

The Impact of the Inter-American Human Rights System on Nation States' Compliance with the Beijing Platform for Action

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The following true story illustrates the challenges of gender-based violence in Latin America:

Between the ages of 14 and 16, Paola del Rosario Guzmán Albarracín was subjected to serious instances of sexual violence by the assistant principal at her Ecuadorean high school; believing that she was pregnant, Paola attempted suicide by swallowing diablitos (fireworks). Her condition deteriorated while she was at school, but instead of receiving urgent medical care that could have saved her life, she was ordered by her school to merely pray for forgiveness. Soon after, she died from the poison.¹

Twenty-five years after the adoption of the *Beijing Platform for Action* ('*Beijing Platform*'), it remains difficult to discern whether global processes, which provide nations with mechanisms that protect and promote gender-based rights, truly influence the adoption of norms at the local community level. As part of its overarching goal to eradicate gender inequality,² the *Beijing Platform* tasks governments with taking integrated measures to prevent and eliminate violence against women.³ Gender-based violence is acknowledged to perpetuate structural inequalities. It is 'multi-causal, systemic and fundamental to the ongoing oppression of women',⁴ and it preserves longstanding barriers for women accessing their social and economic rights,⁵ including accessing education. By tasking governments to challenge and deconstruct these barriers and structures and to develop acceptable mechanisms to protect and promote rights, the *Beijing Platform* aspires to combat '[p]hysical, sexual and psychological violence occurring within ... educational institutions ...'⁶ and to address the 'discrimination in girls' access to education [that] persists owing to customary attitudes ... [and] sexual harassment'.⁷

¹ See *Guzman Albarracin v Ecuador* (Merits, Reparations and Costs) (Inter-American Court of Human Rights, Series C No 205, 24 June 2020) ('*Guzman Albarracin v Ecuador*').

² *The Beijing Declaration and the Platform for Action: Fourth World Conference on Women*, Beijing, China, 4-15 September 1995, GA Res 50/203, UN Doc A/CONF/177/20 (27 October 1995) ('*Beijing Platform for Action*').

³ *Ibid* Strategic Objective D.

⁴ World Health Organisation, *Responding to Intimate Partner Violence and Sexual Violence against Women – WHO Clinical and Policy Guidelines* (2013); See also, Mary White Stewart, *Ordinary Violence: Everyday Assaults Against Women Worldwide* (Praeger 2014) 44.

⁵ See, eg, Beth Goldblatt, 'Violence Against Women and Social and Economic Rights' in Susan Harris Rimmer and Kate Ogg (eds), *Research Handbook on Feminist Engagement with International Law* (Elgar 2019) 362.

⁶ *Beijing Platform for Action* (n 2) s 113(b).

⁷ *Ibid* s 71.

Regional human rights bodies, such as the Inter-American Court of Human Rights ('Court'), have incorporated the principles of the *Beijing Platform* into their jurisprudence by integrating mechanisms that encourage nations to protect and promote rights. In line with this, the Inter-American Human Rights System ('IAHRS') includes what is considered to be a highly progressive international legal framework to protect gender-based rights. A particular strength of this system is its companion framework concerning violence against women, which has been used by the Court and the Inter-American Commission of Human Rights ('Commission') over the past 20 years to develop advanced norms and jurisprudence regarding violence against women. The objectives of the *Beijing Platform* are actioned by the Court and Commission in the development of gender-based norms with respect to violence against women and girls in accessing their social and economic rights, for example in the education sphere. Despite the theoretical strengths of this system, it is clear that, if there is no adoption of these norms at the local level, the objectives of the Court, the Commission and the *Beijing Platform* will be stymied. By way of illustration, even well-constructed regional norms will not translate to safe and accessible education experiences for girls if the same norms are not accepted and adopted in all aspects of girls' interactions with their local communities.

This paper begins by identifying the relevant portions of the *Beijing Platform* concerning violence against women and access to social and economic rights, specifically focusing on access to education, and provides a brief overview of global developments aligning with the objectives of the Platform. Next, it explores the development of gender-based norms by the IAHRS, focusing on the more recent identification of the intersection of gender-based violence and economic and social rights. It then uses the theory of vernacularisation to hypothesize as to whether the decisions of the IAHRS have the ability to influence local community actors to adopt and use such norms. Finally, as there is a gap in literature on this issue, the author suggests that further research is needed to confirm this hypothesis.

Beijing Platform for Action and global developments of its strategic objectives

Violence against women has for many years been recognized to impede women's and girls' access to economic and social rights, including their access to education. The *Beijing Platform* identified both 'Violence Against Women' and Education as strategic objectives in need of action. Under the *Beijing Platform*, 'the term "violence against women" means any act of

gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering'.⁸ This encompasses violence occurring in educational institutions.⁹ Nations are tasked with taking 'integrated measures to prevent and eliminate violence against women'¹⁰ and have been provided with a list of actions to achieve this goal. For example, governments are to support the expansion of educational programmes that 'take into account the importance of such education and services to personal development, as well as the urgent need to avoid ... such phenomena as sexual violence and abuse.'¹¹

Attention to 'violence, resistance, and the struggle of women' is common in Latin American feminist discourse.¹² In the preconference process, it became clear that a focal point of the Beijing Conference would be violence against women, converging with the recent activism of Latin American feminists that led to the adoption of the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* ('Belém do Pará Convention')¹³ in 1994. As a result, participation of Latin American feminists, although traditionally low at UN conferences, substantially increased at Beijing.¹⁴ The Latin American and Caribbean NGO Forum ('Latin American Forum') in Beijing, while acknowledging the importance of the discourse around violence against women, brought attention to several other issues that are instrumental to achieving gender equality. They expressed concern about the lack of progression of economic justice, called for the 'formulation of economic policies centered on people' and demanded a commitment to provide 'the necessary institutional mechanisms and resources to guarantee the implementation' of the objectives of the *Beijing Platform*.¹⁵ They highlighted that without advances of economic and social rights, eradication of gender-based violence would remain elusive.

⁸ *Beijing Platform for Action* (n 2) s 113.

⁹ *Ibid* s 113(b).

¹⁰ *Ibid* Strategic Objective D1.

¹¹ *Ibid* s 83(l).

¹² Marisa Ruiz Tejo and Ana Laura De Giorgi, *Feminist Theories from the Global South: Latin American and Decolonial Approaches*, paper prepared for the International Studies Association Congress, Toronto March 26-30, 2019, 9.

¹³ *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* ('Convention of Belém do Pará'), opened for signature 9 June 1994, 1438 UNTS 63 (entered into force 5 March 1995).

¹⁴ Sally Cole and Lynne Phillips, 'The Violence Against Women Campaigns in Latin America' (2008) 3(2) *Feminist Criminology* 145, 155.

¹⁵ Virginia Vargas, 'Presentation by Virginia Vargas, Coordinator of the Latin American and Caribbean NGO Forum, Fourth World Conference on Women' (Beijing, 13 September 1995) <<https://www.un.org/esa/gopher-data/conf/fwcw/conf/ngo/14123221.txt>>.

Since Beijing, globally there has been a proliferation of domestic legislation focused on eradicating violence against women. Currently, two-thirds of nations have legislation to prohibit domestic violence and even more have enacted legislation regarding sexual harassment.¹⁶ In Latin America, the increase in laws regarding gender-based violence coincided with the adoption of the *Belém do Pará Convention*,¹⁷ which came into effect the same year as the *Beijing Platform*. All Latin American and Caribbean countries have adopted the *Beijing Platform* and ratified the *Convention of the Elimination of Discrimination against Women*,¹⁸ in addition to embracing the *Belém do Pará Convention*. Further, between 1993 and 2000, almost every Latin American nation adopted legislation targeting domestic violence.¹⁹

In spite of these advancements, violence against women remains endemic. Globally, one in three women have suffered violence²⁰ and Latin America has the highest occurrence of gender-based violence against women in the world.²¹ Of the nations with the highest rates of femicide, more than half are located in Latin America²² and violence against women is widespread in both the private and the public domain.²³ Additionally, the outbreak of COVID-19 has prompted an escalation in gender-based violence, particularly in the home.²⁴ An increase in reports of domestic violence has taken place in most nations worldwide, with up to a 40 percent

¹⁶ UN Women, *Twelve Critical Areas* (Web Page) <<https://www.unwomen.org/en/news/in-focus/csw59/feature-stories>>.

¹⁷ *Convention of Belém do Pará* (n 13); Similar conventions were not adopted in other regions until much later. The *Maputo Convention* was approved as a *Protocol to the African Charter on Human and Peoples' Rights* in 2003 (to date there is no jurisprudence) and in 2011, the *Istanbul Convention* was adopted by the Committee of Ministers of the Council of Europe.

¹⁸ *United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

¹⁹ Elizabeth Jay Friedman, 'Re(gion)alizing Women's Human Rights in Latin America' (2009) 5 *Politics and Gender* 349, 349.

²⁰ UN Women, *The Beijing Platform for Action Turns 20* (Web Page) <<https://beijing20.unwomen.org/en/in-focus/evaw>>.

²¹ Plan International, *Surge in Violence Against Women and Girls in Latin America* (New and Press Release, 19 May 2020) <<https://plan-international.org/news/2020-05-19-surge-violence-against-girls-and-women-latin-america-and-caribbean>>; Social Institutions and Gender Index, *SIGI 2020 Regional Report for Latin America and the Caribbean* (OECD 2020).

²² OECD, *Gender Equality: Addressing Femicide in the context of rampant violence against women in Latin America* (Gender Equality Data, 2018) <https://www.oecd.org/gender/data/addressing-femicide-in-the-context-of-rampant-violence-against-women-in-latin-america.htm>>.

²³ Conny Roggeband, 'Ending Violence against Women in Latin America: Feminist Norm Setting in a Multilevel Context' (2016) 12 *Politics and Gender* 143, 143.

²⁴ UN Women, *Press Release: Leaders Reignite the Vision of the Beijing Platform for Action* (Press Release, 2 October 2020) <https://www.unwomen.org/en/news/stories/2020/10/press-release-leaders-reignite-the-vision-of-the-beijing-platform-for-action>>.

rise in some.²⁵ There remains significant work ahead to achieve the objectives of the *Beijing Platform*.

Development of gender-based norms regarding Violence Against Women within the IAHRs

In line with the objectives of the *Beijing Platform*, the IAHRs has been tasked with the objective of eradicating violence against women.²⁶ One mechanism for achieving this objective is through development of gender-based norms in the rulings of the adjudicatory bodies of the Court and the Commission.²⁷ The *Belém do Pará Convention* provides the Court and the Commission with the jurisdiction to use a gender-based lens when ruling on cases involving violence against women. The norms developed by the IAHRs, if adopted and applied at the local community level, would provide a framework for addressing gender-based violence as it intersects with violations of economic and social rights, for example concerning institutional biases in the educational sphere.²⁸

The *Belém do Pará Convention* recognises women's entitlement 'to the free and full exercise of her ... economic and social ... rights ... [and] recognize[s] that violence against women prevents and nullifies the exercise of these rights'.²⁹ While research indicates that the Court has been applying the *Belém do Pará Convention* to develop gender-based norms targeting violence against women for over 20 years, it is only since 2016 that cases have examined the overlap of violence against women and girls and access to institutions providing for economic and social rights, such as national health and education systems.

Globally, the adjudication of economic and social rights is a relatively recent phenomenon.³⁰ Traditionally, there was a bifurcation between civil and political rights, considered to be

²⁵ UN Women, *As COVID-19 Exposes the Fault Lines of Gender Equality, a Strong Focus on Violence Against Women at the UN General Assembly* (Press Release, 29 September 2020) <<https://www.unwomen.org/en/news/stories/2020/9/press-release-focus-on-violence-against-women-at-the-un-general-assembly>>.

²⁶ *Convention of Belém do Pará* (n 13); *American Convention on Human Rights (Pact of San Jose, Costa Rica)* (B-32), opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978).

²⁷ The decisions of the Court are binding on nation states signatory to the *American Convention on Human Rights*. The *Convention of Belém do Pará* provides recourse to the Inter-American Commission on Human Rights for denunciations or complaints of violations of Article 7 of the *Convention*. If not satisfied with the State's response to a negative finding, the Commission may refer the case to the Inter-American Court of Human Rights.

²⁸ See *Guzman Albarracin v Ecuador* (n 1).

²⁹ *Convention of Belém do Pará* (n 13) art 5.

³⁰ Katharine Young, *Constituting Economic and Social Rights* (Oxford University Press, 2012) 1-2.

enforceable, and economic and social rights, considered not suitable for judicial enforcement and to require extraneous expenditure and positive action from the state, placing too great a burden on developing states in particular.³¹ It is clear that, as evidenced in the call for action by the Latin American Forum in Beijing, economic and social rights should ‘occupy a central role in human rights thinking and action ... and are especially important to human freedom, equality and dignity’.³² Despite this, these rights, which have always been evident in international conventions, have only recently been adopted as ‘enforceable obligations’.³³ Consequently, there is scant literature addressing the adjudication of gender-based violations that also determine violations of economic and social rights. Although there have been limited cases addressing these overlapping concerns, an analysis of recent jurisprudence from the IAHRs provides a starting point for a vital new discussion.³⁴

It is useful to consider the prior mentioned complaint against the government of Ecuador, in order to highlight the prevalence of sexual violence in Latin American schools and the need to promote norms and provide reparations that address the overlapping complexities of gender-based violence and access to education. In the case referred to in the introduction, *Guzman Albarracín v Ecuador*, Paola del Rosario Guzmán Albarracín, a student at a public school, died as a result of inadequate care after a suicide attempt in 2002 after being subjected to sexual violence by the Vice Principal and doctor at her school between the ages of 14 to 16. Other members of the school administration were aware of the ongoing relationship and failed to report the matter or to assist Paola in an appropriate manner. In June 2020, the Court held that the state of Ecuador had violated numerous rights under both the *American Convention on Human Rights*³⁵ and the *Belém do Pará Convention*, and identified how gender-based violence detrimentally impacted Paola’s right to education. The Court determined that gender-based stereotypes facilitated discriminatory practices enabling sexual violence against a minor to continue for over 18 months within a school setting and led to further violations of rights within the Ecuadorean judicial system. The reparations provided specific recourse for Paola’s surviving family members as well as steps for the government to take in order to eradicate gender stereotyping that hinders girls’ access to education. These included, but were not limited

³¹ Ibid 5.

³² Ibid 4.

³³ Ibid 6. There has been ‘a surge in both enacted laws and in justiciable claims’ with respect to economic and social rights.

³⁴ *Guzman Albarracin v Ecuador* (n 1).

³⁵ *American Convention on Human Rights (Pact of San Jose, Costa Rica)* (B-32), opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978).

to, identifying measures to: gather statistical information on violence against girls and boys in the school system; detect and denounce cases of sexual violence; train educational personnel on the protection and prevention of sexual violence; and provide assistance and attention to victims of sexual violence and/or their families.³⁶ Ecuador must also declare an official national day for the fight against sexual violence in the education system.³⁷

In this case the Court identifies that endemic discriminatory practices within educational systems are aggravated by social and cultural beliefs perpetuating negative gender-stereotyping. The result is the promotion and facilitation of violence against women and girls. Recognizing that legislative and policy changes will not be sufficient to address these institutionalised and harmful norms, the Court also mandated social reparations aimed at targeting systemic violence and discrimination in the educational sphere. The Court continues to review State compliance with the orders. Future research is needed to determine whether the reparations mandated in this case has had a practical effect at the local community level.

Influence at local level – Vernacularisation

Through the process of localisation, in which ‘local actors’³⁸ appropriate global discourses’,³⁹ gender-based norms developed by the Court may be adopted at the community level of the relevant nation. Ideas and practices from international and regional human rights bodies may be adapted by local actors in a manner that resonates with values and practices at the local level.⁴⁰ Sally Engle Merry, who developed the theory of localisation, emphasises that localising norms is important, because communities have a wealth of alternative perspectives on rights and norms that affect how they respond to developments in the international sphere.⁴¹ She contends that the localisation process enables norms to be translated in a style and manner that is understandable at the local level, enhancing the norm’s effect.

While this process assists in introducing norms, developed at the regional level, to local communities, at the same time the theory suggests that new concepts are unlikely to be accepted

³⁶ *Guzman Albarracin v Ecuador* (n 1) [236]-[241].

³⁷ *Ibid* [230].

³⁸ Often local NGOs or civil society movements.

³⁹ Sally Engle Merry and Peggy Levitt, ‘The Vernacularization of Women’s Human Rights’ in Stephen Hopgood et al (eds), *Human Rights Futures* (Cambridge University Press, 2017) 214.

⁴⁰ *Ibid* 213.

⁴¹ *Ibid*.

at the community level unless they resonate with existing values. Engle Merry posits that, through a process described as ‘vernacularisation’, ideas must be refined and rejected and then adapted to local meaning. Inevitably, ideas that are reshaped during the vernacularisation process may have little resemblance to the original concept.⁴² Accordingly, vernacularisation is not a type of homogenization.⁴³ In this way the process of localisation acts as a restriction on the transformational influence of human rights norms developed at the regional level.⁴⁴

Similarly, Katherine Young argues that even when legislation is passed with respect to economic and social rights, one must take into consideration not just the text of the new law, but what the people who are governed by the law actually accept as constituting the law, and there are often plurality of understandings.⁴⁵ Consequently, jurisprudence from Court cases, which inspire new domestic legislation or regulations, may not be used at the local level unless there is already an accepted in-country movement for change. These theories may be explored by reflecting back on the case of *Guzman Albarracín v Ecuador*.

Gender-based violence pervades all levels of society in Ecuador. Approximately 65 percent of Ecuadorean women experience violence during their lifetime.⁴⁶ According to a joint study by UNICEF, World Vision and the Ecuadorean Ministry of Education, 60 percent of students have experienced violence at school, and as a consequence 16 percent of female students have contemplated suicide.⁴⁷ Cases similar to that of Paola Guzman Albarracín continue to occur. During 2017, in Quito, the capital of Ecuador, 41 students from one single-sex girls’ school reported being sexually abused by school personnel, adding to similar reports of sexual abuse from other local schools.⁴⁸ One can assume that many other cases go unreported. These figures

⁴² Ibid 234.

⁴³ Ibid 235; See also, Sally Engle Merry, ‘Transnational Human Rights and Local Activism: Mapping the Middle’ (2006) 108(1) *American Anthropologist* 38, 38.

⁴⁴ Engle Merry and Levitt (n 39) 235.

⁴⁵ Young (n 30) 7-8.

⁴⁶ Instituto Nacional Estadísticas y Censos (INEC), *Encuesta Nacional sobre Relaciones Familiares y Violencia de Género contra las Mujeres* (Techinical Bulletin, Noviembre 2019) 7 <https://www.ecuadorencifras.gob.ec/documentos/web-inec/Estadisticas_Sociales/Violencia_de_genero_2019/Boletin_Tecnico_ENVIGMU.pdf>.

⁴⁷ Ecuador, Ministry of Education, UNICEF and World Vision, *Una Mirada en Profundidad al Acoso Escolar en el Ecuador* (Report, May 2018) 30, 50 <<https://www.unicef.org/ecuador/informes/una-mirada-en-profundidad-al-acoso-escolar-en-el-ecuador>>.

⁴⁸ Gabriela Quiroz and Fernando Medina, ‘La Comisión Aampetra de la Asamblea revela negligencia en 30 casos de abuso sexual en escuelas’ (El Comercio News Report, 22 November 2017) <<http://www.elcomercio.com/actualidad/aampetra-negligencia-casos-abusosexual-escuelas.html>>.

suggest that educational institutions in Ecuador continue to support an environment in which gender-based discrimination results in gender-based violence.

In its decision, the Commission expressed concern with the prevalence of sexual violence and gender-based discrimination of women and girls in education, and ‘consider[ed] that certain widespread social and cultural beliefs may obstruct the pursuit of education policies capable of guaranteeing the rights to education inasmuch as they promote or facilitate forms of socialisation contrary to the dignity of persons.’⁴⁹ In the subsequent decision, the Court recognized the preconceived gender-bias evident in the decision of the Superior Court of Guayaquil 15 years earlier, which held that the Vice Principal was not guilty of sexual assault, as Paola Guzmán Albarracín, a fourteen year old, had seduced him.⁵⁰ The fact that the power imbalance between the parties was not taken into consideration is indicative of the underlying culture that facilitates such violence.

Evidence demonstrates that in cases of sexual harassment and violence within the Ecuadorean school system, girls are frequently blamed by their community, and even within their homes, of instigating relationships with the accused, who are teachers and supervisors at their schools.⁵¹ This suggests that, alongside the fact that there is no societal norm that condemns the actions of the accused in such power-disparate relationships, many students and their families are unwilling to come forward to denounce a perpetrator of sexual violence although there are complaint mechanisms in place. Social concepts and practices such as these not only hinder the adoption and acceptance of new norms, but also reinforce current negative norms; girls and women often internalise such community values and blame themselves for abusive relationships.⁵² Accordingly, the norms of the Court concerning gender stereotyping of girls at school hold no power to change the communities’ perceptions if there is no existing acceptance of the purported norms at the community level. Without this acceptance, any adaptation of norms through localisation is unlikely to result in substantial change.

⁴⁹ *Guzman Albarracin v Ecuador* (Report on Merits) (Inter-American Commission of Human Rights, Report No 76/08, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, 5 October 2018) [116].

⁵⁰ *Guzman Albarracin v Ecuador* (n 1) [190]- [191].

⁵¹ Centre for Reproductive Rights, *Call to Address Institutional Violence in Latin American Schools* (Report, 1 November 2011) <<https://reproductiverights.org/press-room/call-to-address-institutionalized-sexual-violence-in-latin-america%E2%80%99s-schools>>.

⁵² Gabriela Bustamante et al, ‘I have the Right to Feel Safe: Evaluation of a School-based Child Sexual Prevention Program in Ecuador’ (2019) 91 *Child Abuse and Neglect* 31, 33-7.

Concluding observations:

Twenty-five years later, it is clear that the principles of the *Beijing Platform* have been incorporated into the jurisprudence of the Court and Commission, however, it remains uncertain as to whether they have translated into local communities. The continuing prevalence of violence against women and girls in Latin America suggests that they have not. According to the theory of vernacularisation, it is likely that values and practices necessary to enable the adoption of the regional norms have not yet been embraced at the local community level. Further research, gathered through interviews with those communities involved, needs to be conducted in order to determine whether the gender-based norms developed at the regional level have trickled down in any form to the local level. The author intends to conduct such research in Ecuador once the government and local community have time to respond to the reparations mandated by the Court in *Guzman Albarracin v Ecuador*.

The significance of this research is clear, as it aims to fill a large gap in legal literature with respect to the evolving recognition by the Court and Commission of the intersection between gender-based violence and economic and social rights. For many years, economic and social rights have remained in the shadow of civil and political rights, receiving little attention from the human rights movement and courts and being regularly relegated to the sphere of development.⁵³ At Beijing, the Latin American Forum emphasized the significance of committing institutional mechanisms and resources to guarantee the implementation of the *Beijing Platform*, particularly in regard to these rights.⁵⁴ The Court's recent jurisprudence, recognizing the overlap of violence against women and their access to economic and social rights, responds to the appeal of the Latin American Forum by encouraging the justiciability of economic and social rights as 'enforceable obligations'.⁵⁵ While it is evident that groundbreaking changes with respect to economic and social rights are occurring at the regional level, it remains to be determined whether these developments will influence local communities, and hence the lives of women and girls, as intended. In conclusion, despite many promising advancements within the regional sphere, the lived effects remain unseen; this demands further research.

⁵³ Katherine Young, *The Future of Economic and Social Rights* (Cambridge University Press 2019) 1. Economic and social rights protect our fundamental 'material' interests and as such are often perceived under the classical liberal paradigm of 'statist protection of so called' 'negative rights' or are associated with the 'market's promotion of welfare'.

⁵⁴ Vargas (n 15).

⁵⁵ Young (n 53) 6.