is in part the result of Mexico being a federal republic, which means that there are national as well as federal laws that recognise a women's right to a life free of violence. As a general rule, criminal, civil, and family cases are all brought before the local state courts, with only some issues being brought before the federal courts. The latter deal with the so-called *amparo directo*, which essentially means that it will decide on claims concerning infringements of laws or constitutional norms by the lower courts. Only exceptionally, when a constitutional norm or one contained in international treaties is directly interpreted and a relevant criterion has to be determined, will the Supreme Court intervene. The rulings of the Supreme Court where an interpretative criterion is established will set precedent that has to be followed by lower courts. Additionally, the Mexican Supreme Court also decides actions of unconstitutionality. District judges, in their turn, will decide cases of *amparo indirecto*, which is oriented towards acts or norms that violate human rights, either when these norms come into force, or when they are applied for the first time, as well as administrative acts and omissions, or cases where judicial authorities are not exercising their jurisdictional powers. For instance, an action such as the latter could be brought against the Public Prosecutor. The Supreme Court will decide only exceptionally actions dealing with both *amparo directo* and *amparo indirecto*, in those cases involving constitutional issues of special relevance. All this shows how the very structure of the judiciary and the administrative divisions within the country both represent an additional hurdle in terms of navigating the court system.

Argentina is also a federal state, where substantive Codes have a nation-wide application, but in its turn Procedural Codes are local (the administrative divisions are 24 in total). It is noteworthy that the Argentinean Supreme Court has very few members (5 judges and a vacancy at the moment of writing). Cases will normally be decided by local courts, and only exceptionally, where there is a human rights' infringement will these be decided by the Federal Court, or even the Argentine Supreme Court (by means of a special 'federal action'). The majority of cases decided by the Federal Court come from Provincial Courts. The case of the City of Buenos Aires is different, and more details about its judicial organisation can be found in the country report, specifically in what pertains how a claim of sexual abuse of a child would proceed through the court system in that city. As there is a relative lack of development in the case law of the Argentinean Supreme Court (only 7 cases are analysed here), some decisions by High Provincial Courts have also been included (8 cases). Again, this shows an example of how complex it can be to decide which is the competent court, depending on multiple factors such as administrative divisions within a country.

Brazil is another federal state analysed here, which means that in terms of the scope of this study, the rulings of the Brazilian Supreme Federal Tribunal have been included, which acts as a type of Constitutional Court and also as a Constitutional

Court. Cases decided by the Superior Court of Justice, which interprets federal legislation, have also been analysed. Moreover, some cases decided by the Superior Employment Tribunal were also examined. In total, a sample of 13 cases by the Federal Supreme Court and 3 delivered by the Superior Court of Justice were included in this study.

Table 1. Overview of the higher courts included in the study

Country	Supreme Court	Constitutional Court	Other High Courts
Mexico	X	X	X
Peru	X	X	
Argentina	X		X
Colombia	X	X	
Brazil	X	X	X

2.2. Time frame of the Study.

This study did not pre-define a specific year to be applied uniformly across jurisdictions as starting point in terms of case selection. Flexibility was given to each academic in selecting such starting point, as different countries have had different development trajectories. For example, in the case of Colombia the national report starts in 1996 because this represents the year when a number of relevant international treaties came into force and became part of the so-called 'constitutional block', an example of which is the Convention of Belém do Pará.

The Peruvian decisions by the higher courts analysed here cover a timespan from 2010 and 2021 and represent a total of 19 rulings by the Peruvian Supreme Court and the Constitutional Court. These cover Judgements, Resolutions in actions of nullity, and Plenary Agreements. The latter represent a type of resolution issued as a result of a meeting where specialised judges from one or more courts discuss and debate the main problems emerging from the exercise of their jurisdictional powers and result in the adoption of a joint approach to such recurrent issues. However, accessing such decisions has been particularly difficult as there is no accessible data base where case law trends can be identified based on key words/topics. None of the leading data management platforms in Peru uses descriptors such as 'children and adolescents' or 'violence against girls and adolescents'. What is available is 'gender justice' (*justicia de género*), which was used as a starting point to identify cases affecting girls and adolescents.

As for Mexico, the analysed case law covers a timespan of eleven years, from 2011 to 2022. The starting point was selected as a result of a constitutional reform in what pertains the protection of human rights, as well as a reform to the mechanism

know as *amparo*, the characteristics of which will be described below. Moreover, it was in 2011 that the child's best interest was recognised at constitutional level.

The Argentinean analysis starts in 1994, because this is the year when the Argentinean Constitution granted constitutional hierarchy to the UN Convention of the Rights of the Child and the CEDAW (but not to the Convention of Belém do Pará).

By contrast, the study of case law trends emerging from Brazil comprises the period between 1988 and 2022. The starting point was the enactment of the Brazilian Constitution, which meant a transition towards a democratic state, and is a starting point in terms of its application of International Human Rights treaties, and the protection of the child's best Interests, among other rights.

These differences in terms of the timeframe used in each country report are of course relevant and have to be taken into consideration when drawing comparative conclusions, as for example it is clear that one should expect a vast difference in terms of social perception of women's rights in general, in Brazilian society of the late 80's, as opposed to the reality of Colombia in the first quarter of the twenty-first century, to name one example.

Table 2. Period of time

Country	Timeframe
Mexico	2011-2022
Peru	2010-2021
Argentina	1994-2022
Colombia	1996-2022
Brazil	1988-2022

3. Socio-political background and prevalence of violence against girls and adolescents.

A brief characterisation of the main challenges and recent statistics on violence against girls and adolescents serves the purpose of setting the ground to understand in a more nuanced and critical way the legal responses articulated in each jurisdiction.

In terms of the socio-political background that is specific to the Mexican context, widespread violence in the last decade has affected children and adolescents with greater intensity. According to a report produced in 2021 by the Mexican Network for the Rights to Children, in 88.3% of the cases where there has been violence against children and adolescents, the victims are girls, and 92.8% instances of violence represent sexual violence. This is also highlighted in statistics released by UNICEF, which show that 6 out of 10 adolescent women in Mexico have suffered emotional, sexual, or economic violence. Moreover, adolescents between the ages

of 12 and 17 represent 80% of missing persons below the age of 18. Furthermore, between 2018 and 2021 there have been 250 murders of girls and adolescents.

Data emerging from the Colombian context shows how the COVID pandemic has affected girls and adolescents with particular strength. Data released by the United Nations Population Fund (UNFPA) shows that between 2020 and 2021 there was a 43% rise in cases of sexual violence (from 6,184 to 8,821), and that 42,7% of these involve girls between the age of 10 and 14. Additionally data released by UNFPA also shows that in the same time period there was a 7% increase in the number of births were the mothers were girls between the age of 10 and 14. This is a poignant reminder of how events such as the pandemic need to be studied from an intersectional perspective, so as to detect sub-sections of the population which are more severely affected by public policy decisions such as imposing restrictions to movement. This data shows very clearly that girls and adolescent are particularly vulnerable to violence as a result of such measures.

In the case of Peru, it has to be highlighted that girls and adolescents are not identified in the judgements as a group that is particularly vulnerable to violence, even though most cases of sexual violence involve girls. In that sense, the vocabulary used to describe them is often the 'masculine' form of the word, which is the neutral default in Spanish, and as such, no gendered form describing girls and women in particular is employed. The Emergency Centre for Women reports that out of 52,104 cases of violence against children and adolescents in 2021, 69% of the victims were girls and female adolescents. Regarding sexual violence, in Peru 94.5% of the victims are women, the majority of which corresponds to girls and adolescents.

According to statistics released by UNICEF in 2021, in Argentina between October 2020 and September 2021 there were 15,118 complaints brought before the Programme for Victims of Violence, which represents a 15% increase from the previous year, and 9,989 of those relate to familial violence and/or sexual abuse of children and adolescents. In terms of the gender of these children and adolescents, girls represented 78% of the victims of familial violence, and 84% of the victims of sexual violence. Moreover, in terms of violence in an online context, grooming represented 44% of the instances of violence. In parallel, the National Secretariat for Childhood, Adolescence and Family, which is dependent on the Ministry of Social Development, has a helpline that received 45,589 calls in the same period as the abovementioned UNICEF report, and 45% of these calls reported instances of violence against children. However, not every province in Argentina has access to this helpline, which means that there is no unified database that covers the whole country.

Brazil shows a broadly similar picture, where extreme violence against girls and adolescents represents a key challenge in terms of the design and implementation of public policy. Data published by the Ministry of Health suggests that between 2016 and 2020, approximately 35,000 children and adolescents were killed, with a median of around 7,000 deaths per year. Additionally, between 2017 and 2020 there were 180,000 children and adolescents who were victims of sexual violence,

with a median of 45,000 such victims per year, and in 74% of these cases, the victims were female. The scale of the problems is likely to be much higher, as it is thought reported cases may represent as few as 10% of the real number of such events. The data by the Ministry of Health also suggests that 51% of the victims were between 1 and 5 years of age.

Overall, despite the limitations in terms of comparing these different sources and the different definitions and methodologies used to gather these statistics, what is clear is that women represent the majority of victims of sexual violence in all the studied jurisdictions, and that when age is taken into consideration, a similar pattern is replicated, which means that among children and adolescents, it is girls and female adolescents who are disproportionately affected.

III. Identification of emerging case law trends based on a predefined matrix of analysis.

1. Formal recognition of a right to be free from violence for girls and adolescents

In the Mexican context, the Supreme Court has developed a full acknowledgement of women's right to live free from all forms of violence, based on national and international norms (SCJN, AR 807/2019). This also includes a duty to adopt a gender perspective in the administration of justice. However, while gender is taken into consideration, the Court does not make any distinction based on age, and as such, lacks an intersectional approach to the problem faced specifically by girls and adolescents. Age is taken into consideration when dealing with children and adolescents in general, but it can be seen that while the court does identify particular vulnerabilities experienced by them in general, it does not tackle those specific to girls and adolescents.

This is also the case in Argentina, where no cases were found that addressed specifically girls and adolescent's right to a life free of all forms of violence.

By contrast, the Colombian Constitutional Court has repeatedly declared that girls and adolescents have a right to live free from all forms of violence and abuse, based on international treaties. The framework of protection combines a focus on the best interests of the child (Sentencia T-448/18), as well as Article 44 of the Colombian Constitution which protects the fundamental right of children to be free from against all forms of neglect, physical and moral violence, kidnap, sale, sexual abuse, labour or economic exploitation and dangerous working conditions. Moreover, the parent's right to educate and correct their child does not include exercising physical violence. Interestingly, the Supreme Court decided a case where it was declared that an indigenous girl had the right to live free of violence, adding that in such a case the ordinary criminal courts were competent, and not the indigenous justice system. The reasoning was based on the Belém do Pará Convention (SP6759 of 2014).

Peruvian case law shows that while the right of women to live free of all forms of violence and abuse has been indeed recognised, there is no express acknowledgement of this specifically in connection to girls and adolescents. In the case 04937-2014-PHC/TC which concerned the rape of an 11-year-old girl, the Peruvian Constitutional Court analysed the infringement of the right of the grandmother who represented the child, and not the girl's right in itself. It argued that regarding this case of familial violence, the 'court reinforces the social commitment with elderly women, so that they are treated with dignity, live free of violence, and effectively exercise all rights recognised and protected by the Constitution'. It is curious that the gender perspective was considered, but focusing on the legal representative of the victim, and not the female child herself.

In Brazil, there has been explicit recognition of the right of girls and adolescents to a life free of all forms of violence. In a case decided by the Federal Supreme Court (ARE 1321513) reference was made to the UN Convention of the Rights of the Child, and it highlighted that it was in the girl's best interest not to suffer violence and infringements to her fundamental rights as a person who is developing. In that case the girl had suffered physical and psychological violence and was often punished and made to kneel and ask God to pardon her for not loving her father. However, the court still ordered supervised contact as it was deemed that the bond between father and child should not be broken. A second case (REsp 1549398/TO) relates to labour exploitation of a girl, where the court centres the debate on how the violence suffered by her is the result of the asymmetries between employer and employee, but does not recognise dimension of gender violence. In terms of sexual violence, there is a case that dealt with an absolute presumption of violence in cases where the victim is below the age of 14 (RE 108267), which means that consent and previous sexual activities of the victim become irrelevant, which reflects a broad interpretation of girls' rights even before the reform of the Criminal Code. Moreover, in a case that concerned the rape of a 9-year-old girl (RE 418376) it was deemed that she was incapable of freely expressing her will, which also entails that no self-determination was possible. As such, the court ruled that it was not possible to exclude punishment as a result of the later cohabitation between victim and perpetrator.

2. Typologies of violence identified by courts (gender, domestic, peer) and its use in within a) the family or domestic unit or within any other interpersonal relationship and; b) in the community.

In Mexico, the General Act on Women's Access to a Life Free of Violence is in force for the whole country. It distinguishes violence in several contexts: the family, the work and educational settings, community, institutions, and femicide. It also distinguishes types of violence: psychologic, physic, patrimonial, economic, sexual, and other analogous types of violence that violate women's freedom or integrity. However, it has to be stressed that such typologies are rarely used by the courts. Even so, the Supreme Court has linked intrafamilial violence and gender violence (SCJN, 2021: 47) and acknowledged that it can have an impact on children. Furthermore, the Mexican Supreme Court has also argued that domestic violence affects not only the direct victim, but also has implications for the children

who witness it, yet without reference to gender-based considerations (ADR 807/2019). In a context of sexual abuse, the rights of girls to take part of legal proceedings have been formalised, but again, without reference to gender-based considerations. Community violence has been implicitly addressed in federal judgements, an example of which are acts perpetrated within religious communities. Pertaining sexual violence, this has been linked to gender-based violence, while also acknowledging that a healthcare provider's negative to practice an abortion constitutes a separate harm (SCJN, 2018: 74).

In terms of typologies of violence, in Argentina there is reference to online violence and its links with gender violence (Superior Tribunal de Córdoba, 28/07/2022) where it is deemed that the context of gender violence was an aggravating circumstance, as the perpetrator had acted violently against women in multiple occasions, and some of these were girls. In terms of the intersection between sexual violence and multiculturality, the was a polemic case that refers to the situation where a 9-year-old girl had been sexually abused and was pregnant, both victim and perpetrator being members of an indigenous community (Highest Court of the Province of Salta, 29/09/2016). It was deemed that the customary law of the wichí indigenous community was in conflict with Argentinean criminal law, as well as international human rights law, and that the judgement by the lower court had to take into account the cultural particularities of the wichí indigenous community in this case. This would be so because articles 75 of the Argentinean Constitution, and article 15 of the Provincial Constitution both recognised the respect of the identity of indigenous communities. The majority of the judges centred their attention on issues surrounding cultural identity, and even the dissenting judge failed to develop a reasoning based on how sexual violence affects girls and adolescents. In terms of the newly emerging category of vicarious violence, there has been a ruling by the Supreme Court of the Province of Buenos Aires of 28/11/2018, where damages were awarded in a civil lawsuit, following the murder of two children by their father, where previous reports of domestic violence existed.

In Peru there are several Plenary Agreements adopted by the Supreme Court that tackle different forms of violence. For example, the Plenary Agreement Nº 01-2011/CIJ-116 of 2011 established that gender violence is rooted in androcentric cultural patterns that, following what has been previously sustained by the United Nations, comprises familial violence (physical, sexual, or psychological), community violence (which can also be divided into physical, sexual, or psychological), and violence tolerated by the State. The identification of different typologies of violence has become easier in Peru after the enactment of the Law Nº 30364 of 2015. The application of this law was further explained in the Plenary Agreement Nº 09-2019/CIJ-116 of 2019, where the Peruvian Supreme Court established that the law identifies physical, psychological, and economic or patrimonial violence against women. Before that, in 2016, another Plenary Agreement, further developed the category of psychological violence as 'an action or conduct that intends to control or isolate a person against their will, to humiliate or shame them, and is capable of inflicting emotional harm' (Plenary Agreement Nº 002-2016/CIJ-116 of 2016).

The Colombian Constitutional Court has fleshed out definitions of both gender-based violence as well as structural violence (Sentencia T-878 of 2014, and Sentencia T-462/18). It is important to highlight that the Court conceives gender violence as a form of structural violence. It has also made reference to physical and psychological violence against women, girls, and adolescents (Sentencia T-462/18), as well as a more specific manifestation of it, namely sexual violence against women and girls (Sentencia T-448/18). Additionally, the Constitutional Court distinguishes cases of domestic or intrafamilial violence (Sentencia T-967 of 2014 cited in T-338/18), and also a typology particular to the Colombian context, namely disproportionate gender violence and discrimination as a result of the armed conflict (T-025 of 2014).

Brazilian case law dealing with violence against girls and adolescents identifies domestic and family violence as an action or omission based on the gender of the victim, which causes death, injury, physical, sexual or emotional suffering, and pecuniary and non-pecuniary losses in the context of a family unit, or any intimate relationship where the perpetrator lives or has lived with the victim. There are cases where contact between a violent father and her daughter has been temporarily suspended (ARE 1321513) as a result of a reasoning based on the child's best interest, but commentators also indicate that this represents an extension of the Law Maria da Penha (Law Nº 11,340 of 2006) to encompass girls, whereas the law in question created mechanisms to fight domestic abuse and violence against women in general. Another category of violence that disproportionately affects girls and adolescents in Brazil occurs in the context of domestic labour, where sometimes there will be circumstances akin to slavery. The Brazilian Institute of Statistic and Geography has reported that 93% of children and adolescents who work as domestic servants are girls, and above 60% of these are black. There is a case decided by the Superior Court of Justice (REsp 1549398/TO) that dealt with domestic child labour, but rejected the application of the Law Maria da Penha, arguing that violence and mistreatment originated in labour asymmetries, and did not have a gender-based characteristic. A few years before that ruling the same court had said that the Law Maria da Penha was applicable to all women, regardless of their age. Nevertheless, courts tend to give pre-eminence to poverty as the main factor that explains this type of abusive relationship, and fail to integrate this and gender, even though as seen in recent statistics, the victims are disproportionately younger women. In connection to sexual violence, the law Nº 12,015/09 modified the Brazilian Criminal Code and qualified as rape all sexual relationships or other libidinous acts when the perpetrator knows that the victim is a person below the age of 14 (STJ, REsp 1371163 / DF).

3. **Other specific rights or guarantees associated with the protection of a right to be free from violence (e.g. non-discrimination, access to justice and reparations, informed consent, access to health and sexual and reproductive rights; right to not be tortured, etc.).**

In Mexico, the right to autonomy and the right to freely develop one's personality are often linked to cases of minors being married to adults. For example, in a case involving the Chontal indigenous community, the Mexican Supreme Court ruled

that a marriage between a 12-year-old girl and an adult who was violent and neglected her, and with whom she had a child, involved a balance between customary law and the child's best interest. In that case, the latter prevailed because minors are deemed to be more vulnerable, but also because this represents an obstacle to a free development of their personality. Moreover, the adult in question was deemed criminally liable for pederasty (SCJN, 2016: 32). Moving to an analysis based on the right to equality and its links to other rights, the Mexican Supreme Court has integrated the norms contained in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and it has articulated a relationship between gender-based violence and discrimination against women. There is a case where the analysis developed by the court takes into account the victim's characteristics, such as gender, age, and disability (SCJN, AR 438/2020). In terms of taking children's voices into consideration in the context of legal proceedings, it has to be noted that this is an area of particular emphasis where the Mexican Supreme Court has been most prolific and it involves modifications to the probatory value of evidence (SCJN, ADR 3797/2014; AD 9/2016). Moreover, the High Court of Mexico City has ruled that children have to be seen as subjects of rights, and not as objects of protection (TSJCM, 2017: 49).

The situation in Argentina shows a pre-eminence of a discussion centred on sexual and non-reproductive rights. One of the most prominent cases, which known as the 'FAL case' of 13/03/2012, decriminalised abortions in cases of rape before the enactment of the Law Nº 27,610 which legalised voluntary interruption of pregnancy. Another relevant case was decided by the Higher Court of Justice of the Autonomous City of Buenos Aires on 14/10/2003, when two organisations sought a declaration of unconstitutionality of the law that allowed public authorities to prescribe contraceptives to minors based on a violation of the parents' *patria potestas*. The court rejected the claim on grounds that sexual and non-reproductive rights are basic human rights according to international treatises, and they have a personal character for girls and adolescents. These belong to the sphere of autonomy and freedom, which entails that they cannot be exercised via a representative. It is noteworthy that in Argentina, reproductive rights in the context of interruption of pregnancy are conceived as 'non-reproductive rights'.

As mentioned before, while in the Peruvian context there is no explicit acknowledgement of a general right of girls and adolescents to a life free of all forms of violence, when the analysis moves to specific cases where girls are disproportionately affected, there is a clearer identification of the particularities and vulnerabilities suffered by them. In cases of rape, Peruvian courts have referred to the right to a free sexual and psychological development of adolescents above the age of 14, as opposed to a right to a free development of their personality (understood as a right to sexual integrity and inviolability) for those below the age of 14, together with their right to personal integrity. In that sense, rape can be said to infringe the sexual freedom of those 14-years-old or above, while it infringes the integrity and inviolability of those below that age, which means that for the latter sexual activity will be punishable even if tolerated by the victim (Plenary Agreement Nº 01-2011/CIJ-116 of 2011 and Plenary Agreement No 05-2016/CIJ-116 of 2016). This was also stressed by the Constitutional Court in 2011 (Expediente Nº 02079-

2009-PHC/TC) which dealt with a case where a girl had been raped. In that case, the Court stressed the need of special protection when dealing with childhood in general and argued that the emotional integrity of the child is a primary concern insofar as it affects the development of their personality and capacity to express themselves. However, overall, it is possible to see that no intersectional approach is adopted, and as such the analysis of these cases is rather simplistic as it detaches gender and age and tends to obscure their connection behind gender-neutral language (which, as said before, in Spanish adopts the masculine form of the word). Criminal judges of the Peruvian Supreme Court have also tackled issues affecting girls and adolescent in terms of sexual violence. In Plenary Agreement No 01-2015/CIJ-116 they dealt with the application of article 15 of the Peruvian Criminal Code and intercultural proceedings in cases of rape of girls and adolescents. The Jurisdictional Plenary decided that a distorted interpretation of this article had meant that the rape of girls and adolescents was not punishable when the perpetrator had acted in the context of their culture and customs. This Agreement has meant that early sexual activity with girls below the age of 14 is now considered sexual violence.

In Colombia, abortion was decriminalised (but it is still restricted to only three cases) following a ruling by the Constitutional Court (C-355 of 2006), where it was also ruled that reproductive autonomy is not only a fundamental right of adults, but it is also a right of girls, boys, and adolescents. Moreover, the right to conscientious objection to abortion by a health professional is not deemed to be absolute, and such professionals have a duty to refer girls and adolescents who want to access an abortion to a professional that is willing to assist them (Sentencia C-355 of 2006).

4. Constitutionality of legal barriers to access justice, such as rules on statutes of limitations (prescripción) or the need to have legal representation for submitting a complaint.

In Mexico, there have been cases where the Supreme Court adresses the issues surrounding witness statements by children, specifically in what pertains sexual violence (SCJN, 2014: 50-51), while federal courts have dealt with the specific situation where the victims are girls and adolescents (TSJA, 2021: 16). Some obstacles based on the court's competence as a result of geographic factors have also been removed (TSJCM, 2017: 119 and 121). In terms of the rules of time bar, the General Act on the Rights of Children and Adolescents establishes that sexual crimes against minors are imprescriptible, but the issue has not been settled in terms of crimes that occurred before its enactment as there is a case that has been brought before the Supreme Court, the outcome of which is still pending (SCJN, 2021a: 17). In terms of legal representation of children, these have to be represented by their parents or legal guardians and cannot access the justice system autonomously. This in itself can be seen as a clear barrier to access and should be compared to what happens in Colombia, which is explored below.

In Colombia, the year 2021 saw the enactment of the Law 2,081 which establishes the imprescriptible nature of criminal actions for offences against freedom, sexual integrity and development, or incest, against persons below the age of 18. The

Colombian Constitutional Court reviewed the constitutionality of this statute (Sentencia C-422 of 2021) and grounded the approval of its validity on articles 28 and 29 of the Colombian Constitution, arguing that the best interest of the child and adolescent has to prevail and that this group of the population should be given a strengthened form of protection against sexual offences. Moreover, the Court stressed that from a doctrinal perspective, in Colombian law there is a difference between a time limitation of the criminal action itself, and the imprescriptible nature of the penalty, where the former is justified in the context of the protection of the human rights of children and adolescents. In terms of active participation of children and adolescents in criminal proceedings, there is no barrier to the exercise of the action, as there is no explicit requirement to be above the age of 18, which means that minors do not need authorisation of their parents or legal guardians to take part in legal proceedings of this nature. This is also particularly important in those cases where the perpetrator is precisely a parent or legal guardian, who would otherwise impede a proper defence of the victim.

In Argentina some procedural barriers originated in the so-called 'conflicts of competence' between different tribunals. A case decided by the Argentinean Supreme Court on May 31, 2022 dealt with an adolescent who was abused by her cousin's partner while on holidays, and whose case was then brought before a court in Buenos Aires. This court deemed that it was not competent because the act had occurred in the northern city of Cachi. At the same time, the criminal judge of Cachi also ruled that they were not competent, because it would be on the girl's best interest for the judge of her home address to be competent. The Federal Court decided that the case must be brough before the tribunal where the crime was committed which is more than 1,000 miles away from where the victim lived. Even more recently, in a ruling of June 21, 2022, the Argentinean Supreme Court ruled again that the competent court in a case of rape by the adolescent's grandfather was that of the place where the perpetrator resides. However, rather curiously, where the main issue was not the sexual abuse but a child's custody, then the Supreme Court does endorse the competence of the judge where the child resides. The second obstacle relates to time bar (*prescripción*), with a recent case (High Court of Justice of the Province of Chaco, 13/05/2019) deciding that the lower court did not properly apply the criminal law that was most favourable to the wrongdoer in what concerned time bar. The reasoning of the court was that because sexual abuse is not a crime against humanity (which would entail that there would be no time limit in which it can be prosecuted), that meant that the prescription time of 12 years is applicable.

In Peru the Supreme Court has ruled that discarding a girl's testimonial evidence because it lacks 'uniformity' creates a legal obstacle (Casación Nº 196-2020 Arequipa, September 9, 2021), and that according to a Report by the IACtHR and cases decided by the latter, this would entail a denial of justice and a discriminatory treatment.

In Brazil there were no cases on this topic in the period under scrutiny.

6. Procedural guarantees to prevent secondary victimization and, in general, reasonable adjustments required for the police, social services and judicial proceedings to respect the rights of girls and adolescents.

The articulation of this aspect in Mexico can be understood resorting to three main categories: the child's best interest, girls' participation in legal proceedings, and the actions undertaken by protection offices (*procuraduría de protección*). The first of these has been linked to procedural rules and protective measures, which means that the minor's wellbeing and special risks that affect him or her have to be taken into account (SCJN, 2015: 45). As for the conditions that exist in terms of participation in legal proceedings, this area has been vastly developed in the case law over the last few years. In applications of contact and custody of children, their opinions have to be taken into account (SCJN, ADR 22/2012), and courts have also articulated participation in terms of measures to avoid revictimization as a result of having to repeat a witness statement multiple times (SCJN, 2014: 45). The same judgement also establishes the need to carry out such witness statements in presence of staff that has received appropriate training, and for it to be done in safe environments. In what pertains the probatory value as evidence, children's testimony has two aspects that have been tackled by Mexican courts. One relates to credibility, and the other is connected to the standard of proof. On the first issue, it has been ruled that a girl's declaration cannot be analysed by the same standards of an adult statement, even more so in cases of sexual violence, which means that the court must be sensitive to the reasons that explain some inconsistencies that affect credibility (SCJN, 2014: 76 and 77). On the issue of the applicable standard of proof, where *patria potestas* is lost as a result of domestic violence, it has to be highlighted that this cannot and should not be seen as a punishment of the perpetrator but as a way of protecting children's rights. This entails that the standard of proof is set as a finding of 'prevailing probability' (*probabilidad prevaleciente*) (SCJN, 2014: 93). Interestingly, Higher Courts in some States have referred to this issue and ruled that a girl's testimony is essential evidence given the characteristics of sexual offences. In that sense, it has a higher probatory value when compared to other types of crimes, which means that in terms of establishing the existence of the criminal act and the determination of the associated punishment, the prosecution will face a lower burden of proof (TSJSi, 2017: 15).

In Argentina, some High Courts have ruled that a gender perspective has to be applied not only by judges, but there also must exist an acknowledgement that sociocultural patters that result in gender discrimination can negatively impact the investigation and even the probatory value assigned to evidence (High Court of Justice of the Province of Buenos Aires, 12/05/2021). Moreover, in a case affecting an adult woman, it was deemed that while the general rule is that issues of evidence cannot be reviewed by the Supreme Court as these are reserved to first instance judges, exceptionally this can be done where the shortcomings of the proceedings are such that infringe constitutional rights to due process and defence, as would be the case if these infringe the Convention of Belém do Pará (Argentine Supreme Court, Rivero case, 03/03/2022).

Secondary victimisation is defined and analysed by the Peruvian Supreme Court in Plenary Agreement Nº 01-2011/CIJ-116, and three measures to tackle it were proposed: the confidentiality of legal proceedings, confidentiality regarding the victim's identity, and promotion of a single witness statement by the victim. Moreover, as mentioned before, after in Plenary Agreement Nº 002-2016/CIJ-116 the Peruvian Supreme Court introduced limitations to the criminal exemption based on cultural errors in the understanding of crimes. This means that all courts must now: 1) restrict the application of this exemption in all cases of violence against persons below the age of 14; 2) recognise the rape of girls and adolescents in intercultural contexts as a violation of their human rights, exclude settlement, economic compensation or family agreements as alternative forms of conflict resolution where sexual violence against a girls and adolescents below the age of 14 has been proven; 3) order compulsory anthropologic reports to decide on the intercultural context and the applicability of exemptions; 4) refrain from applying the exemption where no expert opinion about the nature of the intercultural context has been produced; 5) incorporate a reasoning and arguments based on a gender perspective, the best interest of the child, and compensation of vulnerability of girls and adolescents in pluricultural contexts.

In the Colombian context, both the Supreme Court and the Constitutional Court have ruled that there is a need to establish procedural safeguarding mechanisms that take the child's opinion into account, and thus prevent secondary victimisation (Sentencia T-078/10). According to the same ruling, where a child is involved, the Court needs to adopt a *pro infans* perspective. In a more recent case, the Constitutional Court ruled that in cases of sexual abuse and violence against girls and adolescents, settlements or other types of agreements that reduce the sentence are not allowed (T-448 of 2018). Moreover, the credibility of witness statements by girls and adolescents should not be ruled out on grounds of mental inferiority (Sentencias 23706; SP666-2017; SP2714-2018). Concerning applications of contact and custody of children where gender violence has been alleged, the court has to take the latter into consideration and, more importantly, a gender perspective has to be adopted instead of a family-based one (namely one that favours the continuity of a "family" unity under the assumption that this in itself furthers the individual interests of its members). This means that the court has to protect the best interest of the child and the woman's fundamental rights without assuming that a shared custody and contact are the only means of guaranteeing the children's development (Sentencia T-462/18). Moreover, the Colombian Constitutional Court recognises an intersectional dimension, which entails that the State must adopt different measures to target in a differentiated way specific groups of women that are being discriminated against, and in that sense girls and adolescents are subject to a convergence of structural factors of vulnerability based on age and gender (Sentencia T-448/18).

In Brazil, in terms of reasonable adjustments, the Supreme Federal Court have decided that pregnant adolescents and mothers of children below the age of 12 can be given home detention instead of a custodial sentence (HC 143641).

7. Formal remedies and conditions for their effective use provided by national legal systems to enforce the right to a life free from violence for girls and adolescents before courts.

In the Mexican context we can find reinforced protective measures on one hand, and on the other hand, courts have the power to correct and rectify a claim and articulate reasons that have not been submitted by the parties representing children (*suplencia de queja*) (ADR 438/2020). Moreover, there is no need for the harm to materialise which means that it is enough that, in considering the child's best interest, the court verifies the existence of a potential risk to the child's safety (ADR 2710/2017).

In Argentina and Brazil, no cases were reported where courts discuss formal ways to enforce the right to a life free from violence, from the perspective of girls and adolescents.

Peruvian courts, in their turn, have established three forms of procedural conditions in the seventeen judgements analysed here, pertaining: 1) witness evidence by victims of sexual violence; 2) its probatory value (especially in cases involving children and adolescents; and 3) the child's best interest in cases involving minors. There is a degree of flexibility in the requirements of uniformity and internal coherence of the witness statement, in the understanding that excessive rigour disregards familial pressures and the reasons why victims sometimes retract from their statements (Plenary Agreement N° 01-2011/CIJ-116). Moreover, statements have to be videorecorded to avoid revictimization. The Peruvian Supreme Court has ruled that it is excessive to require of an 8-year-old girl to determine the number of times and exact dates when she was abused. This, however, is based on the age of the victim, and there is no mention to gender-based considerations.

In the Colombian context it is deemed that the family justice system is the one that provides the appropriate mechanisms to protect the rights of girls and adolescents. The Constitutional Court has ruled that the rights to truth, justice, reparation, and prevention of reoccurrence involve investigation, judgement and sanction of sexual crimes against women conceived as violations of their human rights. Moreover, the right to information and participation of criminal proceedings should take into account special conditions such as illiteracy, disabilities, extreme vulnerability, among other factors (T-735 of 2017).

8. Identification of specific negative and positive duties and obligations - immediate and progressive- for public organs / officers.

If we analyse the trends emerging from Mexico, it is possible to see that there are general obligations that comprise all state organisms, as well as obligations that specifically target the legislator, and others that bind the judiciary. The first group involves a general obligation to prevent, take care of, and eradicate violence against women, as well as implementing the protection of the child's best interests. Concerning the obligations of the judiciary, in presence of human rights violations, if the federal courts abstain from taking measures to prevent, eradicate, sanction,

and repair them, this would involve a serious omission by the State, an prime example of which is declining the competence to decide a case involving child neglect based on geographic considerations (TSJCM, 2017: 72). Moreover, the judiciary has to adopt a gender perspective in its rulings (ADR 2937/2021); it also has a duty to investigate whether there has been sexual abuse in cases where control and manipulation of a child has been alleged (SCJN, 2012: 159); and lastly, it faces special obligations in relation to children's witness statements (SCJN, 2014: 44). There is a paradigmatic case concerning public policies and administrative bodies (AR 438/2020), which pertains a case where an abortion was denied to a disabled adolescent who had been raped. The judgement links the right to healthcare, with sexual health and family planning, informational duties, and obstetric services, as the State has a duty to provide emergency contraception and access to abortion to rape victims.

Argentinean case law shows that in some cases public authorities can be held liable in negligence for omissions which resulted in a girl being sexually abused while lodged in an institutional facility (High Court of Justice of the Province of Jujuy, 18/08/2021).

Peruvian courts have established that, in a context of violence, there is a duty to take into consideration 1) the child and adolescent's best interest; 2) to apply a gendered perspective in judicial proceedings; and 3) the standards on witness or testimonial evidence. In terms ruling with a gender perspective in mind, judges must avoid gender stereotypes and preconceptions when interpreting facts and legal norms, and compensate structural violence so that material equality between genders is achieved (Corte Suprema de Justicia, Sala Penal Transitoria, Recurso de Nulidad No. 1232-2019-Huanuco, June 23, 2021). Moreover, in terms of witness evidence by victims, the Public Prosecution has to design an adequate procedural strategy to facilitate the witness statement of boys, girls, and adolescent, which are especially vulnerable as a result of their age (Corte Suprema de Justicia. VII Pleno Jurisdiccional de las Salas Penales Permanente y Transitoria. Acuerdo Plenario No. 01-2011/CIJ-116 del 6 de diciembre de 2011). Again, it is possible to see that an intersectional approach is not considered, nor there is particular focus on how this affects girls and adolescents in particular.

In Colombia the Constitutional Court has ruled that the State has an immediate obligation to act with due diligence in the investigation of gender-based violence and to protect girls and adolescents taking part of proceedings involving sexual or domestic violence (T-338 of 2018). Moreover, courts have a duty to adopt a gender perspective in determining the probative value of evidence. (T-338 of 2018). Additionally, there is a duty to investigate and judge sexual crimes against children and adolescents avoiding all discrimination against them. More concretely, the Colombian Constitutional Court has ruled that the General Prosecutor, the Police, the Ombudsman and the Family Commissars all have specific duties to give special protection in cases of gender-based violence. (T-434 of 2014).

In Brazil there were no reported cases covering this aspect.

9. Identification of specific negative and positive duties and obligations - immediate and progressive- for private individuals and organisations.

Mexican courts are reticent of imposing duties to private individuals. The most common are obligations connected to the considerations of the child's best interest and obligations imposed on parents, legal guardians, or any other carer, to protect children from all forms of physical or psychological abuse, neglect and exploitation, including sexual abuse (SCJN, 2014: 50).

In terms of obligations towards private persons, in Peru the Constitutional Court mainly refers to the child's best interest, but there are no details as to the specific positive or negative obligations it may entail. As for Argentina and Brazil, there were no cases in the period under scrutiny on this issue.

By contrast, the Colombian Constitutional Court has argued that private healthcare providers have a duty to avoid treating the victim and the perpetrator in the same facility or the treatment being given by the same professional. This entails a duty to provide temporary lodging, catering and transport by means of appropriate hospitality arrangements to women victims of domestic abuse and their daughters. In cases where the victim refuses to accept these arrangements, a monetary stipend should be given to her so that she can make alternative housing and catering arrangements (T-434 of 2014).

10. Reference to and/or reliance upon other international and/or legal instruments, including international case law.

Mexican courts refer to the UN Convention on the Rights of the Child, the CEDAW, the Convention of Belém do Pará, the Inter-American Convention on Human Rights and opinions of the IACtHR (as for example, the Advisory Opinion OC-17/2002), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. More specific instruments are used to tackle human trafficking that affects women and girls, such as the UN Convention Against Transnational Organized Crime and its Protocol (for example, in the case TSJCM, 2017). Additionally, the UN Standard Minimum Rules for the Administration of Juvenile Justice "Beijing Rules" are also used, along with the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (which was referred to in SCJN, 2016), the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "Protocol of San Salvador" (TSJJ, 2022), and the Guidelines on Justice for Child Victims and Witnesses of Crime. Moreover, the Annual reports of the United Nations High Commissioner for Human Rights have also been used, as well as the General Comments issued by the Committee on the Rights of the Child, and General Recommendations by the Committee on Elimination of Discrimination against Women. Various cases decided by the IACtH have also been used, as seen in the Mexican report produced in the context of this pilot study.

The Argentinean Supreme Court has cited IACtH case law, for example, in a case of 04/06/2020, where reference is made to *Campo Algodonero v. Mexico*, *Veliz*

Franco v. Guatemala, and *Atala Riffo v. Chile* among other cases. The Court also mentions the General Comments issued by the Committee on the Rights of the Child and the Guidelines on Justice for Child Victims and Witnesses of Crime.

In Peru, during the last few decades it has become ever more common for higher courts to refer to international treatises and case law. There are explicit references to the IACH, the CEDAW, the Convention of Belém do Pará, UN Convention on the Rights of the Child, Rules of Procedure and Evidence of the International Criminal Court, General Recommendations of the CEDAW Committee, as well as the recommendations issues by the Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI). However, even though all these international instruments are indeed mentioned, frequently it is a mere transcription of some norms, but they are not fully integrated into the reasoning developed by the court.

It is also common practice for Colombian courts to refer to CEDAW as well as the Convention of Belém do Pará. To determine the implications of the State's due diligence, Colombian courts often refer to case law emanating from the IACtHR, reports by the IACHR and the UN Committee on the Rights of the Child, UNICEF directives, and the United Nations Office on Drugs and Crime. The intersectional approach to legal interpretation has, in its turn, been adopted as a result of integrating recommendations made in the Declaration on the Elimination of Violence Against Women.

In Brazil, the courts regularly refer to the UN Convention on the Rights of the Child, the CEDAW, the Convention of Belém do Pará, the Inter-American Convention on Human Rights.

11. Reference to policy on violence against women and girls developed by National and International Organisations.

There is one case where a Mexican court has referred to public policy considerations developed by an international organisation. In AI 22/2016 the Mexican Supreme Court mentions the Agreed Conclusions on the elimination of all forms of discrimination and violence against the girl child, adopted by the UN Commission on the Status of Women (CSW51 Agreed Conclusions United Nations, March 2007), specifically in what pertains child marriage. The Court also relies on the UN General Assembly Resolution 71/175 of 2016 on child marriage.

What can be seen in Argentina is that the Supreme Court has referred to the child's best interest; the General Recommendations of the CEDAW Committee; and the Convention of Belém do Pará, in a case that dealt with the precautionary suspension of contact where an allegation of sexual abuse of a girl was made (Argentinean Supreme Court, 26/10/2010).

In the Peruvian context, there is almost no reference to public policy by the courts. The sole exception is a reference to a Plenary Agreement of the World Health Assembly (WHA 49.25 of 1996), on the 'Prevention of violence: public health

priority' and its focus on familial violence as one of the main challenges in terms of public health.

In Colombia, the Constitutional Court has adopted an approach that echoes the recommendations made by the Committee on the Elimination of Discrimination against Women as it recognises the need to change the sociocultural parameters that have created the historically unequal conditions faced by women. In that sense, it explicitly acknowledges the need to strengthen the normative framework and public policies oriented towards the protection of women's right to equality (Sentencia T-434 of 2014).

IV. Comparative conclusions.

- It is possible to see that within these five jurisdictions there is a prevalence of forms of violence that affect girls and adolescents as a sub-group of the population in a particularly severe way. Against that material background, there is a common trend in terms of a formal recognition of women's right to live a life free of violence. The most common approach is one that usually focuses on women in general and disregards the specific intersection between age and gender. The exception to this approach is Colombia, where the Constitutional Court has recognised that issues connected to girls and adolescents have to be approached from an intersectional perspective, which means that the State must adopt distinctive measures to target in differentiated way specific groups of women who are discriminated against. This appears to be a more nuanced and innovative approach to the problem, as it expressly recognises that girls and adolescents are affected by a convergence of structural factors of vulnerability which are based on their age and gender and is supported by statistic released by public bodies and non-profit organisations.

- From that perspective, there is a clear trend across the region in terms of integrating gender as a factor that orients the operation of the judiciary. In Peru for example, we see that judges are told they have to avoid gender stereotypes and preconceptions when interpreting facts and legal norms, and that they should also compensate structural violence with the purpose of achieving material equality between genders. In the same line, in Colombia courts also have a duty to adopt a gender perspective in determining the probative value of evidence. Again, we can see that in Mexico the Supreme Court has explicitly linked gender violence and sexual violence, and the former with intrafamilial violence as well. As for Argentina, it was mentioned above that gender violence is seen as an aggravating factor in terms of sentencing, and applies to those cases where the perpetrator has a history of violence against women. Brazil takes a different approach, insofar as the element of gender is taken into consideration in the context of domestic abuse more generally. All this comes to show that there is a generalised recognition that violence against women must be tackled at an institutional level, and this will of course have a knock-on effect on how girls and adolescents' rights are seen at least through the lens of their gender. While this represents a welcome step forward in terms of dealing with complex

social problems that affect women in particular, a new horizon of development of the law should go in the direction of integrating that and other factors of vulnerability.

- There is also some uniformity across jurisdictions in what concerns the formal recognition of international instruments and their integration to internal national laws (both at constitutional level as well as that of lower-hierarchy statutes and laws). However, here we can again see that this centres mainly on either the protection of women's rights, or on a broad perspective of children and adolescent's rights. However, the exact way in which this distinction is determined is not always easy to see and it seems to relate to the factual background behind each type of case. For instance, if the case concerns a girl below the age of 14 and the issue relates to sexual violence, it is likely that this will be addressed as a form of violence against children. By contrast, access to interruption of pregnancy would be typically framed in terms of women's reproductive (or non-reproductive) rights. In that sense, Colombia is also an outlier insofar as its Constitutional Court has repeatedly declared that girls and adolescents in particular, have a right to live free from all forms of violence and abuse based on international treaties.

- The interaction of indigenous justice systems and indigenous customary law is of great relevance in the region and the approach taken by each country greatly varies. In Colombia, one of the cases reported here considers the right of an indigenous girl to live free of violence which resulted in that particular case being decided by an ordinary criminal court and not in the framework of the indigenous justice system. Again, this intersectional approach does integrate several factors, and means that a much more integral understanding can be achieved. In Mexico, while no intersectional approach was adopted, in a case involving a 12-year-old girl from an indigenous community, the balance between the recognition of customary law and the child's best interest resulted in the latter prevailing. In Peru, the Supreme Court has established a series a requirement and a particularly relevant one is that in intercultural contexts the rape of girls and adolescents should be seen as a violation of their human rights, which means that there is an exclusion of settlement, economic compensation or family agreements. Moreover, anthropologic reports are compulsory to determine the correct application of limitations and exclusions of liability. In stark contrast, in Argentina a similar case meant that the respect of indigenous communities and their right to self-determination took pre-eminence, and it was deemed that it was indigenous customary law and not ordinary criminal law that had to be considered in a case involving a 9-year-old girl who was sexually abused and got pregnant. It is possible to see that in Brazil, in the context of domestic labour, girls (and among these, especially black girls) are disproportionately affected. Here an intersectional perspective would be of great assistance because as seen above, Brazilian courts tend to focus on poverty as the main factor explaining this type of violence, whereas age, gender, and ethnicity are disregarded.

- Another conclusion that can be drawn from a comparative overview of these five jurisdictions is that there is a wide variety of typologies of violence. In some cases, these have been developed by statutes (Mexico), while in other cases these categories emerge from the case law (Colombia, Argentina, and Peru). In other occasions (Brazil) the distinctions appear to be elaborated by academics and cases are grouped together as according to their contextual characteristics. Of course, some typologies are context sensitive, as for example the problem of domestic child labour is more prominent in Brazil. Another example of a problem that affects girls and adolescents and is also highly specific to the socio-political context relates to armed conflict in Colombia, where this is acknowledged as a discrete category in their typology of forms of violence.

- Additionally, an interesting and highly relevant emerging trend which can be identified in Colombia concerns applications for contact and custody of children where gender violence has been alleged. In those cases, courts will take the latter into consideration and a gender perspective will be adopted instead of a family-based one (*i.e.* one that favours the continuity of a "family" unity under the assumption that this furthers the individual interests of its members). The practical effect of this is that courts will focus on the protection of the child's best interests as well as women's fundamental rights, without assuming that shared custody and contact are the only means of safeguarding children's development.

- Turning to formal barriers the in access to justice, it is interesting that in the Mexican context, in terms of the obligations of the judiciary, the Supreme Court has ruled that in cases dealing with human rights' violations, a federal court that fails to take measures to prevent, eradicate, sanction, and repair such infringements, would trigger a serious omission by the State, an example of which would be to decline competence to decide a case involving child neglect based on geographic considerations. This is a clear removal of barriers and formal obstacles, which can be contrasted to what happens in Argentina. In the latter, geographical considerations led the Federal Court to declare that a case must be heard by the tribunal where a crime was committed, which in one case reported here was more than 1,000 miles away from where the victim lived. Moreover, another case analysed in the Argentinean country report, deals with a case of rape where the competent court was deemed to be that of the place where the perpetrator resides. This highlights how the complexity of procedural rules can constitute a significant obstacle in terms of girls and adolescents' access to the justice system.

- Moreover, while case law emanating from international courts is cited with some frequency, this is not done so in a uniform way across the analysed jurisdictions. This is more frequent is Mexico, Colombia and Argentina, while in countries such as Peru and Brazil some judgements by the IACtHR are indeed cited, but this is markedly less frequent.

- Lastly, it interesting that specific protection in terms of witness statements is uniformly considered important to avoid secondary victimisation, yet the details and how this is ultimately achieved varies from country to country. For example, in Mexico the Supreme Court has been particularly prolific in adapting the probatory value of evidence and has ruled that children have to be seen as subjects of rights, not mere objects of protection. The rules developed by the case law tackle issues ranging from the environment where witness evidence has to be collected, to issues regarding their credibility and standard of proof. In Argentina, the focus is not on children's rights, but on women being affected by sociocultural patterns of discrimination that affect the value of evidence and how investigations are run. By contrast, in Peruvian law the courts have focused on secondary victimisation of persons below the age of 14.

- In summary, there is great progress across the region in terms of integrating a gender perspective to practical issues such as interpretation of the law, but it can also be seen that specific issue of violence against girls and adolescents are relatively opaque. While in these Latin American jurisdictions the latter is occasionally recognised as a specific problem, more often the approach will be one that focuses on age or gender, and the intersection between these two and other factors is rarely seen.