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Sexual Slavery: Linda Loaiza López Soto v Venezuela

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In the third blog in a series analysing the Inter-American Court's landmark decision of Linda Loaiza López Soto v Venezuela, Christine Chinkin, Keina Yoshida and Gema Fernández Rodríguez de Liévana looks specifically at the Court's decision on sexual slavery under Article 6 of the American Convention on Human Rights which provides that "No one shall be subject to slavery or to involuntary

servitude, which are prohibited in all their forms, as are the slave trade and traffic in women".

The decision

The Inter-American Court found that the State was responsible for enabling the torture and sexual slavery of Linda Loaiza by a private actor in Caracas, Venezuela. The decision thus builds on the Court's jurisprudence on slavery and trafficking in cases such as *La Hacienda Brasil Verde v Brasil* (2016). In *Hacienda Brasil Verde*, the Inter-American Court held that there are two fundamental elements of slavery: i) the condition or state of the individual over whom any or all of the powers attaching to the right of ownership are exercised; ii) the exercise of ownership, including manifestations of control over a person and the restriction of liberty.

The Court lists a number of components which it uses to evaluate the exercise of rights of ownership including the restriction or control of the person's autonomy, the loss of freedom of movement, the absence of consent or free will of the victim or its impossibility or irrelevance due to threats or the circumstances, a benefit or profit obtained by the perpetrator, the condition of the victim, including whether they are held in captivity, and whether there is exploitation.

In paragraphs 176-182, the Court looks specifically at sexual slavery as a particular form of slavery where sexual violence plays a primary means by which a perpetrator exercises the attributes of "property rights" over the victim. The Court reminds us that the prohibition of slavery and sexual slavery is a fundamental principle of international law from which no derogation is permitted. It relies upon the

definition of sexual slavery set out by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences in [the report](#) “Systematic rape, sexual slavery and slavery like practices during armed conflict”. In that report sexual slavery is defined as follows:

“

Slavery should be understood as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including sexual access through rape or other forms of sexual abuse. Critical elements in the definition of slavery are limitations on autonomy and on the power to decide matters relating to one's sexual activity and bodily integrity. A claim of slavery does not require that a person be bought, sold or traded; physically abducted, held in detention, physically

restrained or confined for any set or particular length of time; subjected to forced labour or forced sexual activity; or subjected to any physical or sexual violence although these are indicia of slavery

“

State responsibility

Relying upon the above, the Court held that sexual slavery is a human rights violation under Article 6 of the Convention. In addition, it engages a number of other Convention rights (3, 5, 7, 11, 22) given the intrinsic connection between physical and psychological integrity and bodily autonomy including a person's right to have control over their own body and sexuality.

The Court analysed the facts in the present case finding that from the moment that the perpetrator deprived Linda Loaiza of her liberty, until she was rescued, he exercised complete control over her movements and dominated every aspect of her life. She was handcuffed and constantly threatened. The perpetrator determined when and what she ate and when she could go to the bathroom. He exercised sexual control over her, leaving her defenceless. The Court especially noted the extreme violence he subjected her to, including repeated rape and

other sexual violence, which annulled her right to autonomy, degraded her and caused her severe humiliation, as well as the physical injuries. The Court found it imperative not only to make a finding of slavery but also to make visible the sexual character of the slavery that affects women disproportionately and forms part of the subordination and domination of women by men.

The Court held therefore that the sexual slavery is also a manifestation of discrimination against women, in contravention of Article 1.1. of the Convention. Although the Court did not cite it, this links to the understanding under international law, as first articulated under the Declaration on the Elimination of Violence against Women recognising “that violence against women is a manifestation of historically unequal power relations between men and women... by which women are forced into a subordinate position compared with men.” Similar iterations can be found by the Committee on the Elimination of Discrimination against Women (CEDAW) – who have recently updated their general recommendation no 19 – in general recommendation no 35 on gender-based violence against women.

The Court went on to consider State responsibility for the sexual slavery. The Court found that due to Venezuela’s grave omissions, it had effectively allowed the sexual slavery to take place in violation of Article 6 of the Convention. The Court had already found that State officials lacked formal training on violence against women, and their due diligence obligations, leading to inadequate responses to reports of missing women.

Case significance

The decision marks the first time that the Inter-American Court or indeed any human rights court has found a State responsible for sexual slavery following the actions of a private actor. It is a significant decision in a region where survivors continue to pursue justice for sexual slavery carried out under State control (for example in Argentina) but also in the context of high levels of violence against women, who are murdered (femicide), trafficked and held in sexual slavery by non-State actors.

As the judgment notes, States have an obligation under the Convention to prevent, investigate, prosecute and punish trafficking and sexual slavery. To this end they must ensure that training and mechanisms are in place to ensure immediate and effective action when they receive a report that a woman has disappeared. They must also ensure that their actions are not distorted by gender stereotypes, for instance that she is a prostitute or that she 'escaped' with her boyfriend, or the alleged perpetrator is a respectable member of the community, messages that were also made strongly to Guatemala in the case of *Claudina Paiz v Guatemala*.

Adopting a holistic approach

Sexual slavery has previously been understood as an international crime, listed as such as a war crime and a crime against humanity in the Rome Statute of the International Criminal Court. This ground-breaking judgment acknowledges that the same elements of absolute control, violence and denial of autonomy can be exercised by one person over another in a situation where there is no overt conflict and a single victim. Recognition that such behaviour is not solely a crime for which the individual is responsible but can also constitute a

violation of human rights law emphasises the State's due diligence obligation to adopt a holistic approach to tackling violence against women and ensuring that all involved put it into effect. Failure to do so incurs State responsibility including the obligation to make adequate reparation to the victim. This judgment is thus an important step forward in eradicating this scourge.

The background facts of the case are set out in our first blog available [here](#). A second blog by Lisa Gormley provides an analysis of the Court's findings in relation to torture, which is a significant part of the judgment, which can be read [here](#).

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About the author



Christine Chinkin is a leading expert on international law and human rights law, especially the international human rights of women. In 2000, her co-authored, ground-breaking book with Hilary Charlesworth, 'The Boundaries of International Law: a feminist analysis' examined the status of women in human rights and international law'. In 2005, in recognition of this and other contributions, Chinkin and Charlesworth were awarded the American Society of International Law, Goler T. Butcher Medal 'for outstanding contributions to the development or effective realization of international human rights law'.



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Keina is a Research Officer in the Centre for Women, Peace, and Security, where she works on the AHRC funded project Feminist Approaches to the International Law of Peace and Security (FILPS). Keina is researching the links between the environment, nature, sustainable development goals, the gendered causes and impacts of violence against women, and structural inequalities in the context of international legal conceptions of peace and security.



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