

# **STRUCTURAL SEXUAL VIOLENCE IN THE PERUVIAN MILITARY**

An Empirical Study of Discrimination against Women and its consequences  
in the Peruvian Armed Forces



University of Oslo

Faculty of Law

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Candidate Number: 8020

Supervisor: Cecilia Marcela Bailliet

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*To the anonymous voices of female soldiers who contributed  
to this thesis with their valuable testimonies*

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## Abbreviations

|        |  |
|--------|--|
| CEDAW  | Convention on the Elimination of all Forms of Discrimination against Women     |
| CESCR  | Committee on Economic, Social and Cultural Rights                              |
| GC     | General Comment  |
| IACHR  | Inter-American Commission of Human Rights                                      |
| ICCPR  | International Covenant on Civil and Political Rights                           |
| ICESCR | International Covenant on Economic, Social and Cultural Rights                 |
| ICJ    | International Court of Justice   |
| MRTA   | Revolutionary Movement Tupac Amaru   |
| P.A.F  | Peruvian Armed Forces  |
| PTRC   | Peruvian Truth and Reconciliation Commission                                   |
| SANAF  | Servicio Activo No Acuartelado Femenino (Non-billeted Active Feminine Service) |
| SL     | Sendero Luminoso (The Shining Path)  |
| UN     | United Nations   |
| UNHCR  | United Nations High Commissioner for Refugees                                  |
| WHO    | World Health Organization  |

## I. INTRODUCTION

Sexual violence within the Military is not an open issue for discussion in Peru. We know that it exists because of the very limited number of incidents that reach the media and are publicly examined.<sup>1</sup> However, neither politicians nor scholars have paid proper attention to this issue.

The aim of this thesis is to analyze structural sexual violence within the Peruvian Armed Forces (hereinafter P.A.F). The study will examine not only the acts of sexual violence per se, but also consider the situation of gendered discrimination in which women are placed. Through a human rights approach, it will explore the link between gendered discriminatory policies implemented by the Peruvian State and the permissiveness of sexual violence within the Military.

### 1.1 Research objective and questions

The purpose of this thesis is to analyze the link between gendered discriminatory policies implemented by the Peruvian State and the occurrences of sexual violence within the Peruvian Military. This is achieved by addressing the following questions:

- How women in general and female soldiers in particular are protected from discrimination by international law?

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<sup>1</sup> The following cases may be considered a sample of sexual violence within the Military: Andrea Zapata Lopez, a cadet at the Navy Academy for Officers, who reported that on November 8<sup>th</sup>, 2007 she was sexually harassed and subjected to reprisals; see: <http://informedegestion1.blogspot.com/2009/07/iv.html>. Diana Bazan Hidalgo, a cadet of the Air Force Academy for Officers, who reported that she was raped by a male officer in her dormitory at the Academy on December 15<sup>th</sup>, 2007; see: [http://www.rpp.com.pe/2009-02-19-madre-de-cadete-diana-bazan-pide-al-estado-reparacion-por-caso-de-hija-noticia\\_165447.html](http://www.rpp.com.pe/2009-02-19-madre-de-cadete-diana-bazan-pide-al-estado-reparacion-por-caso-de-hija-noticia_165447.html). Sadith Raymondi Bazan, a female conscript serving in the Army, who reported that she was raped by a senior officer after being drugged, between August 14<sup>th</sup> and 15<sup>th</sup>, 2008; see: <http://peru21.pe/noticia/215907/separan-al-mayor-ejercito-acusado-violar-recluta>. Karla Vargas Torrejon, a cadet in the Army Academy of Chorrillos, reported that she was sexually harassed by two senior officers in September 2008. In reprisal for the report, she was separated from the Academy two weeks before graduation; see: <http://www.larepublica.pe/archive/all/larepublica/20081019/pasadas/13/167779>. Shirley Castillo, cadet at the Technical School of the Army, reported that she was raped on April 8<sup>th</sup>, 2010 by the School's director and subsequently taken to the Military Hospital where she was forcibly confined at the Mental Health Department for 45 days; see: <http://www.larepublica.pe/sociedad/14/06/2010/cadete-denuncia-violacion-0>.

- What is the profile of Peruvian female soldiers and what do they expect from their participation in the Military?
- What are the consequences of discriminatory policies against women who are subjected to socio-economic vulnerabilities?
- Are occurrences of sexual violence against female soldiers linked to gendered discriminatory policies?

## 1.2 Relevance of the Study

The elimination of sexual violence against women is a worldwide concern. The General Assembly of the United Nations has declared that violence against women has its roots in the historically unequal power relations between men and women, and that violence seriously limit the capacity of women to make use of their aptitudes.<sup>2</sup> This declaration follows the same rationale provided in the Preamble of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter Convention of Belém do Pará),<sup>3</sup> which is the instrument *par excellence* regarding to the issue of violence against women in the Inter-American system.<sup>4</sup>

Recently, the Inter-American Court of Human Rights have issued important decisions that condemn the failure of the States in comply with its obligations to the Convention of Belém do Pará: the prevention, punishment and eradication of acts of violence.<sup>5</sup>

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<sup>2</sup> Resolution adopted by the General Assembly: 63/155. Intensification of efforts to eliminate all forms of violence against women (A/RES/63/155)

<sup>3</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará); General Assembly of the Organization of American States (1994). Ratified by Peru on February 2<sup>nd</sup>, 1996.

<sup>4</sup> Art. 1 of the Convention of Belém do Pará provides that “violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”

<sup>5</sup> See the cases of: “*Miguel Castro-Castro Prison v. Peru*” (Merits, Reparations and Costs), Inter-American Court of Human Rights Series C, No. 160. (November 25, 2006). The case handles on the violent attacks committed by State agents, to which male and female prisoners were victims from May 6 to May 9, 1992. Prisoners were killed under the attack and male and female inmates, including pregnant women, had to flee to avoid gunfire. Female inmates were subjected to several conducts of sexual violence during the following days of detention, including forced nudity in front of male State agents, digital penetration, lack of hygienic supplements and lack of pre and post partum care. The court held the Peruvian State responsible for the participation of its State agents in the forced nudity of female inmates. See also “*González et al. (“Cotton Field”) v. Mexico*”, (Preliminary



In spite of the advancements in the implementation of the Convention of Belém do Pará, sexual violence in Peru seems to be increasing. The World Health Organization (hereinafter WHO) found in its Multi-country Study on Women's Health and Domestic Violence against Women that 28 percent of Peruvian women living in Lima (the capital city) and 32 percent of Peruvian women living in province had reported that they had suffered sexual violence by other person than their partners at least once since they were over the age of 15 years old.<sup>6</sup> Between the years 2007 and 2008 the annual reports on rape in Lima went from 2939 to 3658, showing an increase of more than 24 percent.<sup>7</sup>

Even though a register of cases of sexual violence within the Peruvian Military does not exist, serious reports -especially on sexual harassment and rape- have been released in the media,<sup>8</sup> which gives us clear signals that there are multiple violations of women's rights in this institution. The respond of the Peruvian State to the reports on sexual violence follows a traditional approach. The Ombudsman Office in Peru, facing the cases released by the media, has focused the battle against sexual violence within the Military on a joint project<sup>9</sup> together

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Objection, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No. 205; November 16, 2009. The Court held the State of Mexico responsible for not investigating the disappearance, torture and death of three women, two of them minors, whose bodies were found in a cotton field outside of Ciudad Juarez in Mexico. Hundreds of women have been murdered under a context of gender violence in the past 16 years. In addition, the Court established that violence against women may constitute gender discrimination. See also "*Fernandez-Ortega et al. v. Mexico*", (Preliminary Objection, Merits, Reparations and Costs) August 30, 2010; Series C No. 215. The Court recognized that acts of sexual violence may constitute torture when committed by the members of the Armed Forces. It does not matter whether the acts were performed in State's facilities or not.

<sup>6</sup> WHO "Multi-country Study on Women's Health and Domestic Violence against Women: initial results on prevalence, health outcomes and women's responses." Claudia García-Moreno et al, p. 43. (January 2005)

<sup>7</sup> Ministerio Publico, Statistical yearbook 2008 (March 2009). It must be noted that statistical data is not always reliable in cases of sexual violence; the psychological stress which to victims are exposed and the social stigma placed upon sexual crime victims cause that reports to police are only a fraction of the real quantity.

<sup>8</sup> See note 1.

<sup>9</sup> The project attempts to look for a viable solution to sexual violence, focusing on three aspects: First, Military Instruction which includes the impartment of courses on Ethics, Regulation of Conduct and Sexual harassment, leadership and motivation, etc., considering that this training would help strengthen discipline within the institution; the implementation of a permanent service of surveillance during nights in order to check that routine activities are not disturbed; and the implementation of strict rules for the displacement of male and female military personnel inside the barracks. Second, Academic Instruction which provides psychological and

with the High Commanders of the P.A.F.<sup>10</sup> The project only focuses the solution from a civil and political rights approach, protecting *inter alia* the right to physical integrity,<sup>11</sup> the right to personal liberty and security,<sup>12</sup> and the right not to be subjected to torture.<sup>13</sup> No attention has been brought to the conditions under which female military personnel, especially during the first years of instruction or military service, are placed within this institution, or the effects of discriminatory policies may have with regard to gendered violence.<sup>14</sup> No analysis has been done on the serious socio-economic reasons that force female personnel to remain within the Military either.

Thus, the traditional approach to the issue of sexual violence, which focuses solely on the civil and political rights, does not provide the necessary support for women nor the solution to this issue. It is necessary to search for a more comprehensive approach. The fight against sexual violence demands that socio-economic rights should also be taken into consideration, recognizing that issues affecting women must not only be focused on their bodies and physical liberties, but also in the surrounding circumstances and the way they are perceived in society.

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legal consultation for male and female personnel; and guidance for the report of sexual harassment. Third, Well-being which sets better conditions with regard to infrastructure (improvement of dormitories, kitchens, toilets, etc). Information obtained from Communication NC-120-COFA-INSG-No 0632 on August 19, 2009 where the Chief Commander of the Peruvian Air Force informs the Deputy Ombudsman for Women's Rights about the mechanisms the Military is implementing to improve the disciplinary aspects of the institution. Copy in my power.

<sup>10</sup> The P.A.F have not recognized the existence of an issue of sexual violence against female military personnel within this institution. They only recognize the existence of isolated incidents.

<sup>11</sup> Convention of Belém do Pará, Art. 4(b)

<sup>12</sup> Ibid, Art. 4(c)

<sup>13</sup> Ibid, Art. 4(d)

<sup>14</sup> Race-based discrimination in the Peruvian Armed Forces is also an issue that must be consciously analyzed. There is not reliable data on the percentages of participation of military with regard to place of origin or ethnicity, but a study suggests that most of the population at Non-compulsory Military Service comes from the highlands and the Amazonas region, and only a minimum fraction of the population comes from the costal area (Lima and main cities). Thus, it seems that the positions at the Non-compulsory Military Services are filled with poor indigenous people who probably will participate in hostilities while Peruvians of Hispanic origin living in the main cities do not participate in the Military Service. See: Manuel Piqueras; "Etnicidad, Ejército y Policía en el Perú: Una aproximación" (Ethnicity, Army and Police in Peru: an approximation) Informe de investigación. Lima: CISEPA, 2007.

### **1.3 Scope and limitation of the study**

#### **1.3.1 Scope**

In Peru, sexual violence against women has received substantial attention under two specific contexts. The first one is the internal conflict the country experienced from 1980 to 2000, between the P.A.F. on one side, and Sendero Luminoso (hereinafter SL) and Revolutionary Movement Tupac Amaru (hereinafter MRTA) on the other side. Humanitarian Law and Human Rights Law have been used for the analysis of the crimes perpetrated during this period. The second one is the context of domestic violence. Law, Sociology and Psychology are the disciplines usually dealing with this issue. Attention is growing given the high incidence of violence experienced by women at home. Several disciplines and contexts may be invoked in order to examine the issue of sexual violence.

This thesis focuses only on sexual violence against female military within the Peruvian Armed Forces. During the investigation of this thesis, additional sub-issues deserving further analysis have been discovered and marked in footnotes. Neither cases of sexual violence against civilians nor male military are considered. The study involves the three branches of the P.A.F.: Army, Navy and Air Force.

#### **1.3.2 Limitations**

It is important to acknowledge the broad limitations in the analysis of sexual violence within the P.A.F. The lack of official data dealing with cases of sexual violence is a significant disadvantage for research. There is no record of occurrences of sexual violence available in the P.A.F., and military authorities are not willing to provide information to researchers.<sup>15</sup>

However, some official documents were provided to me by anonymous sources with the condition of confidentiality to protect both sources and victims.

Another limitation is the lack of relevant domestic literature focused on the issue of sexual violence within the P.A.F. The difficulties in obtaining official data and reliable testimonies make it hard for researchers to publish studies related to this issue.

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<sup>15</sup> Given that members of the PAF have been accused of violations of human rights during the internal conflict, military information is usually deemed as “classified” and therefore remains unavailable for scrutiny.

Finally, discussion on sexual violence is not welcome among victims or their families because of the stigmatization and re-victimization effects. In Peru, a country where traditional values are still ruling the society order, women may be sometimes considered responsible for the acts of sexual violence committed against them.

#### **1.4 Terminology clarification**

Even though a widely accepted concept of “sexual violence” does not exist, I consider that the U.N. Secretary General Report: “*In-depth study on all forms of violence against women*”<sup>16</sup> provides a definition that will be very useful for the purposes of this thesis. This concept considers sexual violence as the “abusive sexual contact, making a woman engage in a sexual act without her consent, and attempted or completed sex acts with a woman who is ill, disabled, under pressure or under the influence of alcohol or other drugs”,<sup>17</sup> recognizing in this way that sexual violence occurs not only when the perpetrator uses physical force, but also when he coerces the victim with psychological intimidation, taking advantage of the special circumstances in which women find themselves in and the inequalities women bear in society. The report also specifies, when talking about violence committed by state agents, that sexual violence includes “rape, sexual harassment and molestation”;<sup>18</sup> no proof of intercourse is required for the recognition of a conduct as sexual violence.

#### **1.5 Literature review**

Several sources have been used throughout the writing of this thesis. Gendered discrimination have been approached under the light of theorists like MacKinnon<sup>19</sup> and Chinkin,<sup>20</sup> examining the effects of “neutral” legal regulations on women. Theoretical explanations pursuing the

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<sup>16</sup> United Nations General Secretary (2006) “In-depth study on all forms of violence against women: Report of the Secretary-General” (A/61/122/Add.1) New York, United States.

<sup>17</sup> Ibid, par. 113.

<sup>18</sup> Ibid, par. 140.

<sup>19</sup> Catherine MacKinnon, “*Are women human? And other international dialogues*”, (Part 4) Cambridge: Harvard University Press, 2006.

<sup>20</sup> Christine Chinkin, “*The protection of economic, social and cultural rights post-conflict*”, available at: [http://www2.ohchr.org/english/issues/women/papers\\_access\\_to\\_justice.htm](http://www2.ohchr.org/english/issues/women/papers_access_to_justice.htm)

understanding of the etiology and dynamics of sexual violence have been approached with the help of authors like Jasinski.<sup>21</sup> For the better understanding of the Peruvian women's social context, a series of articles dealing with discrimination, sexual violence and women's rights in post-conflict Peru have been consulted. The mentioned articles have mostly a multidisciplinary perspective, where law plays a main role.

Given the lack of domestic literature on sexual violence in the P.A.F., complementary sources dealing with sexual violence have also been consulted. Reports from NGO's and the media have provided an insight to documented cases of sexual violence. Nevertheless, aware of the biases and limitations that characterize this kind of information, I have tried to maintain an objective position in that respect.

## **1.6 Methodology**

This thesis mainly focuses on the legal analysis of issues of sexual violence and discrimination. The study of sexual violence within the P.A.F. requires an analysis of the female military context. Thus, empirical inquiry has been used for the examination of female soldiers' capabilities and constraints in Peru.

### **1.6.1 Field research**

Given the lack of reliable data on sexual violence within the P.A.F., it was extremely important to collect information in the country of study. A series of interviews were made during July and August 2010. Two groups were targeted. The first group consisted of female soldiers belonging to the three branches of the P.A.F. who would provide first-hand information on their experiences and opinions about their participation in the Military.

Despite the initial reticence encountered, 18 interviews were obtained from female soldiers – both retired and active members- serving as a part of the non-compulsory military service.<sup>22</sup> Several methods were used to approach female soldiers. Some interviews were obtained after continual visits to the surroundings of military quarters at dismissal time. Some others were

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<sup>21</sup> Jana L. Jasinski, "Theoretical explanations for violence against women" in "Sourcebook on Violence against Women" Claire M. Renzetti et al. (ed.), Sage Publications (2001)

<sup>22</sup> Servicio Activo no Acuartelado Femenino - SANAF (Non-billeted Active Feminine Service)

obtained through a newspaper add soliciting female personnel with military experience for security guards positions. Few were obtained after a previous contact with their relatives or acquaintances.

All interviews were made under the compromise of absolute anonymity. The interviewees showed a deep concern for being identified by the Military and feared to possible reprisals.<sup>23</sup>

The collection method used was an initial survey followed by a colloquial conversation. No interpreters were needed. In general, interviewees initiated conversations with mistrust which most of them put aside as time went by. The treatment of sensible issues on sexual violence profited from the common gender and ethnicity between the interviewer and interviewees.<sup>24</sup>

The second group consisted on researchers working with topics of sexual violence, experts in military and civil relationships, and officers belonging to the Armed Forces, who would provide information to compensate the lack of statistical data and relevant domestic literature. Despite the attempts to obtain an official interview with military authorities, this was not possible.<sup>25</sup>

### **1.6.1.1 Challenges with interviewing**

Some challenges were faced during the interviews. Socio-cultural obstacles including re-victimization, stigmatization of victims, and social adaptation to an environment of sexual violence cause victims' reluctance to recognize themselves as "victims".<sup>26</sup> Without the appropriate psychological support the task of recognizing narratives related in third person

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<sup>23</sup> Fear was founded on the common practice of retaliation against victims of sexual violence and their relatives who reported these crimes during the internal armed conflict. The perpetrators were political-military authorities. See DEMUS, "Para una Justicia Diferente: violencia sexual en conflictos armados" December, 2009, p.18.

<sup>24</sup> Gender and ethnicity are factors contributing to the generation of sufficient trust in victims of sexual violence. See Martin D. Schwartz, "Methodological Issues in the Use of Survey Data for Measuring and Characterizing Violence Against Women", *Violence Against Women*, August 2000, vol. 6 no.8 p. 815-838.

<sup>25</sup> Several attempts to obtain interviews with High Commander Officers were made during the field work period.

<sup>26</sup> DEMUS (2009), p. 23.

was difficult to achieve. Thus, some questions involving sensible topics were not asked when the researcher suspected that interviewees may be relating their own experiences of violence.

Interviewees' fear for being identified by the Military was also an obstacle. Peru has a recent history of torture, forced disappearance and assassination of female soldiers who reported crimes committed by members of the Armed Forces during the internal conflict.<sup>27</sup> Some of the cases remain unsolved, which promotes a sense of impunity and discourages the report of more crimes involving members of the P.A.F. Consequently, it was decided not to ask for the names of the alleged perpetrators of the crimes mentioned in the narratives.

A final observation must be set. Some of the narratives presented by the interviewees described cases of torture and mutilation. One particular testimony referred to the case of a female soldier who suffered the removal of both eyes by members of the Army Intelligence Service. The interviewee declared that the aggression was provoked by the high curiosity of the girl. Later, she recommended me not to be so inquisitive. Statements like this may cause stress in the interviewer and illustrates one of the difficulties in discussing violations of human rights in Peru.

## **1.7 Legal Sources**

In analyzing issues of gendered discrimination and sexual violence, it is imperative to turn to the main international instruments dealing with these issues. In addition, attention must be placed in other documents which have achieved general international acceptance and reflect *customary law*. For the theoretical approach presented in Chapter three, the following instruments have been used:

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<sup>27</sup> See for example the cases of the female agents for the Army Intelligence Service: Mariella Barreto (tortured, assassinated and dismembered), Leonor La Rosa (tortured and raped) and Luisa Zanatta (harassed) because they allegedly reported criminal acts committed by intelligence members to the media. See Inter-American Commission of Human Rights (hereinafter IACHR) Report No. 30/00, Case 12.095 (Mariella Barreto) Peru, February 23, 2000; IACHR Report No. 54/98, Case 11.756 (Leonor La Rosa Bustamante) Peru, December 8, 1998; and "Agente Zanatta, la historia completa", <http://www.caretas.com.pe/1998/1508/agente/agente.htm> (Luisa Zanatta).

- Convention on the Elimination of all Forms of Discrimination against Women (hereinafter CEDAW)<sup>28</sup>

- Universal Declaration of Human Rights (Art. 7)

- The International Covenant on Economic, Social and Cultural Rights (Art. 2(2))

- The International Covenant on Civil and Political Rights (Art. 26)

The below jurisprudence dealing with the issue of discrimination provided a valuable insight for this thesis:

- “*Legal Status and Rights of Undocumented Migrants*” Advisory Opinion by the Inter-American Court of Human Rights

- “*F. H. Zwaan-de Vries v. the Netherlands*” a decision by the Human Rights Committee

For the empirical analysis presented in Chapter 4, international human rights law and Peruvian legislation have been consulted. The examination of sexual violence against women has been taken under the framework of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), which is the most vital regional instrument for the protection of women.

For the examination of the Peruvian public policies with regard to the conditions in which female soldiers are placed, both international and national legislation has been consulted. The Comments of the Committee on Economic, Social and Cultural Rights (GC No. 13 and GC No. 18) have proved to be very useful in the analysis of socio-economic rights. In addition, the incorporation of case law from the Inter-American Court of Human Rights (“*Cotton Field*”, “*Fernandez-Ortega et al. v. Mexico*”, “*Castro-Castro*” and “*Plan de Sanchez*”)<sup>29</sup> provided a valuable source for analysis and contrast.

Finally, Peruvian national legislation consisting of several Laws, Decrees and General Directives have been consulted. These instruments regulate several relevant aspects of the military function for this thesis. Unfortunately, Peruvian legislation has not directly addressed the issue of sexual violence within the military. Peru does not have a penal law against sexual harassment.

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<sup>28</sup>Convention on the Elimination of all Forms of Discrimination against Women, UN. Doc. A/34/46(1979). The CEDAW was ratified by Peru on September 13, 1982.

<sup>29</sup> See note 5



## 1.8 Structure of thesis

The point of departure of this thesis is the analysis of the context in which the issue of structural sexual violence within the P.A.F. is placed. In chapter one, Peruvian post-conflict reality and the participation of women in the internal conflict will be examined. Precedents of sexual violence committed by the P.A.F. during the internal conflict will serve us to understand the existing biases at the Military. Finally, an examination of the profile of women serving at the P.A.F. will be presented, which will show us their socio-economic characteristics, incentives and expectations, and the current necessities and constraints women experience in the Military.

In chapter two, I will look at the relevant instruments providing Peruvian female military protection against discrimination. I will analyze how CEDAW protects women from gendered discriminatory policies within the Military and how the principle of non-discrimination is considered *jus cogens* within the Inter-American System. Further, I will discuss the duty of the Peruvian State to protect women from sexual violence and how a more comprehensive understanding of the circumstances surrounding sexual violence would benefit the fulfillment of such obligation.

In chapter three, I will analyze the link between the discriminatory policies against female military -focused on the violations of economic, social and cultural rights- and the permissiveness of sexual violence in the Military. For this purpose, I examine Article 5 of the “Convention of Belém do Pará”, which primarily states that the existence of violence against women “prevents and nullifies” the full exercise of social and economic rights; establishing only a one-way rationale with regard to these elements. I argue that in order to have a holistic comprehension of the issue of sexual violence within the Armed Forces, the link between the enjoyment of social and economic rights, and the violence against women must also follow the opposite rationale. Thus, the no-exercise of social and economic rights allows the existence of sexual violence against female personnel within the P.A.F.

Finally, in chapter four, I will present the conclusions of this empirical study and some recommendations for the awareness and recognition of sexual violence as a consequence of the no-exercise of women’s social and economic rights; as well as the obligation for the

Peruvian State to derogate discriminatory policies against women within the Peruvian Military.

## 2. WOMEN AND THE MILITARY IN PERU

### 2.1 The background: Women's participation in the Peruvian internal armed conflict

Women's participation in the P.A.F. begins officially in 1993, when female citizens are allowed by law to do Military Service in the three branches of the P.A.F. Nevertheless, women's real participation in the P.A.F. began one decade earlier,<sup>30</sup> and it coincided with the outburst of an internal conflict that lasted around 20 years. The role of women, which was traditionally perceived as submissive, supportive and passive,<sup>31</sup> got deeply affected by the conflict and experienced dramatic changes. In order to fully understand how female soldiers are nowadays perceived by male soldiers within the P.A.F., it is necessary to examine the role of women during the conflict.

#### 2.1.1 Women's participation in Sendero Luminoso: From peasant to fighter

Until 1983, women's participation in the Peruvian socio-political arena was limited to some philanthropic and feminist organizations.<sup>32</sup> Women were not allowed to be members of the P.A.F. It is at this time when the armed group called "Sendero Luminoso" (SL) entered to the Peruvian scene, inter alia transforming the traditional figure of the poor female indigenous peasant to the all-powerful female fighter.

SL recruited women thanks to the inclusion of a feminist approach in the movement's ideology. Henríquez<sup>33</sup> explains that Peruvian women -both young and adults- found relief in an ideology that contemplated their particular necessities and aims. They could easily identify themselves with the discourse of the *proletariat fight* because they felt abandoned by the

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<sup>30</sup> Legislative Decree 264 (Art. 1), passed in 1983, includes women in the regulations of the Military Service. Women's duties were set "preferably" with regard to administrative and logistic chores. Nevertheless, some branches of the P.A.F. organized pilot programs for the inclusion of female soldiers in military activities.

<sup>31</sup> Narda Henríquez Ayín (2006), "*Cuestiones de Genero y Poder en el Conflicto Armado en el Perú*" (Issues of gender and power in the Peruvian armed conflict), CONCYTEC, Peru.

<sup>32</sup> Feminist organizations active at that time were: Flora Tristan, Manuela Ramos and Mujeres en Lucha.

<sup>33</sup> Henríquez (2006)

Peruvian society and the Peruvian government. It was a kind of “popular feminism”.<sup>34</sup> Women did not feel represented by the Peruvian State because their civil and political rights were not respected. Besides, most of them were poor peasants, living in rural areas and they did not have access to education, health or justice.

Women who until that moment had been relegated to a sort of second-class citizenship, found themselves in positions of power within SL. Women were recruited not only for the direct participation in hostilities but also for logistical and educational labor. Women were given guns and power, a combination that never happened before in Peruvian modern history.<sup>35</sup>

### 2.1.1.1 Challenging patriarchal traditions

During the first period of SL’s operations, hostile actions were mainly focused in small communities in the highlands, where patriarchal traditions had governed the dynamics of society and women had maintained a limited position in the community. Women were (and in many cases still are) represented in the imaginary of these communities as beings with an intimate connection with the household and domestic chores. Any transgression of this role carried direct negative repercussions in the family and the community. Women’s political opinion with respect to the public affairs of the community was usually taken as a sign of misconduct and it was frequently labeled as “gossip”.<sup>36</sup>

The introduction of the figure of the female fighter provoked the reaction of the male members of the community. The following testimony illustrate it:

*“Girls, like this, carrying guns took me to the square (...) yes, girls that were not worthy, but they had guns, so we had to obey...”*<sup>37</sup>

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<sup>34</sup> Jelke Boesten (2010), *“Revisiting ‘democracy in the country and at home’ in Peru”*, Democratization, 17:2, 307-325, quoting Carole Andreas, *“When Women Rebel: The Rise of Popular Feminism in Peru”*, Westport, CT: L. Hill, 1985.

<sup>35</sup> Boesten (2010)

<sup>36</sup> Gina Arnillas, (quoted by Henríquez (2006)) *“Representaciones simbólicas de Género en Cerámica de Quinua”* (Ayacucho). Materiales de monografía DEG PUCP. Lima: Diploma de Estudios de Género – PUCP (inédito) 4p.

<sup>37</sup>Original testimony presented in Henríquez (2006) : *“Chicas así armadas me llevaron a la plaza (...) sí chicas que no valían la pena, pero como tenían arma teníamos que obedecer...”* p. 25. The translation is mine.

This testimony suggests that the existing perception of women hereto i.e. “not worthy”, experienced a change, causing a forced empowerment of women through guns. The encounter of traditional actors of the community with the new figure of female fighters caused a change in the dynamics of their relationships. Now men had to obey women’s orders, not because women had achieved political power but for the fear of being killed.

Therefore, the participation of women in the armed conflict -especially on the side of the rebel group- forced the community to reexamine the traditional role of women confronted with their new role of power and violence. This initiated a conflict between the traditional figure of the protective mother against the young female carrying a rifle.<sup>38</sup> When addressing issues of discrimination within the P.A.F., it is important to keep in mind this experience. Such conflict might provoke negative consequences in the perception of women as soldiers.

### **2.1.2 Women as victims of human rights’ violations**

Despite the SL’s discourse on equality of men and women, the traditional role of women remained. They were still considered caretakers and only few of them reached the status of fighters. When women actively participated in the conflict, most of them were carried by different reasons. Not all women participated voluntarily in the conflict. Several were kidnapped or in other ways forced to fight against the P.A.F.<sup>39</sup>

Besides the active participation of women in the armed conflict as fighters, women also were victims of the violence. And because of their gender they were victims of an especial kind of violence i.e. sexual violence.

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<sup>38</sup> Henríquez (2006).

<sup>39</sup>It must be recognized that women perform an especial role in the family; in traditional cultures they are subjected to the will and decisions of the male members of their families e.g. father, husband, brother, son; not having enough power to decide over their own actions. Usually women are attributed the same political opinion of the male members of the family, and in Peru that caused that women were targeted because they were relatives to males suspected of belonging to one armed group or another. Women had to fight defending their loved ones in both fronts. Refugee law has studied and recognized the attributed political opinion on women, see: *Rios & Rios v. Ashcroft*, Attorney General, 287 F. 3rd 895 (2002); Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1a(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees, UNHCR (2002)

In its Final Report, The Peruvian Truth and Reconciliation Commission (hereinafter PTRC) concluded that members of the P.A.F. were responsible for approximately 80 percent of the acts of sexual violence perpetrated during the internal conflict.<sup>40</sup> According to the PTRC, the acts constituted spread and systematic violations of human rights against women. These crimes included all kind of sexual violence e.g. rape, sexual harassment, forced prostitution, involuntary abortion, forced sterilization, etc.

The PTRC also commented that accountability in the cases of sexual violence may be very difficult to satisfy because of the poor socio-economic conditions the country (especially the small indigenous communities) was experiencing at that time. Issues like the informality, the lack of resources and the general abandonment the indigenous population suffered, caused that many of the women killed during the armed conflict did not have any record of their existence and were invisible for the State. Therefore, it is impossible to know exactly how many female victims suffered sexual violence and how many of the women that were assassinated by the rebel groups or the Armed Forces were previously sexually assaulted.

This precedent is extremely important in the analysis of sexual violence within the Military. The fact that members of the P.A.F. engaged in the perpetration of these crimes calls for an exhaustive analysis of the causes and contributing factors for these actions. In addition, it must be noticed that any member of the P.A.F. has ever been found guilty for the commission of these crimes. Thus, the sense of impunity with respect to sexual crimes committed by members of the Armed Forces may promote the commission of more crimes.

### **2.1.2.1 Discriminatory targeting of victims**

After the examination of the narratives gathered by the PTRC during multiple sessions in the most affected areas of the country, it is clear that female victims of sexual violence were targeted by the members of the Military according to their socio-economic characteristics.

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<sup>40</sup> The PTRC published its Final Report in 2003. The sixth volume of the document named "*Crimes and Violation of Human Rights*" includes a section on sexual violence against women, in which the PTRC determined that 83 percent of cases of sexual violence during the conflict were responsibility of the members of the Peruvian Armed Forces; p. 277. Available at: <http://www.cverdad.org.pe/ifinal/pdf/TOMO%20VI/SECCION%20CUARTA-Crimenes%20y%20violaciones%20DDHH/FINAL-AGOSTO/1.5.VIOLENCIA%20SEXUAL%20CONTRA%20LA%20MUJER.pdf>

Most of hostile actions between the Military and the rebel groups occurred in the highlands. Several military bases were set up in strategic villages and roads, creating new forms of interaction between the indigenous population and the military. Female peasants were subjected to all kinds of sexual violence by the members of the institution that were supposed to protect them (some were detained because of been suspected of terrorism and others were just attacked while performing their peasant chores). Educated and whiter women were reserved for the officers of the highest ranks. The following testimony of the detention of a street vendor girl and a dentist confirms the racial/socio-economic bias:

*“the girl was given to the troops. They destroyed her (...) we were forty, did not I tell you” “The whole troop passed by her, when they were given to the troop, everybody had to pass (...) and the dentist was raped by the captain (...) Once the captain had finished he told me if I wanted to pass also. I said no (...) It was because she was a person I respected”<sup>41</sup>*

While the street vendor (a girl probably undereducated and coming from an impoverished part of the Peruvian society) was given to the troops (probably experiencing the same socio-economic conditions within the Peruvian society), the highly educated Peruvian woman (probably belonging to the medium class) was reserved to the captain who at that place represented the highest rank within the Military. Hence, women were treated like objects with different value according to race, class, economic condition, education, etc.

The narratives of victims and witnesses of sexual violence are riddled with references to race and class status, which make the analysis of this issue even more complex. Rape was not only a weapon of war (recognized by the PTRC) but, according to some scholars, “sexual violence during war fits into a continuum of violence against women of Andean descent”,<sup>42</sup> which

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<sup>41</sup> PTRC. Testimony No 100168. Original text: “esa chica la regalaron a la tropa. A ella le hicieron pichanga (...) éramos cuarenta no le digo” “Todita la tropa, cuando regalaban, todos pasaban (...) y a la odontóloga el capitán la violó (...) El capitán una vez que estuvo con la odontóloga me dijo a mi si quería pasar por la chica. Le dije que no(...) Más que todo porque era persona que me merecía bastantes (sic) respeto.” The translation is mine.

<sup>42</sup> Boesten (2010) p. 312

clearly highlights the existence of discriminatory factors that did not appear with the armed conflict, but were present in the Peruvian society long before that.

It is extremely important to take into consideration this rationale when discussing the issue of sexual violence within the Military. It is necessary to analyze whether discriminatory conducts and beliefs affect the treatment of women within the Military and whether these conducts and beliefs provoke the permissiveness of sexual violence.

The narratives presented above happened approximately 20 years ago (during the 80's and the 90's), and the military who perpetrated those acts are probably still members of the Armed Forces (probably in high rank positions). If as Boesten says, "wartime violence against women might better be called an exacerbation of existing violence, instead of interpreting it as completely exceptional", then is it not logical to ask whether current sexual violence within the Military is also affected by the same discriminatory biases that affected sexual violence during the conflict?

### **2.1.3 Women's new socio-political role**

The Peruvian internal armed conflict have caused great suffering to women and their families. Despite all that, it must be said that the violent and challenging situations experienced during the conflict have prompted that women began to act in social and political scenes in which they were not allowed before. As Boesten commented "violence largely serves to reproduce, perpetuate, and sometimes *challenge* social divisions within society or between societies".<sup>43</sup>

Women began to interact with governmental institutions such as the Police and the Military demanding protection for their families. They began to participate in the political life of the community, taking positions of power and decision making when men were running away to the cities or involved in the fire of hostilities. They began to participate in associations with the purpose of demanding the Peruvian State the respect of basic rights. Peruvian women realized that they are also actors in the Peruvian scene.

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<sup>43</sup> Ibid.



## 2.2 Who is willing to serve? Identifying Peruvian female soldiers

In order to understand the issue of sexual violence within the Peruvian Military in its total dimension, it is necessary to know who are the victims of violence and under which conditions they have come to the decision of enrolling themselves in the Armed Forces.

Female participation in the Peruvian Military is recent and exclusively voluntary. Women are allowed to do Military Service since 1993, even when some military programs for the participation of women existed since the seventies, being one of them the so-called “Servicio Activo No Acuartelado Femenino-SANAF” (Non-billeted Active Feminine Service). Since 1996 women have legal access to Military Academies for Officers and Noncommissioned Officers.<sup>44</sup> The enjoyment of these rights have come late, around fifteen years after Peru subscribed to CEDAW, as a result of a strong political campaign promoting the exercise of women’s civil and political rights, and the attention generated by the Fourth World Conference on Women<sup>45</sup> (hereinafter Beijing Conference).

Unfortunately, information on qualitative and quantitative participation of female personnel in the Peruvian Military is very limited and confidential. Nevertheless, it has been possible to obtain some data from a study published by the Legal Defense Institute in Peru.<sup>46</sup> Thus, it is possible to observe that the number of female military is very low in comparison with the level of male participation, constituting only 5.11% of the whole military personnel in Peru (Table A). This suggests us two preliminary conclusions: the Peruvian State is not interested in the promotion of female participation, and only a very little part of the female population in Peru is willing to enroll in the Armed Forces.

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<sup>44</sup> Law 26628 “Amplían para las mujeres el acceso a las escuelas de oficiales y sub-oficiales de las Fuerzas Armadas”, published on June 19<sup>th</sup>, 1996.

<sup>45</sup> The United Nations Fourth World Conference on Women, held in Beijing, China on 4 – 15 September 1995.

<sup>46</sup> Legal Defense Institute (2009).

**Table A**

|                                 | <b>Male</b> | <b>Female</b> | <b>Total</b> |
|---------------------------------|-------------|---------------|--------------|
| <b>Officers</b>                 | 8847        | 460           | 9307         |
| <b>Noncommissioned Officers</b> | 33138       | 1443          | 34581        |
| <b>Troop</b>                    | 37749       | 2398          | 40147        |
| <b>Total</b>                    | 79734       | 4301          | 84035        |

\* Statistical Compendium of the Peruvian Defense Sector 2007.

The minimum age for male and female personnel in order to enter at military service is 18 years old<sup>47</sup> (age of majority in the Peruvian legislation). Nevertheless, the Armed Forces have been accused of the forced recruitment of persons that did not reach that age.<sup>48</sup> The reports involved only recruitment of male persons, but according to the interviews I conducted in Lima, there exist also recruitment of female underage. The maximum age for recruitment for military service is 30 years old. It is important to point out that even though the law accepts women until the age of 30, the average age of the women interviewed was 18 years old when they began with their service, being the oldest 24 years old at that time. Thus, is possible to say that the military service has a participation of young female population.

Female personnel doing Military Service must be single and not have children.<sup>49</sup>

<sup>47</sup> Law 29248 Military Service, Art. 2.

<sup>48</sup> The issue of recruitment of minors has been presented to the Inter-American Commission of Human Rights in its Session 138 on March 23, 2010. In addition, several reports have been released by the media denouncing the recruitment of minors in the Peruvian Military. See for example: Inforegion (November 6, 2009) available at: <http://www.inforegion.pe/portada/41074/rechazan-reclutamiento-de-menores-de-edad-que-seguiria-realizando-ejercito-peruano/>; RPP (July 18, 2009) available at [http://www.rpp.com.pe/2009-07-18-ejercito-peruano-vuelve-a-reclutar-menores-de-edad-denuncia-prensa-noticia\\_195498.html](http://www.rpp.com.pe/2009-07-18-ejercito-peruano-vuelve-a-reclutar-menores-de-edad-denuncia-prensa-noticia_195498.html); De igual a igual (April 15, 2009) available at: <http://www.deigualaiigual.net/pt/actualidad/peru/3467-ejercito-peruano-usamenores-vrae>.

<sup>49</sup> Law 29248 of Military Service states in its Art. 35 that it will be considered as excepted from Military Service the person who maintains family duties of exceptional nature. It does not specify what must be understood as "exceptional nature". Nevertheless, the information available in the Peruvian Army webpage states that one

In terms of education, female military are clearly disadvantaged. According to data obtained in 2007, any female troop's soldier in the Army had completed secondary education and 70 percent had not even completed elementary education (Table B). The Peruvian State is clearly aware of the educational level of female personnel, and this can be observed in the low demand for educational achievement in recruitment, which only requires candidates to have completed elementary education.<sup>50</sup>

**Table B**

| <b>Educational Level</b>              | <b>Percentage</b> |
|---------------------------------------|-------------------|
| <b>Without education</b>              | 10                |
| <b>Incomplete primary education</b>   | 60                |
| <b>Complete primary education</b>     | 20                |
| <b>Incomplete secondary education</b> | 10                |
| <b>Complete secondary education</b>   | 0                 |

\*Statistical Compendium of the Peruvian Defense Sector 2007.

Another element that can portrait the average female military in Peru is the socio-economic level. Within the Peruvian Military there are three different status of personnel: Officers, Noncommissioned Officers, and soldiers doing Military Service. Each of these groups has its own characteristics in terms of socio-economic power and distribution, and it may be said that it is a reflection of the Peruvian Society. Officers are formed in elite academies with a very strict admission process or have been assimilated by the Military after finishing relevant university education. They come from the upper/middle class society and have relative economic power. In accordance with their rank, they receive a salary not below the amount of

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requisite for applying to the Military Service is to be single and childless. Available at: [http://www.ejercito.mil.pe/index.php?option=com\\_content&view=article&id=829&Itemid=362](http://www.ejercito.mil.pe/index.php?option=com_content&view=article&id=829&Itemid=362)

<sup>50</sup> Despite the low levels of educational achievement of female personnel within the Military, it must be noted that according to the last Peruvian census 13.13 percentage of the population is illiterate, and around 7.97 of that percentage are women. Female population living in conditions of extreme poverty (mostly indigenous and illiterate peasants) does not even have the opportunity to go to the Military.

a minimum-wage established by the State. The highest ranks receive economic benefits that overcome many times the average salary of a professional in the private sector.

Noncommissioned officers attend especial academies where they receive education equivalent to technical instruction. They usually belong to the middle/low class of the society and enjoy limited but some economical power. In accordance with their rank, their salaries are above the minimum-wage amount but the highest salaries do not reach the officers' level.

Soldiers at Military Service come from the most impoverished areas of the Peruvian society. Generally, they choose to do military service because they see no other way to acquire capabilities which would help them to get out of their situation of poverty. They go to the Military because they are looking for an activity that provides them free food, housing and little money to contribute to family expenses. Female soldiers at Military Service do not receive a salary, but they have the right to get an amount of money that covers transportation (if they are not living in the barracks) and a “tip”, which is established by the regulations of each branch of the Armed Forces. The total amount (transportation plus tip) does not reach the minimum wage, but it provides some economic relief to young people living in poor economic conditions. This situation is confirmed by the statements of more than 50 percent of the female soldiers interviewed. They declared that the principal motivation for their participation in the Armed Forces was their economic distress and their inability to get an education that will provide them work eventually.

The cultural and sociological characteristic of the Peruvian society are also important when trying to describe the female soldier profile. The 76.5 percent of Peruvian families living in urban areas declare to have a male “jefe de hogar” (head of household), while in rural areas the percentage reaches 84.<sup>51</sup> These numbers show us that women are not as empowered in the Peruvian households as men. In 2006, 44.5 of the Peruvian population was placed below the poverty line and extreme poverty reached 28.7 percent in rural areas.<sup>52</sup>

To summarize, women serving in the P.A.F. are young and live in an environment that does not recognizes women equal as men. Depending on the rank they have, women are subjected

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<sup>51</sup> INEI. Censo de Población y Vivienda 2005,(Population and Housing Census 2005), see: [www.inei.gob.pe](http://www.inei.gob.pe)

<sup>52</sup> CEPAL (2007), Anuario estadístico de América Latina y el Caribe: Estadísticas sociales (Statistical Yearbook of Latin-America and the Caribbean).Published by CEPAL.

to some economic restrictions, being the most serious the situation of poverty or extreme poverty experienced by female personnel in the Military Service. Female officers are educated while noncommissioned officers are less educated. Women at Military Service are generally undereducated.

### 3. PROTECTION FROM GENDER BASED DISCRIMINATION AND THE RESPONSIBILITY OF THE STATE

#### 3.1 Gender-based discrimination

Women are victims of the largest discrimination in human history. Even though special focus has been directed to the elimination of inequalities based on gender,<sup>53</sup> women still suffer constant attacks against their rights and human dignity. Women are especially subjected to discrimination when placed in institutions where traditional customs and patriarchal values rule the status quo.

Within the Military, an institution with a large patriarchal tradition<sup>54</sup>, female personnel are subjected to discriminatory behaviors in terms of education, career opportunities, infrastructure, sanitary conditions, etc.<sup>55</sup> A continuation we will see how the most relevant

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<sup>53</sup> Take for instance: CEDAW (1979); DEVAW (1993); the creation of Special Rapporteur on Violence Against Women (1994); *Convention of Belém do Pará* (1994); the “Platform for Action” adopted in the Fourth World conference on Women (1995).

<sup>54</sup> Cynthia Enloe has defined patriarchy as “the structural and ideological system that perpetuates the privileging of masculinity” and at the same time has identified the Military as “among those sites of ordinary life perhaps especially notorious for their inclinations toward patriarchal values, structures, and practices”. See: Cynthia Enloe, *The curious feminist: Searching for women in a new age of empire* University of California Press (2004) p.4. The Military has been recognized as a patriarchal institution by several scholars. Schenwar argues that “military [is] already one of society's most blatantly hierarchic institutions”, see Maya Schenwar, *Gender in the Rank*, Truthout, April 9, 2008 at <http://www.truthout.org/article/winter-soldier-2008-gender-ranks>. Peach wrote “The military is itself a patriarchal and sexist institution which dominates and oppresses women”, see Lucinda J. Peach, *Women at war: The ethics of women in combat* Hamline Journal of Public Law and Policy. Vol. 15 (Spring 1994), p. 199. In Peru, the Legal Defense Institute –one of the very few academic institutions dealing with Military issues- has also argued that the Military constitutes an “organizational culture that clusters traditionally masculine institutions and that highlights virile values as an element of what soldiers should be, and that such institution is bias by a discriminatory slant against female personnel. See Instituto de Defensa Legal (Legal Defense Institute), *Personal militar en situación de vulnerabilidad en el Perú* Lima, Peru; August 2009, p. 35.

<sup>55</sup> Even though gender-based discrimination exists in every Armed Force, the level and areas of discrimination vary according to the characteristics of the countries. Western countries like Canada, U.S., U.K., and Sweden have developed mechanisms for the assimilation of female military within their Armed Forces with certain level of success. Non-western countries have also experienced participation of female soldiers like Sierra Leone (see Chris Coulter (2008), *Female Fighters in the Sierra Leone War: challenging the assumptions?*, Feminist Review, London: Apr 2008, Iss. 88; pp. 54) and Eritrea (See Cecilia M. Bailliet (2007) *Examining Sexual violence in the Military Within the Context of Eritrean Asylum Claims Presented in Norway*, International Journal of Refugee Law, vol. 19, N° 3, pp. 471-510, published by Oxford University Press). For in depth discussion of the reasons why ratio of female participation in the Armed Forces increases see Mady Wechsler Segal (1999),

international instrument against women's discrimination –CEDAW- is applicable in these situations.

### **3.1.1 The protection of CEDAW**

The U.N. adopted CEDAW in 1979 with the purpose of monitoring the situation of women and to promote women's rights. The convention is based on the principles of the United Nations i.e. respect for the fundamental rights and dignity of the person, and the equal rights of men and women. Three aspects related to the situation of women are clearly differentiated in the Convention. Firstly, focus on civil rights and the legal status of women are placed as the main concern within this instrument; secondly, the Convention goes further in the understanding of women's necessities and challenges, and focuses on the aspect of reproductive rights; and thirdly, the Convention formally recognizes the aspects of culture and tradition as key-factors for the perpetration of discriminatory behaviors, setting specific provisions in this respect.

With regard to women's civil rights and legal status, CEDAW follows what the traditional approach to women's rights began to develop with the Convention on the Political Rights of Women (1952), emphasizing on the exercise of political rights, guaranteeing women the right to vote, to hold public office and to exercise public functions. The legal status of women, traditionally related to marriage, is also a big concern in the Convention. However, what attracts most interest for our analysis is the consequences of discrimination in respect with education, employment, and economic and social activities. Articles 10, 11 and 13 oblige the State Parties to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men”<sup>56</sup> in the fields of education, employment and in other areas of economic and social life. This rationale is also stated in the Preamble, where discrimination against women is considered to violate “the principles of equality of rights and respect for human dignity” and to be “an obstacle to the participation of women, on equal terms with men, in the political, *social, economic* and cultural life on their countries.”<sup>57</sup> The

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“*Gender and the Military*” (Chapter 25) in Janet Saltzman Chafetz (ed.) *Handbook of the Sociology of Gender*; Kluwer Academic/Plenum Publishers, New York, 1999.

<sup>56</sup> CEDAW, Art. 10

<sup>57</sup> *Ibid*, Preamble (Emphasis added)

mentioned rationale links discriminatory regulations as a cause for the non-enjoyment of not only civil and political rights but also socio-economic rights.

Furthermore, CEDAW does not only limit itself to the provision of substantive norms, but also establishes obligations for the States Parties to incorporate the principle of non-discrimination into domestic law, and what is more progressive, to “modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”<sup>58</sup>

Having said that, the reality shows us that the aim of the provisions established in CEDAW has not yet been successfully translated to practice. In the particular case of gender-based discrimination within the Peruvian Military, the Peruvian State in its last report to CEDAW<sup>59</sup> briefly informed on the admission process of female military to the Military Academies, which according to the report it is implemented with the criteria of impartiality and non-discrimination by the Peruvian Ministry of Defense. Two main advances were mentioned in the report. The first one is about the conditioning of the Military facilities for housing of female personnel. The second one handles on the quota system introduced by domestic regulation, which assigns the number of vacancies that will be covered by male and female personnel separately, and in accordance with “organizational needs, the provisions of articles 55 to 65 of Legislative Decree No. 752, Military Status Act, and the number of male and female officer candidates at each grade.”<sup>60</sup>

As we can see, the Peruvian report only presents two main issues in a very superficial manner. There is no reference to the situation of female noncommissioned officers or women attending military service with respect to housing and other habitability conditions in the Military. This issue must be addressed taking special consideration in the socio-economic constitution of the female population in the mentioned branches (which has been presented in the previous

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<sup>58</sup> Ibid, Art. 2(g)

<sup>59</sup> According to Art. 18 of CEDAW, States Parties must submit a report informing the Committee on the Elimination of Discrimination against Women on the measures they have adopted to comply with the provisions of the Convention. The Peruvian Country Report to CEDAW, Sixth periodic report , 37<sup>th</sup> session (2007) is available at: <http://www.un.org/womenwatch/daw/cedaw/reports.htm#p>

<sup>60</sup> Peruvian Country Report to CEDAW, Sixth periodic report , 37<sup>th</sup> session (2007), par. 99.



chapter), noting that marginalized women may experience a more vulnerable situation towards discrimination. The issue of the vacancies assigned by quotas demands also a deeper analysis, especially when noting that the number of vacancies depends on “organizational needs”, which is not regulated and can be interpreted subjectively in terms that do not correspond with the Convention. These issues –and others that will be further analyzed– clearly compromise the obligation of the Peruvian State to comply with the principle of non-discrimination with regards to women’s socio-economic rights.

Unfortunately, there is not information about the assessment of the CEDAW Committee to the Peruvian report. The lack of mechanisms for the enforceability of the Convention, causes that country reports –which are only a monitoring instrument- are not controlled or verified, providing “no guarantee that the information in the country reports is even accurate.”<sup>61</sup> CEDAW’s difficulties for enforcing its provisions in the international community, particularly with respect to the elimination of discriminatory regulation included in States Parties’ domestic legislation, have proved to be varied and extended. Despite that CEDAW has been ratified by a large number of States, it is still being regarded as “a point of reference and not as a binding legal obligation mandating domestic implementation.”<sup>62</sup> However, the Convention’s major positive effect appears to be the promulgation of new non-discriminatory law, demonstrating with this that new positive standards are being set.

It is clear then, that CEDAW is a vital instrument setting modern standards for the passage of new non-discriminatory regulation, but despite the efforts of the Committee and other organizations defending women’s rights, the Convention has not proved to be a forceful instrument for the elimination of already-existing discriminatory policies, customs and practices against women. Thus, in order to eliminate discriminatory regulations within the P.A.F. banned by the Convention, it is necessary to fully understand the real effects of the inequalities women suffer and to find appropriate routes to hold the Peruvian State responsible of these negative effects.

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<sup>61</sup> Jennifer Riddle, “*Making CEDAW Universal: A Critique of CEDAW’s Reservation Regime under Article 28 and the Effectiveness of the Reporting Process*” 34 *Geo. Wash. Int’l L. Rev.* (2002-2003)

<sup>62</sup> Jessica Neuwirth (2005), “*Inequality Before the Law: Holding States Accountable for Sex Discriminatory Laws Under the Convention on the Elimination of All Forms of Discrimination Against Women and Through the Beijing Platform for Action*”, *Harvard Human Rights Journal* 18 *HvHRJ* pp. 19 (Spring 2005)

### 3.1.2 The Principle of Non-Discrimination in the Inter-American System: A Jus Cogens principle

The right to equality and non discrimination is a widely recognized fundamental right, early established by international instruments as the Universal Declaration of Human Rights (Art. 7), the International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR) (Art. 2(2)), the International Covenant on Civil and Political Rights (hereinafter ICCPR)<sup>63</sup> (Art. 26) and recently CEDAW. In the case of the ICCPR, the Covenant states that even when the life of a nation is threatened by a public emergency, and the State Parties may take steps derogating from certain obligations under the Covenant, “such measures may not involve discrimination solely on the grounds of race, color, sex, language, religion or social origin”,<sup>64</sup> recognizing that the principle of non-discrimination is a peremptory norm.

In this respect, the Inter-American Court of Human Rights in *Legal Status and Rights of Undocumented Migrants*,<sup>65</sup> which further develops the scope of this principle, has been the first international court recognizing the principle of equality and non-discrimination as *jus cogens*,<sup>66</sup> stating that “the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws”<sup>67</sup> and therefore imposing obligations *erga omnes* to the state party members of the Inter-American system. Thus, the Court stated that the nature of equality and non-discrimination is such that protects all human rights in the international legislation as much as within the domestic legislation of the States;

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<sup>63</sup> The International Covenant on Civil and Political Rights, adopted by the U.N. General Assembly on December 1966.

<sup>64</sup> ICCPR, Art. 4

<sup>65</sup> Advisory Opinion OC-18/03 of September 17, 2003, Requested by the United Mexican States: Legal Status and Rights of Undocumented Migrants, Inter-Am. Ct. H.R. (Ser. A) No.18 (2003).

<sup>66</sup> When a rule is considered as *jus cogens*, its nature does not allow any derogation, and any State can violated it. This is a fundamental principle of international law considered to have been accepted for the international community as a whole. Following the Article 53 of the Vienna Convention on the Law of Treaties, any treaty in violation of a peremptory norm is automatically considered null and void.

<sup>67</sup> Legal Status and Rights of Undocumented Migrants, par. 101

and that the States have the obligation of not introducing discriminatory rules within their domestic legislation, of eliminating any discriminatory rule from the domestic legislation, and to fight against discriminatory practices.<sup>68</sup>

The Human Rights Committee<sup>69</sup> has established in one of its decisions that the principle of non-discrimination is not only applicable within the context of the rights featured by the ICCPR, but also for rights provided in other instruments. The mentioned precedent is extremely useful for the analysis of the application of the principle of non-discrimination with regard to socio-economic rights, and therefore it would be analyzed here in more detail. The Human Rights Committee was presented the case of Ms. Zwaan-de-Vries, a citizen of The Netherlands who after approximately two years of labor became unemployed and when demanding unemployment benefits to the State was denied those benefits on a continuous basis because she was a married woman and not the “breadwinner” of the family. Social security regulations did not provide the same treatment to married men, even if they did not earn the highest income in the house. Ms. Zwaan-de-Vries argued the State of the Netherlands had violated the principle of non-discrimination stated in Art. 26 of the ICCPR through a series of discriminatory practices based on her gender. The Netherlands alleged that Art. 26 did “entail an obligation to avoid discrimination, but that this article [could] only be invoked under the Optional Protocol to the Covenant in the sphere of civil and political rights”, distinguishing the mechanisms of enforceability of civil and political rights from socio-economic rights i.e. right to social security. Finally, the Committee held that the ICCPR “would still apply even if a particular subject-matter is referred to or covered in other international instruments, for example [...] the International Covenant on Economic, Social and Cultural Rights.”<sup>70</sup>

Clearly, the Human Rights Committee here contributed to the development of international law, clarifying that the principle of non-discrimination featured in the ICCPR is not an exclusive guarantee for civil and political rights, only based on Art. 26. On the contrary, the

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<sup>68</sup> Ibid, par. 88

<sup>69</sup> Established under Art. 28 of the International Covenant on Civil and Political Rights.

<sup>70</sup> F. H. Zwaan-de Vries v. the Netherlands, Communication No. 182/1984, U.N. Doc. Supp. No. 40 (A/42/40) at 160 (1987), Human Rights Committee.

Committee went beyond what was established until that moment, stating that the principle of non-discrimination “derives from the principle of equal protection of the law without discrimination, as contained in article 7 of the Universal Declaration of Human Rights”,<sup>71</sup> recognizing in this way the superior scope of the principle.

### **3.2 State responsibility to protect women from sexual violence**

States are obliged to protect their citizens from serious violation of human rights. The doctrine of State Responsibility, even though generally applied to internationally wrongful acts, recognizes that a State is responsible for the wrongful actions of its organs. The Draft Articles of States for Internationally Wrongful Acts<sup>72</sup> (hereinafter Draft Articles of State Responsibility) state that “the conduct of any State organ shall be considered an act of that State... whether the organ exercises legislative, executive, judicial or any other functions.”<sup>73</sup> This instrument also points out who can be considered an organ of the State, including any person... which has the status in accordance with the internal law of the State”.<sup>74</sup> State Responsibility for the action of its agents has also been recognized as a principle of *customary international law* by the International Court of Justice (hereinafter ICJ) when stated that “the conduct of any organ of a State must be regarded as an act of that State”.<sup>75</sup>

Thus, it is clear that a member of the P.A.F. is an organ of the Peruvian State, and that the actions of this organ contravening the rules of international law may be considered as an act of the Peruvian State. The fact that the members of the P.A.F. are also acting against the rules

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<sup>71</sup> Ibid, par. 12.3

<sup>72</sup> The Draft Articles on Responsibility of States for Internationally Wrongful Acts were adopted by the UN General Assembly in 2001. This document reflects of existing law in some aspects, while develops law in others.

<sup>73</sup> Draft Articles of State Responsibility, Art. 4 (1).

<sup>74</sup> Ibid, Art. 4 (2).

<sup>75</sup> Difference Relating to Immunity from Legal Process of Special Rapporteur of the Commission on Human Rights (Advisory Opinion), 1999 ICJ Reports, 62.

of the Peruvian State<sup>76</sup> does not constitute an exception for the responsibility of the Peruvian State.<sup>77</sup>

The Inter-American Court of Human Rights, implementing Art. 7 of the Convention of Belém do Pará, has also established responsibility upon a State –the Peruvian State- because of its failure to prevent Peruvian State agents from the practice of violence against women (which is the purpose of the treaty).<sup>78</sup>

However, the Peruvian position with respect to its responsibility for the acts of its agents is not so clear. In the cases of sexual violence against women during the internal armed conflict, the Peruvian State through its executive organs i.e. Ministry of Defense and Ministry of Justice have not recognized the systematic practice of sexual violence committed by members of the Peruvian Military. This unwillingness of the State does not correspond with the Final Report delivered by the PTRC –an independent organ formed by experts and representatives of the civil society-, which determined that the members of the P.A..F. were responsible for more than 80 percent of the reported cases of sexual violence.<sup>79</sup> The PTRC, despite its vital function in the transitional process after the conflict, does not have a judiciary function and its conclusions and recommendations are not binding.<sup>80</sup>

At this point it is important to note that the violation of civil and political rights can be addressed in the international forums e.g. U.N. Human Rights Committee, Inter-American Court of Human Rights, etc, with more facility than socio-economics rights. This may be the

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<sup>76</sup> Rape is considered as a crime according to the Peruvian Penal Code. Sexual harassment, despite not being considered as a crime, is against labor regulation.

<sup>77</sup> Art. 7 Draft Articles on State Responsibility states that a State is responsible for the acts of its organs even if the organ “exceeds its authority or contravenes instructions”.

<sup>78</sup> See note 5.

<sup>79</sup> See note 40.

<sup>80</sup> The function of Truth and Reconciliation Commissions as instruments of transitional justice has been continuously discussed and challenged in connection with the cases of *inter alia* South Africa, South Korea, Liberia, Sierra Leone, Colombia and Peru. For more information on discussion about the PTRC see: Kimberly Theidon, “Justice in Transition: the micropolitics of reconciliation in post-war Peru”, *Journal of Conflict Resolution*, June 2006 vol. 50 no. 3 433-457.

reason why scholars have focused more on the violations of civil and political rights with regard to the issue of sexual violence instead of the lack of fulfillment of socio-economic rights, also related to this issue. At the international level, the State Parties to the ICESCR are obliged to present periodic reports to the special Committee on Economic, Social and Cultural Rights (hereinafter CESCR).<sup>81</sup> The CESCR GC No. 14 has established that the State's obligation to protect includes *inter alia* "to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence."<sup>82</sup> Despite the efforts of the U.N., this mechanism does not provide the same level of enforceability that civil and political rights enjoy. At the regional level, the violation of the socio-economic rights recognized in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter Protocol of San Salvador)<sup>83</sup> can not be addressed in the Inter-American Court of Human Rights, with the exception of the Right to Education and one aspect of the Trade Union Rights.<sup>84</sup>

Therefore, it is important to be aware of the link between the non-fulfillment of socio-economic rights and structural sexual violence against women in the P.A.F. The recognition of this link will promote the enforceability of socio-economic rights holding the Peruvian State liable for the acts of sexual violence caused by the non-fulfillment of such rights.

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<sup>81</sup> Committee on Economic, Social and Cultural Rights. Established under ECOSOC Resolution 1985/17 on May 28, 1985.

<sup>82</sup> CESCR GC No. 14 (2000), the Right to the Highest Attainable Standard of Health (Art. 12), par. 35.

<sup>83</sup> Adopted on November 17, 1988.

<sup>84</sup> Protocol of San Salvador, Art. 19.

## 4. UNVEILING THE PERMISSIVENESS OF SEXUAL VIOLENCE AGAINST FEMALE MILITARY: VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

### 4.1 Reexamining Article 5 of the “Convention of Belém do Pará”

The core international instrument in the Inter-American system for the protection of women from violence is the Convention of Belém do Pará. This Convention is the result of the development of international law and also the necessity to have a binding instrument addressing issues of violence against women.<sup>85</sup> The document recognizes that violence against women “constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms”;<sup>86</sup> defines the term “violence against women” with reference to physical, sexual and psychological aspects of violence; provides a non exhaustive list of rights directly related to the protection of women; points out which are the duties of the States for the protection of women from such violence; and sets the mechanisms for the protection of rights provided by the Convention within the Inter-American system.

The Convention has demonstrated to be an useful instrument for the protection of women’s rights, particularly holding States Parties responsible for the non-fulfillment of the obligations derived from the treaty. In this respect, the cases of *Castro Castro Prison*<sup>87</sup> and the recently decided “*Cotton Field*”<sup>88</sup> and *Fernandez-Ortega et al. v. Mexico*<sup>89</sup> presented before the Inter-American Court of Human Rights, demonstrate that the provisions set by the Convention are applicable for establishing liability of States when they have failed to prevent their State

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<sup>85</sup> The Declaration on the Elimination of Violence against Women and the General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women are also important documents but they only constitute *soft law*, while the Convention of Belém do Pará is the only binding regional instrument for the States Parties.

<sup>86</sup> Convention of Belém do Pará, Preamble.

<sup>87</sup> See note 5.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

agents from engaging in the practice of violence against women;<sup>90</sup> or when they have not applied due diligence to investigate violence against women.<sup>91</sup>

However, the Convention does not seem to have the same level of effectiveness with regard to the prevention of the practice of violence against women and especially with regard to sexual violence.<sup>92</sup> In the cases of sexual violence within the P.A.F., the Peruvian State could be held responsible for the non-prevention of its agents in the commission of acts of violence against women, or for the failure to investigate such acts, but that would only constitute an *ex post* rapprochement to the issue (necessary indeed), leaving aside the *preventive* aim of the Convention.

Article 7(b) of the Convention provides that the States Parties commit to “apply due diligence to *prevent*, investigate and impose penalties for violence against women”<sup>93</sup>, which would then display the obligation of the Peruvian State to implement mechanisms for the prevention of sexual violence against female personnel in the Military. Moreover, Art. 7(e) obliges the Peruvian State to “take all appropriate measures [...] to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women.” Then, it is essential to know which are the appropriated measures the State must take for the elimination of the persistence and tolerance of violence against women.

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<sup>90</sup> Convention of Belém do Pará, Art. 7(a)

<sup>91</sup> Ibid, Art. 7(b)

<sup>92</sup> The IACHR in its report on “The Situation of the Rights of Women in Ciudad Juárez” criticized that “[w]hile public and official attention have focused on the brutality of and fear associated with the so-called “serial” killings, insufficient attention has been devoted to the need to address the discrimination that underlines crimes of sexual and domestic violence, and that underlies the lack of effective clarification and prosecution” recognizing therefore the need of addressing the link of socio-economic rights with the issue of violence against women in order to prevent the commission of more of these crimes. See Inter-American Commission on Human Rights, “The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right To Be Free From Violence and Discrimination” (2002), available at <http://www.cidh.org/annualrep/2002eng/chap.vi.juarez.htm> par. 11, 69-87.

<sup>93</sup> Emphasis added.



The Inter-American Court of Human Rights has already stated, in the *Cotton Field* case, that Art. 7 (which contains the obligations whose violation could be addressed before the Court)<sup>94</sup> may be interpreted in accordance with the other articles of the Convention.<sup>95</sup> Thus, Art. 7(e) must be complemented with Art. 9, which says that “[w]ith respect to the adoption of the measures [...] States Parties shall take special account of [...] women [...] who are socio-economically disadvantaged[.]” Then, the Convention recognizes that there is a link between the issue of violence against women and their socio-economic rights, and that this link must be taken into consideration when establishing measures for the prevention of sexual violence.

Nevertheless, it is important to note that in addition to Art. 9, the Convention refers only once again to women’s socio-economic rights, in Article 5 of the Convention of Belém do Pará states:

*“Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.”*<sup>96</sup>

With this article, the Convention reaffirms the existence of a link between women’s socio-economic rights and the conditions in which women are subjected to violence. Yet the established link has been traditionally regarded as having a mono-directional rationale i.e. violence prevents women from the enjoyment of socio-economic rights.<sup>97</sup>

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<sup>94</sup> Convention of Belém do Pará, Art. 12.

<sup>95</sup> See Case of González et al. (“Cotton Field”) v. Mexico. Par. 79.

<sup>96</sup> Emphasis added.

<sup>97</sup> Giulia Paglione has observed the shortcomings of the Convention of Belém do Pará with regard to the interpretation of domestic violence as a violation of the right to housing, concluding that the Convention does not “specifically highlights socio-economic rights”, and therefore “lacks an integrated vision of the complexities and interrelation of women’s human rights.” See: Giulia Paglione (2005), *“Domestic violence and housing rights: A reinterpretation of the right to housing”*, Institutt for offentlig retts skriftserie nr. 4/2005 (Universitet i Oslo).

#### **4.1.1 Incorporating a bi-directional rationale: Indivisibility of civil and political, and socio-economic rights.**

The preventive aim of the Convention requires a more comprehensive approach to sexual violence; it is necessary to reexamine Art. 5 and incorporate a bi-directional rationale in the understanding of the link between socio-economic rights and violence against women, particularly observing that the non-fulfillment of women's socio-economic rights promotes a permissiveness for acts of sexual violence.

For that purpose, a revision of the following two international instruments might be evidence for the existence of such rationale.

The Preamble of the American Convention on Human Rights recognizes that “the ideal of free men [and women] enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights”. In this instrument, the rationale on the enjoyment of freedom as a consequence of the enjoyment of socio-economic rights is clear.

Furthermore, the Protocol of San Salvador expressly recognizes “the close relationship that exists between economic, social and cultural rights, and civil rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified.”<sup>98</sup>

The indivisibility of Civil and Political Rights and Economic and Social Rights, following Chinkin, is progressively recognized, which allows “the interpretation of civil and political rights to include economic and social rights and thereby to read economic and social rights into instruments that do not apparently include them.”<sup>99</sup> Thus, the Human Rights Committee

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<sup>98</sup> Protocol of San Salvador, Preamble.

<sup>99</sup>Christine Chinkin, “The protection of economic, social and cultural rights post-conflict”. In addition, MacKinnon, in a critique of international human rights law, argues that the division of the different groups of

and the European Court of Human Rights have issued decisions that -supporting Chinkin's arguments- recognize that the right to health "builds upon and complements other rights such as the right to life, to education, to receive information, to participate in public affairs, to freedom of expression (including sexual expression), to shelter, to food, to privacy and to protest"; and "[e]quality of rights between men and women, requires data on [...] the impact on of poverty and deprivation on women - all under ICCPR, article 6 (right to life)."<sup>100</sup>

Thus, article 5 of the Convention of Belém do Pará must be read under the light of the indivisibility of civil and political, and socio-economic rights; broadening the current treatment of sexual violence, which mainly focuses on women's civil and political rights, through the incorporation of an analysis of the fulfillment of women's socio-economic rights in the fight against gendered violence.

Cases of discrimination in the fulfillment of women's socio-economic rights have several effects with regard to violence against women. The Inter-American Commission of Human Rights in its report on "*Access to justice for women victims of violence in the Americas*" stated that the credibility of the victims may get seriously affected by socio-cultural patterns existing in the society, which causes women to be identified as provoking-agents or deserving of the actions and not as victims.<sup>101</sup> Discrimination may also lead to unwillingness to carry out the investigation and/or prosecution of the crimes, because people in charge of these processes may also be influenced by these patterns, thus taking women's behavior, social class, economical power, etc into consideration. In this respect, the Inter-American Court has recognized that in cases of violence against women and impunity, the States influenced by discriminatory patterns are responsible for failing in their duty of non discrimination contained in Article 1(1) of the American Convention of Human Rights.<sup>102</sup>

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rights is a consequence of men's domination of the law given that they prioritize groups of rights that are convenient for their protection, leaving women unprotected as a result. See: Catherine MacKinnon (2006).

<sup>100</sup> Chinkin, p. 42.

<sup>101</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, 20 January 2007.

<sup>102</sup> See *González et al. ("Cotton Field") v. Mexico Case*, par. 402.

In addition, the IACHR addressed the issue of economic subordination in the treatment of women subjected to violence, recognizing in one of its recommendations the necessity to adopt “more integral social services designed to respond to the problem of economic subordination that often prevents women from removing themselves from an abusive situation.”<sup>103</sup>

Therefore, Article 5 of the Convention of Belém do Pará must be implemented for the prevention and fight against sexual violence against female personnel within the Peruvian Military; this demands a comprehensive analysis of the female soldier’s socio-economic conditions and whether discriminatory policies exist against women. In the following section, an analysis of three particular discriminatory policies will illustrate the link between socio-economic rights and sexual violence against women.<sup>104</sup>

## **4.2 Discrimination in the Access to Education, Labor and Reproductive Rights**

### **4.2.1 Access to Education**

The right to education is widely recognized in multiple international instruments. The Universal Declaration of Human Rights declares that “[t]echnical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”<sup>105</sup> The ICESCR follows the same path reaffirming that education should be equally accessible to all.<sup>106</sup> Focusing in the protection of women, CEDAW establishes that States Parties shall “eliminate discrimination against women in order to ensure to them equal

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<sup>103</sup> IACHR, “The Situation of the Rights of Women in Ciudad Juarez, Mexico: The Right To Be Free From Violence and Discrimination” (2002) (Recommendation No. 17 to improve the application of due diligence to investigate, prosecute and punish violence against women in Ciudad Juarez and overcome impunity).

<sup>104</sup> During my field work, conclusive references to sexual violence were presented. Eight out of the eighteen women answered positively when asked if they had ever felt sexually harassed during their military service. Fourteen gave a positive answer when asked if they knew of another female soldier who has been sexually harassed. More alarmingly, five out of the eighteen female military interviewed stated that they knew or had references of a case where a female soldier suffered an attempt of rape within the Military.

<sup>105</sup> Universal Declaration of Human Rights, Art. 26 (1)

<sup>106</sup> ICESCR, Art. 13 (c)

rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (a) The same conditions for [...] access to studies [...]; (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms [...].<sup>107</sup> In addition, the Beijing Platform addressing the constraints and obstacles for the empowerment of women, pays a lot of attention to women's access to education, aiming to ensure equal access to and equal treatment of women and men in education.<sup>108</sup>

Despite all the precedent provisions, the P.A.F. sustain policies that may be qualified as discriminatory with regard to the access to education. For instance, at the Chorrillos Academy of Officers (belonging to the Army) male and female cadets receive a five years education. During the first three years, cadets receive general instruction, and the last two years are destined for courses of specialization chosen by each cadet. Female cadets have access to eight of twelve specialties available. The specialties of Infantry, Cavalry, Artillery and Religious Military Service<sup>109</sup> are solely available for male personnel.<sup>110</sup>

The Navy Academy has a similar policy with respect to female access to certain specialties. All cadets, after graduation, must choose a specialty for continuing their education; female cadets can only choose six of ten specialties. The fields of Submarines, Infantry, Special Operation, and Scuba diving and Rescue are only available for men.<sup>111</sup> The case of the Air Force academy is no exception; women are allowed to choose six out of the nine specialties, the branches of Combat Pilot, Air Defense, and Defense and Special Operations are unavailable to women.<sup>112</sup>

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<sup>107</sup> CEDAW, Art. 10

<sup>108</sup> Beijing Declaration and Platform for Action.

<sup>109</sup> The specialty of Religious Military Service is only available for men because religious service is driven by the Catholic Church, which does not allow women to have sacerdotal positions.

<sup>110</sup> Legislative Decree 437, Ley orgánica del Ejército del Perú (1987).

<sup>111</sup> Information available at <http://www.escuelanaval.edu.pe/>

<sup>112</sup> Ivette Castañeda Garcia et al. (2009); "La mujer en las Fuerzas Armadas y la Policía: Una aproximación de género a las operaciones de paz", available at <http://www.resdal.org/>

The Armed Forces argue that limitations imposed upon women's access to certain specialties are based in the nature of the military function. Accordingly, Article 2 of the Law 28359 which states that Armed Forces officers have the same rights and obligations, and the rules established by this law shall not cause acts of discrimination, specially with regard to sex, does allow the setting limitations based on objective criteria and sex, which is qualified as "inherent to the military function".<sup>113</sup>

Thus, in the case of female cadets at Military Academies in the three branches of the Armed Forces (Army, Navy and Air Force), it is evident that the principle of non-discrimination in the access to education is not respected.

The difference in the treatment of male and female officers clearly contravenes the recommendations made by the CESCR, which states that technical and vocational education is an "integral element of all levels of education", and that they shall be accessible on a non-discriminatory basis.<sup>114</sup> The CESCR goes further and states that the prohibition against discrimination, which is provided in Art. 2(2) of the Covenant, is not subject to progressive realization nor the availability of resources (Art. 2(1)). This means that in the case of discrimination against women with regard to education within the Peruvian Military, even when the access of women to some specialties would demand particular measures -e.g. infrastructure, especial dietary management, adequate clothing, etc.-, it may not be considered as justification for the discriminatory behavior.

#### **4.2.1.1 The consequences of discrimination in the access to education**

The limitations set upon women are very serious and have multiple consequences. For example, it must be noticed that the positions reserved only for male personnel are the ones

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<sup>113</sup> Art. 2, Law 28359, "Ley de situación militar de los oficiales de las Fuerzas Armadas" (2004). Original text: "Principio de igualdad

Los Oficiales de las Fuerzas Armadas, tienen iguales derechos y obligaciones. Ninguna disposición de la presente Ley podrá, en su aplicación, generar acto de discriminación alguna, en especial por razones de sexo, en el acceso a la carrera militar, asignación de empleo, ascenso y pase al retiro.

Se pueden establecer limitaciones en base a criterios objetivos y de sexo, inherentes a la función militar, los que han de establecerse en el reglamento de la presente Ley."

<sup>114</sup> CESCR General Comment on the Right to Education (Art. 13).

from which the highest ranks in the Armed Forces come from.<sup>115</sup> This means that female officers are being relegated to secondary positions preventing women to occupy the highest command ranks in the future, which in turn impedes a full integration of women in the Military.

Taking into consideration the arguments set in the Beijing Platform, the female personnel who suffer gender discrimination and also face “particular barriers” such as denied or limited access to education, find themselves in a vulnerable position, being isolated or marginalized within the Armed Forces.<sup>116</sup> Discrimination in the fulfillment of socio-economic rights combined with a precarious financial situation may subject women to vulnerabilities *vis à vis* sexual exploitation.<sup>117</sup>

The profile of the average Peruvian female military, discussed in a previous chapter, illustrates that women’s economic situation in Peru is not standardized, and it may be a key factor for the enjoyment of socio-economic rights<sup>118</sup>. Female cadets at Military Academies are young and, therefore depend on their families. Families invest money in the tuition for their daughters, expecting that a career in the Military will eventually provide an acceptable salary (a challenging fulfillment given the increasing rate of underemployment and that 44.5 percent of the population are under the poverty line).<sup>119</sup> Their economic vulnerability added to the denial of empowering access to education causes that young female military personnel may be more exposed to acts of sexual violence.

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<sup>115</sup>Legal Defense Institute (2009), p.37.

<sup>116</sup> Beijing Platform, par. 33.

<sup>117</sup> Ibid, par. 53.

<sup>118</sup> The IACHR Report on Peru (2000) recognized that “in Peru there are profound differences in the effective enjoyment of economic, social, and cultural rights as between the rural and urban populations, and there is a profoundly unequal distribution of wealth as between the richest and poorest sectors in the country” Available at: <http://www.cidh.org/pais.eng.htm> par. 22.

<sup>119</sup> Information taken from <https://www.cia.gov/library/publications/the-world-factbook/geos/pe.html>

The case of Diana Bazán<sup>120</sup> illustrates the serious predicament female military experiment when faced to acts of sexual violence. Female cadets like Diana Bazán must pay a tuition of around PEN 9,000 (approximately USD 3,217)<sup>121</sup> when they get accepted in the Military Academy. The monthly minimum wage in Peru is PEN 550 (approx. USD 196), then this tuition fee imposes an important financial burden for the family. When cadet Bazán was asked about the delay of two days for reporting the crime, she declared that she used the time to look for advice on the course of action she should take and the possible consequences of the report with regard to the alleged perpetrator and the Academy.<sup>122</sup> The mentioned consequences may involve negative economic repercussions. Female cadets reflect on the possibilities the report would not be upheld and that they may be subjected to a disciplinary process for the issuance of a false report.<sup>123</sup>

If cadets are found responsible for the issuance of a false report, they may face expulsion from the Academy. That implies that the cadet's family will lose the money they paid for the concept of tuition, which supposes a serious drawback for the family.<sup>124</sup>

Therefore, the non-enjoyment of socio-economic rights caused by the discriminatory denial of access to education, added to the financial vulnerability of women and their families, put female military victims of sexual violence in a difficult situation. If the report of sexual violence is not upheld, the victim would face more problems than solutions. This causes that

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<sup>120</sup> See note 1.

<sup>121</sup> Calculation made on October 6, 2010.

<sup>122</sup> Summary of cadet Bazán's declaration included in the 27 Public Attorney Office's Report No 245-10. Copy in my power.

<sup>123</sup> The testimonies collected during the interviews in Peru point out that there are difficulties for reporting a conduct of sexual violence in the Military. According to the female soldiers interviewed, the report must be accompanied by prove. Documents, videos or testimonies of witnesses are often required, making hard that the report will be taken seriously.

<sup>124</sup> In the case of cadet Bazán, when she was separated by the Armed Forces in what she claims to be a reprisal for the report, the Academy refund her the amount of PEN 5,261.34, which is not a regular procedure because expelled cadets do not receive any refund. This fact may be taken as an indication of that the Armed Forces considered the expulsion of cadet Bazán as, at least, particular; and that they expected the refund of a part of the tuition amount will discourage cadet Bazán's family to continue with their demands . See : <http://www.larepublica.pe/21/06/2009/no-hay-justicia-para-diana>



victims not be willing to report these criminal conducts. In addition, the risk of being subjected to sexual violence increases in an scenario of underpowered women and low rate of crimes' reports.

#### **4.2.2 Access to Labor**

The right to work is a fundamental right enshrined in multiple international instruments. One of the essential aspects of this right is the principle of non-discrimination which guarantees that every person shall have a fulfilling and dignified work under safe and healthy conditions and with fair wages.

An analysis of the assignment of functions within the Peruvian Military will show us whether discriminatory conducts with regard to access to labor exist in this institution.

The Peruvian military service lasts two years. During the first three months of service, military personnel receive military instruction which mainly consists of physical training. At the end of this period, the military personnel are assigned to labors in the different departments and offices within the specific branch of the Armed Forces where they have chosen to serve. According to the testimonies presented during the interviews conducted in Lima, female personnel are assigned for solely administrative work, serving as a kind of administrative assistants or secretaries, while men are assigned to chores more related to the Military function e.g. security, management of weapons, maintenance of the barracks, etc.<sup>125</sup>

According to the interviews, female personnel are not free to choose the kind of work they will do (within the limits of the military function). Their only option is to work as administrative help, a kind of labor that is traditionally regarded as woman's job. Therefore, it may be perceived that this relegation of women to certain roles within the Military is contravening the principle of non-discrimination with regard to work, and specially Art. 5 of CEDAW, which obliges States to work towards the modification of social and cultural

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<sup>125</sup> Even though Supreme Decree Nº 021-2009-DE-SG (2009) generally regulates the performance of military service, including the labor of female personnel, this rule has not been completely implemented, leaving each branch of the Armed Forces the responsibility to organize the performance of the service within its jurisdiction.

patterns in order to eliminate “prejudices and customary and all other practices which are based on [...] stereotyped roles for men and women”.

The issue of gender stereotyped work is especially serious in one of the testimonies collected during the interviews. A female military serving in the Army recounted that after the three months of military instruction she was assigned to an office where part of her duties was to prepare breakfast and clean the toilet of the officer in charge. According to her testimony, she could sense a clear gender biased division of work, where female personnel were inside the office together with the officer in charge, and male personnel were outside, carrying out duties of vigilance. In the case of cadet Raymondi,<sup>126</sup> it was reported that female personnel doing military service were ordered to serve as hostess and waitresses in a party celebrated inside the barracks; female personnel were requested to use miniskirts.<sup>127</sup> This clearly proves that -at least- some part of the Military keeps a patriarchal conception of women’s participation within the Armed Forces.

The main purpose of the Military Service in Peru is that every Peruvian exercises the constitutional right and duty to participate in the national defense.<sup>128</sup> However, it must be taken into consideration that labors assigned to military personnel must comply with the provisions of the ICESCR. This instrument demands that the State should guarantee the respect of fundamental political and economic freedoms of the individual in the provision of measures for the achievement of productive employment.<sup>129</sup> As it has already been said, the socio-economic situation of young women in Peru influences their decision for doing military service; young Peruvians consider the military service as a work opportunity.

The CESCR in General Comment No. 18 declares that States Parties must “ensure the right to access to employment, especially for disadvantaged and marginalized individuals and groups,

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<sup>126</sup> See note 1

<sup>127</sup> See La Republica, August 22, 2008 at:  
<http://www.larepublica.pe/archive/all/larepublica/20080822/pasadas/15/162852>

<sup>128</sup> Law 29248, Art. 2

<sup>129</sup> ICESCR, Art. 6(2)

permitting them to live a life of dignity.”<sup>130</sup> Thus, it is important to recognize female personnel as a marginalized group within the P.A.F. because of their gender. This recognition would permit that women’s economic vulnerabilities will be taken into consideration for their access to employment.

The perpetuation of women’s traditional roles in the assignment of duties within the Military, encourage male personnel to continue looking at female military as solely support or service personnel; preventing women from work opportunities with which they could demonstrate their capabilities and contributions related to the military function.

#### **4.2.2.1 Gender-biased labor and sexual violence**

Noting that male personnel surpass women in number and rank within the Military, the stereotyped labor of women may create an environment that gives room to sexual violence. Dias Espinoza, from the Defense Commission of the Peruvian Congress, argues that “given the military system follows a patriarchal thought, many male officers believe that female military must submit to their subtle or brutal advances, and that in order to have a better life and better chances to be promoted women must accept their sexual demands.”<sup>131</sup> This is confirmed by eight of eighteen women interviewed in Lima. They declared that “good-looking girls”<sup>132</sup> have advantages related with the military life e.g. they were excused to make physical training, they were often invited to eat in the canteen for officers and noncommissioned officers, and especially they were offered job positions which allowed them to earn more money.<sup>133</sup> Furthermore, according to the testimonies of thirteen female military, it exists a tacit permissiveness of sentimental and sexual relationships between married male personnel and female personnel doing military service.<sup>134</sup> This permissiveness exists despite the fact that relationships between military personnel are strictly regulated by

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<sup>130</sup> CESCR General Comment No. 18, The Right to Work, adopted on 24 November 2005, par. 31.

<sup>131</sup> Raquel María Díaz Espinoza (2008), “Situación de las mujeres en las Fuerzas Armadas a una década de su incorporación”, I Foro Interamericano de Mujeres contra la Corrupción (2008), available at: <http://agendadelasmujeres.com.ar/index2.php?id=3&nota=6795>

<sup>132</sup> No parameter was established for the concept of “good-looking girl”.

<sup>133</sup> The amount of tips and transport depends on the office where military personnel are posted.

<sup>134</sup> Male and female doing military service must be single. See note 49.

law, and extra-marital relationships are qualified as “improper relationships” penalized by administrative regulation.<sup>135</sup>

If women do not get equal access to military positions, they will continue to be considered as accessory personnel, being evaluated by male superiors based on characteristics that are not relevant to the military function, such as physical features and pleasant conduct. Sexual harassment is not a strange experience for the female military interviewed in Lima. Eight of eighteen women declared to have experienced sexual harassment during their military service by a male of higher rank than them. Three of them were sexually harassed by the officer in charge while performing administrative duties. One refers that she was proposed to have sexual relations with her officer in charge in exchange of a recommendation for promotion of rank (which would mean an increase of salary for her).

Besides the concern for the exposure of female military to sexual violence, the role of women within security forces has already brought the attention of the IACHR, noting that in the Americas, police women do not receive an “equal and nondiscriminatory treatment with respect to job-related rights”.<sup>136</sup> The report stresses that women are being discriminated in the assignment of labors and they are being denied the opportunity to actually perform the proper functions of police work. In addition, the IACHR recognizes the importance to have a security force that represents the composition of the society, taking into account characteristics as *inter alia* ethnicity, culture, language and gender.

Establishing a parallel between the Police Force and the Armed Forces, even though their functions differ in most States, the role of women faces the same difficulties. The fact that female military are relegated to a stereotyped role hinders the function of the Armed Forces and makes them not representative of the society. The role of female military is extremely important especially in post-conflict states as Peru, where gender mainstreaming is being

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<sup>135</sup> In 2008, after Cadet Bazán report was broadcasted, the Peruvian Defense Ministry passed three General Directives (007-2008/MINDEF/VRD/DGRRHH; 005-2008/MINDEF/VRD/DGRRHH; and 006-2008/MINDEF/VRD/DGRRHH) which regulate interpersonal conduct within the Military and establish the administrative procedure in case of sexual harassment. The sanctions for “improper conduct” or “improper relationship” are of an administrative nature.

<sup>136</sup> IACHR, Special Report on Citizen Security and Human Rights (2009), available at: <http://www.cidh.org/pais.eng.htm>

promoted as one element for the achievement of peace-building and post-conflict reconstruction.<sup>137</sup>

### 4.2.3 Reproductive rights

The right to found a family -whatever constituted- is a fundamental right recognized by the Universal Declaration of Human Rights and it is entitled to protection by the State.<sup>138</sup> The protection of maternity is necessary because it is an external expression of women's intrinsic characteristics. Pregnancy is a situation that is clearly linked to the gender of the person carrying it. Therefore, protection of women against discrimination encompasses the protection of all their natural characteristics and experiences, which derive from women's nature.

CEDAW specifically protects women from discrimination on the grounds of maternity, stating that in order to ensure women's effective right to work, States Parties shall take appropriate measures to prohibit dismissal on the grounds of pregnancy.<sup>139</sup>

Despite all the mentioned international protection, Peruvian legislation allows Military Academies to expel female cadets that become pregnant while attending the Academy. The law which regulates the Military Academies states that the maintenance of the cadet status is subject to the fact that the person must not have children or become pregnant during the entire period of formation.<sup>140,141</sup> Therefore, if female cadets become pregnant they are immediately subject to expulsion from the Academy. The same rule applies for male cadets who impregnate women, which might seem gender-neutral at first sight, but going further in the analysis will prove that given women's pregnancy becomes inevitably notorious, they are

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<sup>137</sup> See UN Security Council Resolution 1325 (2000)

<sup>138</sup> Universal Declaration of Human Rights, Art. 16.

<sup>139</sup> CEDAW, Art. 11(2)(a)

<sup>140</sup> Supreme Decree No 001-2010-DE/SG "Intern Regulation of the Centers of Formation of the Armed Forces", Art. 42.

<sup>141</sup> The period of formation lasts 3 years for Noncommissioned officers and 5 years for Officers.

more exposed to sanctions than men. Therefore, the rule adversely affects women more than men.<sup>142</sup>

The expulsion of pregnant cadets from centers of instruction has already been analyzed by the Peruvian Constitutional Tribunal in the case of Nidia Yesenia Baca Barturén, a cadet at the Police Academy. The Tribunal declared that the expulsion of the cadet was against the Peruvian Constitution because it denied the right to education based on her gender. Pregnancy was recognized as an element or distinguishing factor of women's gender. The tribunal qualified as "discriminatory" not only the conduct perpetrated against Baca but also against the family.<sup>143</sup> The case of cadet Baca is easily comparable with the cases of cadets subjected to expulsion by the same reasons from military academies.

Through expulsion, female cadets who become pregnant are denied the right to education, whereas male cadets subjected to the same kind of temporal physical impediments are offered a medical leave. The same regulation which establishes that cadets shall not keep their status if they get married or have children, also provides –in case of sickness- that cadets may enjoy a medical leave until the maximum period of two years.<sup>144</sup>

Naturally, during the pregnancy period women do not enjoy the same physical abilities non-pregnant cadets do, but these limitations are only temporary and are specifically related to only one aspect of the military function i.e. physical training. The issuance of a leave must be considered as a viable option, especially following the provisions of the ICESCR, which states that mothers should be granted special protection before and after childbirth.<sup>145</sup>

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<sup>142</sup> According to the testimonies collected in Lima, male military use to hide the existence of children when it is inconvenient for their career opportunities within the Armed Forces. Pregnant cadets do not have this possibility given the physical condition of pregnancy.

<sup>143</sup> Resolution No. 05527-2008-hc (February 11, 2009), available at: <http://www.tc.gob.pe/jurisprudencia/2009/05527-2008-HC.html>

<sup>144</sup> Supreme Decree No 001-2010-DE/SG "Intern Regulation of the Centers of Formation of the Armed Forces", Art. 121. The Peruvian Ministry of Defense passed this law after the mentioned decision of the Constitutional Tribunal, which may be interpreted as a sign of that patriarchal traditions still rule within the Armed Forces above constitutional principles.

<sup>145</sup> ICESCR, Art. 10.

Pregnancy, being a natural faculty of women, must not be taken as a disadvantage for the military career. Paternity and maternity should be supported by the governmental institutions such as the Armed Forces. Thus, male and female military must have the right to decide on the number and spacing of their children, and the Peruvian State must provide women the means to exercise that right.<sup>146</sup>

In a very similar American case, Justice Ginsburg pronounced that “excluding a pregnant woman from the Air Force when men otherwise similarly situated in their capacity or incapacity to work are provided sick leave is a core case of sex discrimination because the distinction ‘reflects arbitrary notions of woman's place wholly at odds with contemporary legislative and judicial recognition that individual potential must not be restrained, nor equal opportunity limited, by law-sanctioned stereotypical prejudgments.’”<sup>147</sup>

Consequently, the expulsion of female cadets because of their pregnancy is of clear discriminatory nature.

#### **4.2.3.1 Discrimination in reproductive rights and sexual violence**

Discrimination against women based on their condition of pregnancy constitutes one more way of perpetuating women’s traditional role in society and particularly within the Military.<sup>148</sup> The CESCR has already recommended, with regard to sexual harassment, that States should take effective public education measures designed to eliminate gender-based prejudices and traditional practices that are harmful to women and girls;<sup>149</sup> suggesting in this way that

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<sup>146</sup> CEDAW, Art. 16(1)(e)

<sup>147</sup> Neil S. Siegel et al. (2010), “*Struck by Stereotype: Ruth Bader Ginsburg on Pregnancy Discrimination as Sex Discrimination*”, 59 Duke L.J. 771 (January 2010). In this essay the authors discuss the arguments of Professor Ruth Bader Ginsburg in the merits brief in *Struck v. Secretary of Defense* (USA, 1972).

<sup>148</sup> Despite the predisposition of the Peruvian Military to expel pregnant cadets, according to a survey, 80 percent of the Peruvian population supports that women who become pregnant during their studies at the Military Academies should enjoy a leave and be permitted to come back to the school. See: “*Protegiendo Ciudadanos: Boletín de vigilancia para la protección de los derechos fundamentales del personal militar*”, Year 1, No. 2 (March 2010), available at: <http://www.ciudadanosprotegiendociudadanos.org/boletines.php>

<sup>149</sup> CESCR GC No. 14 (2000) Art. 12 par. 21; see also Fleur van Leeuwen (2010), “*Women’s Rights Are Human Rights: The Practice of the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights*”; School of Human Rights Research Series, Volume 36, Intersentia, 2010.

women are more vulnerable to sexual violence when situated in prejudiced and traditional environments. Thus, the denial of the exercise of women's right to have a family –especially when abortion is prohibited by Peruvian law-,<sup>150</sup> forces women to abandon the Military or, in some cases, subjects them to the whim of their superiors at the Military.

Female personnel doing voluntary military service are also subjected to expulsion if they have children or become pregnant.<sup>151</sup> Nevertheless, according to seven of the eighteen female soldiers interviewed, pregnant soldiers are granted a “special” leave if they have good relations with the superiors.<sup>152</sup> Thus, the possibility of getting a leave depends not on the law, but on the will of superiors, who are usually men. Being aware of the factual permissiveness of relationships considered “inappropriate” by the law,<sup>153</sup> it is not uncommon that female soldiers are harassed or offered sexual propositions in exchange of leaves. Again, the socio-economic situation of women doing military service (mostly undereducated and experiencing financial difficulties) must be taken into consideration when examining the link of discrimination and sexual violence.

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<sup>150</sup> The issue of legal and safe abortion is a highly controversial up-to date topic in Peru. Even though the Peruvian Penal Code does not punish abortion when the life of the mother is in danger, there are not adequate regulations for determining such danger and therefore, there is no application of the exception, condemning women to carry on with unwanted, dangerous pregnancies. See Sarah A. Huff, “The abortion crisis in Peru: finding a woman's right to obtain safe and legal abortion in the Convention on the Elimination of All Forms of Discrimination against Women”, 30B.C. Int'l & Comp. L. Rev. 237 (Winter 2007). Another issue concerning reproductive rights is the use of the Emergency Contraceptive Pill (ECPs) or “morning-after pill” which generated controversy in Peru after the Constitutional Tribunal prohibited the Ministry of Health to distribute it. The Constitutional Tribunal decision does not prohibit the sale of the pill in the private market, which clearly constitutes a discriminatory measure against poor female population who lack economic resources to purchase it. See EXP. N.º 02005-2009-PA/TC (22 Oct 2009) available at <http://www.tc.gob.pe/jurisprudencia/2009/02005-2009-AA.html>

<sup>151</sup> See note 49.

<sup>152</sup> The same exceptions are granted to women who have children before applying to military service.

<sup>153</sup> See General Directive 006-2008/MINDEF/VRD/DGRRHH p. 2-3. (Peruvian Ministry of Defense)



## 5. CONCLUSION

Traditionally, the understanding of protection of women from sexual violence has been set in terms of the State's obligation to prevent and prosecute the perpetration of the act. Thus, the States focus their attention exclusively on civil and political rights i.e. right to life and security, to liberty, to physical, mental and moral integrity, etc. The case of sexual violence against the female military in Peru demonstrates that whereas civil and political rights must be respected and enforced, the satisfaction of socio-economic rights is also a key element for the prevention of violence against women.

Gender-based discrimination is prohibited by international law. CEDAW protects women from discrimination at the international level. The principle of non-discrimination is considered *jus cogens* in the Inter-American system. Nevertheless, sexual violence within the Peruvian Armed Forces is clearly linked to the discriminatory policies the female personnel are subjected to during the execution of several aspects of the military function. The discriminatory limitations examined in this thesis with respect to the right to access to education, to labor, and reproductive rights within the Peruvian Military demonstrate that, in reality, women are forced to remain in situations where they are exposed to sexual violence because of the existence of structural organizations perpetuating the unequal power relations between men and women. The failure of the State to fulfill its obligations with respect to socio-economic rights not only aggravates the situation of women facing sexual violence, but also exposes women to such acts.

Therefore, the State's awareness on the implications of the lack of fulfillment of women's socio-economic rights through a gender-sensitive approach is necessary to prevent sexual violence against women. The Convention of Belém do Pará is a vital instrument in the fight against sexual violence. In article 5, the Convention clearly links violence against women to the non-exercise of socio-economic rights. This thesis demonstrates that the link is bi-directional. Consequently, it must be understood that violence against women prevents the exercise of socio-economic rights, and the lack of fulfillment of socio-economic rights promotes sexual violence.

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**ANNEX I**

**PROFILE OF THE FEMALE MILITARY INTERVIEWED**

| <b>CODE</b> | <b>AGE AT BEGINING OF SERVICE</b> | <b>YEAR OF SERVICE</b> | <b>BRANCH OF THE PAF</b> | <b>MAIN MOTIVATION FOR VOLUNTEERING TO MILITARY SERVICE</b> | <b>BILETETED/NON-BILETETED MILITARY SERVICE</b>           | <b>SALARY (Tip + Transport) PEN</b> | <b>NUMBER OF WOMEN WHO ENTERED TO SERVICE WITH HER</b> | <b>NUMBER OF WOMEN WHO RETIRED FROM THE SERVICE</b> |
|-------------|-----------------------------------|------------------------|--------------------------|---|---|-------------------------------------|--|---|
| <b>A1</b>   | 18                                | 2005-2007              | Army (Province)          | Possibility of getting education                            | Non-billeted  | Does not say                        | 18   | 0   |
| <b>A2</b>   | 18                                | 2005-2007              | Army (Lima)              | Possibility of getting education / job                      | Non-billeted  | 238                                 | 80-90  | 40-45   |
| <b>A3</b>   | 18                                | 2005-2009              | Navy (Lima)              | Possibility of getting education / No financial means       | Billeted (3 months)                                       | 79                                  | 79   | 5   |
| <b>A4</b>   | 19                                | 1987                   | Navy (Lima)              | Possibility of getting education / No financial means       | Each Saturday   | 0                                   | 200  | Does not know                                       |
| <b>A5</b>   | 18                                | 1995-1996              | Army (Lima)              | Possibility of getting education                            | Non-billeted  | Does not say                        | 180-200  | Several for extraordinary circumstances             |
| <b>A6</b>   | 19                                | 1995-1996              | Army (Lima)              | Possibility of getting education                            | Non-billeted  | Does not say                        | 180-200  | Several for extraordinary circumstances             |
| <b>A7</b>   | 17                                | 2002-2004              | Army (Lima)              | Possibility of getting education / No financial means       | Non-billeted/ Slept in barracks when she had night shifts | 170                                 | 30   | Does not know                                       |
| <b>A8</b>   |                                   | 2003-2005              | Air Force (Province)     | Possibility of getting education                            | Non-billeted  | 300                                 | 5  | 3   |

|            |    |           |                  |  |              |              |    |               |
|------------|----|-----------|------------------|--|--------------|--------------|----|---------------|
| <b>A9</b>  | 22 | 2008-2010 | Army (Lima)      | Possibility of getting education       | Non-billeted | 315          | 15 | 6             |
| <b>A10</b> | 20 | 2005-2007 | Army (Iquitos)   | Possibility of getting education       | Non-billeted | Does not say | 11 | 11            |
| <b>A11</b> | 18 | 2005-2010 | Army (Lima)      | Possibility of getting education       | Non-billeted | 550          | 60 | 35            |
| <b>A12</b> | 18 | 2008-2010 | Navy (Lima)      | Family problems/ no place to live      | Billeted     | 120          | 89 | Does not know |
| <b>A13</b> | 18 | 2008-2010 | Navy (Lima)      | Possibility of getting education       | Billeted     | 120          | 89 | Does not know |
| <b>A14</b> | 18 | 2008-2010 | Army (Lima)      | Family tradition                       | Non-billeted | Does not say | 28 | 15            |
| <b>A15</b> | 18 | 2008-2010 | Army (Lima)      | Possibility of getting education       | Non-billeted | Does not say | 28 | 15            |
| <b>A16</b> | 24 | 2008-2010 | Army (Iquitos)   | Military vocation                      | Non-billeted | 311          | 25 | 10            |
| <b>A17</b> | 17 | 2002-2003 | Army (Lima)      | Possibility to enter to Police Academy | Non-billeted | 160          | 50 | 20            |
| <b>A18</b> | 18 | 2008-2010 | Air Force (Lima) | Family problems / Military vocation    | Billeted     | 220          | 30 | More than 50% |

**ANNEX II**

| <b>CODE</b> | <b>WERE THERE PREGNANCIES OR FEMALE SOLDIERS WITH CHILDREN AT SERVICE?</b> | <b>WERE THERE MARRIED FEMALE SOLDIERS SERVING?</b> | <b>WERE THERE RELATIONSHIPS BETWEEN FEMALE AND MALE SOLDIERS?</b> | <b>WERE THERE ADVANTAGES FOR HAVING A RELATIONSHIP WITH A SUPERIOR?</b> | <b>EXPERIENCED SEXUAL HARASSMENT</b> | <b>KNEW SOMEBODY WHO EXPERIENCED SEXUAL HARASSMENT</b> | <b>"PRETTY GIRLS" HAVE ADVANTAGES IN THE ASSIGMENTS OF DUTIES</b> | <b>ADDITIONAL INFORMATION</b>      |
|-------------|--|--|---|---|--------------------------------------|--|---|------------------------------------|
| <b>A1</b>   | NO   | YES  | Does not know   |   | NO                                   | NO   | Does not know   |                                    |
| <b>A2</b>   | YES, aborts  | Does not know                                      | YES   | YES   | YES                                  | YES  | YES   |                                    |
| <b>A3</b>   | YES, aborts  | Does not know                                      | YES   | YES   | YES                                  | YES  | YES   | Relates periodic "virginity tests" |
| <b>A4</b>   | YES  | Does not know                                      | YES   | YES   | NO                                   | YES  | Does not know   |                                    |
| <b>A5</b>   | YES  | Does not know                                      | YES   | YES   | YES                                  | YES  | Does not know   |                                    |
| <b>A6</b>   | Does not know  | Does not know                                      | YES   | YES   | YES                                  | YES (Rape attempt)                                     | Does not know   |                                    |
| <b>A7</b>   | YES  | Does not know                                      | YES   | YES   | YES                                  | YES  | Does not know   |                                    |
| <b>A8</b>   | NO   | NO   | YES   | NO  | NO                                   | NO   | Does not know   |                                    |
| <b>A9</b>   | YES  | NO   | NO  | NO  | NO                                   | YES  | Does not know   |                                    |
| <b>A10</b>  | NO   | Does not know                                      | YES   | YES   | YES                                  | YES  | Does not know   |                                    |
| <b>A11</b>  | NO   | Does not know                                      | YES   | Does not say  | Does not say                         | Does not say   | YES   |                                    |

|            |     |               |               |              |              |                    |               |  |
|------------|-----|---------------|---------------|--------------|--------------|--------------------|---------------|--|
| <b>A12</b> | YES | YES           | Does not know | Does not say | Does not say | YES (Rape attempt) | YES           |  |
| <b>A13</b> | YES | NO            | NO            | Does not say | Does not say | YES (Rape attempt) | Does not know |  |
| <b>A14</b> | NO  | NO            | YES           | NO           | NO           | YES (Rape attempt) | YES           |  |
| <b>A15</b> | NO  | NO            | YES           | NO           | NO           | YES (Rape attempt) | YES           |  |
| <b>A16</b> | YES | Does not know | YES           | NO           | NO           | YES                | YES           |  |
| <b>A17</b> | YES | NO            | YES           | YES          | YES          | NO                 | YES           | Relates the organization of a "beauty contest" by military authorities in which female soldiers participated |
| <b>A18</b> | YES | NO            | YES           | YES          | YES          | YES                | YES           |  |

**ANNEX III**

| <b>CODE</b> | <b>PREVIOUS EDUCATION</b>                           | <b>RECEIVED EDUCATION</b>     | <b>IS SATISFIED WITH THE EDUCATION RECEIVED IN THE PAF?</b> | <b>TYPE OF DUTIES ASSIGNED WITHIN P.A.F.</b> | <b>HEARED DISCRIMINATORY COMMENTS AGAINST FEMALE SOLDIERS</b> | <b>ADDITIONAL INFORMATION</b>                                 |
|-------------|---|-------------------------------|---|--|---|---|
| <b>A1</b>   | Secondary Education                                 | 6 month course of dressmaking | YES   | Administrative Assistant                     | YES   |   |
| <b>A2</b>   | Secondary Education and training as physiotherapist | 3 month course of nursing     | NO  | Administrative Assistant                     | YES   | Education received is not well accepted by civilian employers |
| <b>A3</b>   | Secondary Education and IT technology               | Does not say                  | Does not say  |  | YES   |   |
| <b>A4</b>   | Secondary Education                                 | Typing course each Saturday   | Does not say  | Physical training                            | Does not say  |   |
| <b>A5</b>   | Secondary Education                                 | IT training                   | Does not say  | Administrative Assistant                     | YES   |   |
| <b>A6</b>   | Secondary Education                                 | IT training                   | Does not say  | Administrative Assistant                     | Does not say  |   |
| <b>A7</b>   | Secondary Education and training as physiotherapist | Little training in Civics     | NO  | Administrative Assistant                     | Does not say  |   |

|            |  |                            |              |                                     |              |  |
|------------|--|----------------------------|--------------|-------------------------------------|--------------|--|
| <b>A8</b>  | Secondary Education                                    | Training in IT and economy | NO           | Administrative Assistant            | NO           |  |
| <b>A9</b>  | Secondary Education                                    | NO                         | NO           | Administrative Assistant            | YES          |  |
| <b>A10</b> | Secondary Education                                    | NO                         | NO           | Administrative Assistant / Cleaning | YES          |  |
| <b>A11</b> | Secondary Education                                    | NO                         | Does not say | Administrative Assistant            | YES          |  |
| <b>A12</b> | Secondary Education                                    | Military training          | YES          | Administrative Assistant            | Does not say |  |
| <b>A13</b> | Secondary Education and IT training                    | Military training / Maths  | YES          | Administrative Assistant            | Does not say |  |
| <b>A14</b> | Secondary Education                                    | Does not say               | Does not say | Does not say                        | YES          |  |
| <b>A15</b> | Secondary Education                                    | Does not say               | Does not say | Does not say                        | YES          |  |
| <b>A16</b> | Does not say   | 3 month IT course          | Does not say | Administrative Assistant            | YES          |  |
| <b>A17</b> | Secondary Education and training as nursing assistant. | 3 month IT course          | Does not say | Administrative Assistant            | YES          |  |
| <b>A18</b> | Secondary Education and 1 year course of Cosmetology   | NO                         | NO           | Administrative Assistant            | YES          |  |

| <b>ANNEX IV</b> |                                    |  |
|-----------------|------------------------------------|--|
| <b>CODE</b>     | <b>WOULD COME BACK TO THE PAF?</b> | <b>IS IT DANGEROUS FOR A WOMAN TO BE IN THE PAF?</b> |
| <b>A1</b>       | Not sure                           | Does not know  |
| <b>A2</b>       | YES                                | YES  |
| <b>A3</b>       | Does not say                       | YES  |
| <b>A4</b>       | Does not say                       | Does not know  |
| <b>A5</b>       | YES                                | Does not know  |
| <b>A6</b>       | Not sure                           | Does not know  |
| <b>A7</b>       | YES                                | Does not know  |
| <b>A8</b>       | YES                                | It depends on woman's character                      |
| <b>A9</b>       | NO                                 | YES  |
| <b>A10</b>      | NO                                 | It depends on woman's character                      |
| <b>A11</b>      | YES                                | It depends on woman's character                      |
| <b>A12</b>      | NO                                 | YES  |
| <b>A13</b>      | NO                                 | YES  |
| <b>A14</b>      | NO                                 | It depends on the working environment                |
| <b>A15</b>      | NO                                 | It depends on the working environment                |
| <b>A16</b>      | YES                                | Does not know  |
| <b>A17</b>      | NO                                 | Does not know  |
| <b>A18</b>      | NO                                 | Does not know  |