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December 5th, 2019

Gender based violence as torture: the case of Linda Loaiza López Soto

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In the second blog in a series on the case of [Linda Loaiza López Soto v Venezuela](#), and to mark 16 Days of Activism, [Lisa Gormley](#) analyses how this case has developed a long-standing theme in feminist legal advocacy in understanding gender-based violence as a violation of the right not to be tortured.

The case

Ms. López Soto was kidnapped and subjected to extreme physical, sexual and psychological abuse. Her sister immediately and repeatedly reported her absence to the police, who did not admit any complaint in relation to the disappearance, on the basis that the assailant was 'her partner'. Her sister gave the police the name and telephone number of the kidnapper but nothing was done to protect Ms. López Soto from four months of violence before her rescue, when she was close to death. Police investigations favoured her assailant's false assertion that she was a prostitute, and that the injuries had been inflicted by others. The domestic judicial process, which lasted five years, failed to convict the perpetrator for sexual violence, thereby impugning Ms. López Soto's credibility and leaving her without remedies for an integral part of the violence that was perpetrated against her.

Ms. López Soto and her family claimed before the Inter-American Court of Human Rights that the State's failure to protect her from torture and to provide her with access to justice, violated the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

The significance of the Court's findings

The [Court's significant findings](#) detail the State's legal responsibility for the acts of violence committed by non-State actors when the State fails to take appropriate action to protect women known to be at risk of violence, and fails to investigate and prosecute in a competent manner which respects victims' rights. The Court also made important comments about the context of patriarchal domination in

which sexual violence takes place and how that discrimination makes gender-based violence a form of torture.

It has been a principle of international human rights law since the [Velázquez-Rodríguez v. Honduras \(29 July 1988\)](#) that when a State fails to investigate or to take reasonable steps to prevent killings, acts of disappearance, or torture, this failure incurs the legal responsibility of the State. Developing this principle the Court accepted the expert witness evidence from the former UN Special Rapporteur on torture, Juan Méndez, who said:



the indifference or inaction of the State constitutes a form of acquiescence or de facto authorization of torture. This principle applies especially when the State [...] does not make efforts to prevent gender-based violence. The lack of protection appears when the State does not protect victims from prohibited conduct; when it does not act to end torture when it

is reasonable to assume that it is aware that it may be occurring; and when the State does not proceed to investigate and prosecute the violations committed. This is because their indifference to such facts indicates their consent, acquiescence and, sometimes, justification of violence



Inter-American Court of Human Rights, paragraph 149

Applying this analysis of the law, the Court found Venezuela responsible for the torture and ill-treatment experienced by Ms. López Soto in a number of ways.

Failure to investigate abduction

The police failed to take prompt and effective measures to find Ms. López Soto when her sister first reported her abduction – even though she gave them the name and mobile number of the perpetrator. It transpired that the police called the perpetrator’s mobile but were persuaded by his story that this was “a relationship”. In fact, the perpetrator increased the violence after these calls, to punish Ms.

Lopez Soto for her family reporting her disappearance to the authorities.

A criminal code that discriminates against women

The Venezuelan Criminal Code at the time “was highly discriminatory against women, especially with regard to the definition of sexual crimes.” For example, it specified that sexual crimes committed against a woman engaged in prostitution were less serious and required less serious punishment, than crimes against other women. It also described sexual crimes as offences against “morals and good conduct” rather than as crimes of violence. The legal system was therefore not competent to provide justice for survivors of sexual violence, as it permitted impunity. It acted in fact as the State’s consent, acquiescence and justification of sexual violence, which could amount to torture.

The perpetrator took advantage of this discriminatory Criminal Code by alleging that Ms. López Soto was a sex worker. The Court determined this was intended to “distort the credibility of Linda Loaiza López’s testimony” and in accordance with the law itself deem her of “lesser value or implicitly deserving of the aggressions.” This resulted in “a scenario in the which the victim was constantly questioned and stigmatized”, both by the defence and her aggressor.



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Inadequate investigation, distorted by stereotypes

The authorities inflicted secondary victimization on Ms. López Soto, through allowing further gendered stereotypes to prejudice and distort the investigation and judicial hearing of her case. The investigators failed to carry out a victim and gender-focused examination of the totality of her experience of violence. Instead, she was confronted with the alleged perpetrator’s version of events, which became the focus of the investigation. Police and prosecutors failed to take timely forensic evidence from the apartment where she was held but focused on the alleged “romantic relationship” between Ms. López Soto and the perpetrator.

Investigation methods re-traumatised the victim of crime

The authorities failed to provide access to female medical and legal professionals to help Ms. López Soto to prepare her case. Even though it was immediately clear that she had been subjected to severe sexual violence, Ms. López Soto was required to submit to gynaecological and psychiatric investigations by male doctors, although she had specifically asked for female doctors. She was required to give numerous repetitive statements before male guards and investigators. Further questioning at the public hearing took place in the presence of the perpetrator, without any psychological assistance or accompaniment.

Gendered experience of torture

The Court identified the gendered experience of torture – how violence is used to target women and girls and how it operates within a patriarchal system.



Linda Loaiza López Soto was subjected to constant and extreme physical, sexual and psychological violence. This violence was intended to control her movement, but also to destroy her autonomy and dignity, since

[the perpetrator] controlled every aspect of her life, including her sexuality, over which the aggressor exercised exclusivity



Inter-American Court of Human Rights, paragraph 121

The Court emphasized the sexual aspect of the torture. Rape is “an extremely traumatic experience that has severe consequences and causes great physical and psychological damage that leaves the victim physically and emotionally humiliated.” Referring again to the expert evidence of Juan Méndez, the Court found that the severity of pain and suffering needs to be assessed with reference to the personal characteristics of the victim – their age, health, and particular vulnerabilities – as well as the type of harm inflicted. But even with this context-specific variation, the level of extreme pain and suffering required to prove that an assault is an act of torture is “inherent to sexual rape.”

The Court identified the “patriarchal domination” of one man over a young woman as a key factor in identifying violence against women as a form of torture.



the purpose of the aggressor was to intimidate her, annul her personality and subjugate her. In short, to affirm a position of subordination of women, as well as their relationship of power and patriarchal dominion over the victim, which demonstrates the discriminatory purpose.

[...] the Court has highlighted the transcendental role of discrimination in analyzing violations of women's human rights and their adaptation to the figure of torture and ill-treatment from a gender perspective. Therefore, the Court determines that Linda Loaiza was subjected to acts of physical, sexual and psychological torture.



Inter-American Court of Human Rights, paragraph 188

Case significance

The case provides a rich discussion of international human rights law, reviewing and approving the legal approaches to gender-based violence as a form of torture by non-State actors established in other courts and by other experts, for instance the Committee against Torture's [General Comment 2 \(2008\)](#) and the Special Rapporteur on torture's [2016 report](#) on gender perspectives on torture.

This judgment is therefore a useful consolidation of international human rights law, confirming the recognition of gender-based violence by State and non-State actors alike as a form of torture and ill-treatment.

This blog is the second in a series on the case of Linda Loaiza López Soto. You can read the first blog "Inter-American Court reaches landmark decision on torture and sexual slavery" [here](#).

Further information on the case is available in English on [CEJIL's website](#). Information about other landmark cases concerning acts of gender-based violence against women can be found on the LSE WPS ['Tackling Violence Against Women' Resource site](#).

Please note: the translations from the original Spanish judgment are unofficial, as no official translation into English is available.

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About the author



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Lisa Gormley is a Policy Fellow in the Centre for Women, Peace and Security. She is an international lawyer specialising in equality for women and girls, and the obligation of States to eradicate violence against women and girls. Currently, Lisa is developing the Centre's Tackling Violence against Women website, adding further detailed analysis of the international jurisprudence relating to violence against women, with support from the Joseph Rowntree Charitable Trust.

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