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# Promotion and Defense of Reproductive Rights: a New Challenge for the National Human Rights Institutions



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Inter - American Institute of Human Rights

**PROMOTION AND DEFENSE OF  
REPRODUCTIVE RIGHTS: A NEW  
CHALLENGE FOR THE NATIONAL  
HUMAN RIGHTS INSTITUTIONS**



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## **Introduction**

Many Ombudsman Offices – national human rights institutions- in Latin America, the Caribbean and Canada have been working for a number of years to promote and defend reproductive rights.

Their interest is based on several general considerations:

- Universal human rights include reproductive/sexual rights and health.
- The violation of people's reproductive rights restricts, interferes with and infringes upon their enjoyment of other rights, such as: the right to life, liberty, personal safety and humane treatment; the right to decide the number and spacing of their children; the right to privacy, health, employment and social security; the right to education, development, equality and freedom from discrimination; the right to raise a family, to have access to appropriate, accurate and timely information, to legal protection and due process; and the right to a life without violence.
- Because human rights are universal, integral, indivisible and interdependent, promotion and protection of human rights, including sexual and reproductive rights, is part and parcel of the work for human development.

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- Both women and men stand to benefit from the application and effective exercise of sexual and reproductive rights, even though in reality, women suffer the most serious consequences when such rights are not respected.

Three international organizations joined efforts to examine the work that the national institutions have completed in the area of reproductive and to offer ideas and tools for making their actions more effective: the office of the United Nations High Commissioner for Human Rights (UNHCHR), the United Nations Population Fund (UNFPA) and the Inter-American Institute of Human Rights (IIHR). This was an excellent opportunity for our organizations for it allowed the development of a strategic and joined work alliance on the promotion of specific rights. For the IIHR, it strengthened the teamwork among the Ombudsman Programs and the Women's Human Rights.

In the framework for the joined project, two seminar-workshops took place: "Promotion and protection of reproductive rights through the work of national human rights institutions," the first targeting Latin America (San Jose, Costa Rica, May 2002) and the second for the Caribbean (Kingston, Jamaica, March 2003).

The workshops brought together representatives of the Ombudsman offices of Latin America, the Caribbean and Canada, for the following objectives:

- To analyze the work of national human rights institutions and other entities to promote reproductive rights.
- To provide the Ombudsman offices with a framework for the application of human rights to reproductive and sexual health;

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- To examine existing structures and/or mechanisms within the Ombudsman offices to promote and protect reproductive rights within the region;
- To encourage the development of action plans by the Ombudsman offices for the promotion and protection of reproductive rights.

This publication has been prepared as a product of the two activities. The Office of the High Commissioner for Human Rights, the United Nations Population Fund and the Inter-American Institute of Human Rights are pleased to offer it as a conceptual and practical contribution to strengthening the work of Ombudsman institutions in the countries of the region, for the defense and promotion of reproductive rights.



## **I. OUTLOOK AND INSTITUTIONAL COMMITMENTS**

### **Office of the High Commissioner for Human Rights**

*Helga Klein Bidmon*<sup>1</sup>

Six or seven years ago, the Office of the United Nations High Commissioner for Human Rights and the United Nations Population Fund (UNFPA) undertook a dialogue to find ways of including sexual and reproductive rights on our general agenda for human rights work, in keeping with relevant international instruments. We have also enjoyed many years of partnership with the Inter-American Institute of Human Rights, working and cooperating together.

This is why we are so pleased that representatives of Ombudsman offices, human rights prosecutors and national human rights commissions from all over the American continent have come together to discuss reproductive rights.

The world now has a highly developed system of international and regional human rights treaties ratified by many States. These international human rights instruments are the ideal vehicle for creating a universal culture of human rights, and some, such as the Convention on the Rights of the Child, have already become nearly universal.

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<sup>1</sup> Counselor for regional affairs of the United Nations High Commissioner for Human Rights.

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Existing international treaties address economic, civil, cultural, social and political rights, as well as the right to life, education, and human security. Laid alongside accepted principles of non-discrimination and equality between men and women, this body of treaty law provides a perfect setting for discussing sexual and reproductive rights.

Nevertheless, we all know that words are often far removed from deeds. National human rights institutions (NHRIs) are therefore called upon for the important task of making sure that words and actions are consistent.

Let me be more specific. We know that traditions and customs often occupy the middle ground between actions and the words of ratified texts. Governments, as administrators of the State, hold responsibility for compliance with international and regional instruments; but in all countries, national human rights institutions (defenders, prosecutors or commissions) are needed to lobby, push, encourage, act, educate and inform the public of existing rights.

The general population tends to be terribly misinformed about human rights, and this is especially true among vulnerable groups, including indigenous people, afro-descendants, and generally, the most poor. This is why national human rights institutions serve such a critical role as a bridge connecting these population groups and international organizations to governmental authorities, a role that is particularly important for reproductive rights.

International organizations must pay close attention to the work of national human rights institutions in this field. It is equally important for national institutions to exchange information with one another on the work they have done, their problems, obstacles, and opportunities. International organizations are willing to support them in this endeavor.

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If institutions begin to share information specifically on reproductive rights, doors will open for them to address other issues in the future and find ways to work more effectively. Within their working programs, NHRIs can become the link between international bodies and the national level. They can engage in a form of national oversight even before it becomes necessary to call for international monitoring. In the best of cases, when national mechanisms are working effectively, international monitoring would prove unnecessary. This is our hope and our goal, and we must press on to strengthen NHRIs in their important work to ensure that international human rights commitments assumed by the States are respected in each country.

### **The Inter-American Institute of Human Rights**

*Roberto Cuéllar*<sup>2</sup>

The human rights situation has changed in much of the Americas. The continent now has many formally sound democracies, human rights violations have declined, we have a supranational system of governments and institutions, and we find that the differences in our societies increasingly receive recognition. Nonetheless, our democracies continue to be fraught with disadvantage, irregularities and inconsistencies, including: seats of power that remain remote from the public; personal insecurity for citizens; and a growing culture of social exclusion and shameful marginalization in our Americas.

The human rights debate has responded, coming to serve in recent years as the framework for socioeconomic and political transformation with a much stronger focus on the economic, cultural and social dimension. Human

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<sup>2</sup> Executive Director, IHR.

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development is receiving much more attention than before, although civil, individual and political rights continue to be preeminent.

The international political world changed radically with the end of the Cold War. The Copenhagen World Council on Social Development has been followed by numerous world conferences on such topics as women, human rights, population and development, the environment, and more recently, the Monterrey International Conference on Financing for Development. A consensus has emerged on other rights and other components of human social and political life that have enriched the debate and widened the spectrum of human rights.

The Conference on Population and Development (1994) outlined a full range of rights pertaining to human reproduction. Rather than an unambiguous set of absolutes, they are a multidimensional web of rights on which considerable consensus already exists. However, there is still no uniform agreement on whether these rights should be recognized in national constitutions and laws, or how they should be implemented, nor is the practice of these rights spreading evenly through the countries of the region.

The Cairo Conference –mentioned above- defined reproductive rights as those that are based on recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence. Reproductive rights therefore comprise a set of human rights already recognized internationally and in some national constitutions: the right to life, the right to health, the right to freedom and personal

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safety, the right to decide on the number and spacing of children, the right to privacy, the right to equality and non-discrimination, the right to marry and raise a family, the right to employment and social security, the right to education and the right to appropriate, timely information. This multidimensional set of rights is unambiguous.

The Office of the High Commissioner for Human Rights, the United Nations Population Fund and the Inter-American Institute of Human Rights, together with the Ombudsman of Costa Rica agree that Ombudsman institutions have an important role to play in promoting and protecting human rights in general. However, this alone is not enough. The Ombudsman offices, whether established as defending counsel or as commissioners, are becoming the final standard and outstanding exemplars of conscience, thinking, dignity and defense. Although an important complement, they can never replace the judicial and constitutional mechanisms responsible for day-to-day protection of human rights and for conflict resolution.

In their position as arbiters and exemplars of conscience, thinking, coordination and general defense, the Ombudsman offices need to focus on reproductive rights as a top priority. The IHR, as host of the Technical Secretariat of the Ibero-American Ombudsman Federation, trusts that the Ombudsman institutions present at this seminar will receive the help they need for acquiring or building skills essential to their work. We hope you will find here a wealth of useful knowledge and practical experience for creating development programs and applying the full gamut of human rights standards to the reproductive rights of women.

All that is really needed in Latin America is a culture that promotes and protects human rights, in the framework of equality, equity and respect for diversity. This will be enough to close the current gap between the letter of the law and

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actual practice; the problem of social and economic inequality; and the deplorable exclusion of many population groups in our countries, which in itself is a violation of human rights and a systematic threat to our fragile democracies.

### **The United Nations Population Fund**

*Tomás Jiménez*<sup>3</sup>

I would like to begin by saying how pleased we are about the recent partnership we have been building with the High Commissioner for Human Rights. One of the intentions of our high priority agenda for the whole world is to place human rights, including sexual and reproductive rights, at the center of development.

Population is our priority and our comparative advantage within the work of the United Nations, and the topic of rights has been occupying an increasingly important role in this field. We believe that, in the absence of rights, human development can never really exist, nor can rights exist in the absence of development. This means that simply admiring our extensive body of conventions and texts will never be enough; we need to create the conditions for these rights to be exercised. This in turn requires an environment in which people have access to enough information and education that, based on personal knowledge, they can make their own decisions freely and responsibly. In this area of sexual and reproductive health and sex education, such knowledge is absolutely critical for making free choices and autonomous decisions.

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<sup>3</sup> UNFPA Representative in Nicaragua and Country Director for Costa Rica and Panama.

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The other matter I would like to emphasize is the universal nature of these rights. They are obligatory and bridge no duty-free zones or havens, for a very important reason: all people are the same in their human condition, regardless of geographic location, ethnic identity, social condition or economic status. The exercise of rights can never progress unless this universality is defended as a basic condition. Many arguments have been wielded to justify delays in recognizing, practicing or exercising these rights, claiming that inadequate levels of development or the presence of poverty or institutional backwardness prevent a country from recognizing or practicing them.

This argument is clearly ill-conceived, as development is not the key for rights to be exercised. Development may contribute, but it is not a fundamental condition. Many examples in the international realm demonstrate that there is no correlation between per capita gross domestic product or national income level, and the degree to which rights are recognized and protected. More important is the existence of social recognition, social covenants and institutional arrangements. These make it possible, first, to introduce rights into the legal structure, and second, to protect them through vigilant oversight by society and monitoring by organizations such as human rights Ombudsman offices assigned to such tasks.

In our view, then, recent growth in the recognition and practice of human rights, including sexual and reproductive rights, depends very much on national and international partnerships by State institutions and civil society organizations whose essential task is to see that these arrangements and covenants are truly respected.

I would like in closing to mention a matter that has been coming up in discussions of new development paradigms. We seem to be assigning ever-greater responsibility to the

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market for carrying out State and government responsibilities to promote development. The best evidence that the market is blind lies in the field of rights. The market is blind to equity and it is blind to rights. If we think the market will allocate rights equitably, we are seriously mistaken, as only the State can regulate and protect these rights. Clearly, a democratic State and a strong civil society are essential prerequisites if these commitments are to be respected.

We must join together if we hope to progress through a constructive dialogue in which everyone is included. We need to build and strengthen our partnerships, beginning in the national sphere and continuing the debate at the regional level, because countries do not all advance at the same pace. We can exchange experiences and learn from one another. The Population Fund offers its full support for this process and, to the extent of our possibilities, in partnership with our colleagues in the United Nations system and the IIHR, we will work alongside national human rights institutions from now on.

## II. CONCEPTUAL FRAMEWORK

### **Safeguarding the Future: The National Human Rights Institutions and Reproductive Rights**

*Alda Facio*<sup>4</sup>

#### **Introduction**

This document is divided into four parts. The first part, entitled “Reproductive Rights are Human Rights,” explains the six concepts that had to be developed in the evolution of human rights in order to understand the scope of women’s human rights and, in turn, to understand reproductive rights as an integral part of human rights. This first part of the document also includes a list of six reasons why all National Human Rights Institutions, even those whose mandates are very limited, should incorporate reproductive rights that are related to their mandate in their actions to fulfill their obligation to protect, promote and guarantee human rights without discrimination.

The second part, entitled “The Scope and Content of Reproductive Rights,” is divided into two sections or headings: the first outlines the universe of reproductive rights, composed of twelve basic human rights which, in turn, include other human rights; the second section analyzes these twelve reproductive rights, based on the definitions

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<sup>4</sup> Coordinator of the Program for Women, Justice and Gender of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD). Consultant, UNFPA.

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contained in different international instruments. In this section, we have included only the definitions that explicitly refer to reproductive rights - or at least to women's health - in an effort not to make this section too long. The idea is to provide National Human Rights Institutions with a detailed description of the content of reproductive rights so that they can promote and protect these in the best manner possible.

The third part of this document, entitled "The Importance of the Quasi- Jurisdictional Function of the National Human Rights Institutions", offers a brief description of the mandate of the national human rights institutions and of the differences between these, underscoring the fact that the quasi-jurisdictional function is not limited to applying only those instruments ratified by their country, but obliges them morally and legally to include all reproductive rights in their actions. A distinction is also made between jurisdictional, quasi-jurisdictional and non- jurisdictional functions, with the aim of unifying criteria in relation to these functions.

The fourth part, "Promotion and Protection of Reproductive Rights through the National Human Rights Institutions", describes the fictitious country of, Equilandia, where the national human rights institution has incorporated work on reproductive rights. This imaginative exercise seeks to facilitate the implementation of some of these actions by the national human rights institutions. It does not pretend to be an exhaustive list of the actions that these institutions could implement. Furthermore, we hope that in the course of this workshop the list will be expanded with the actions that have already been carried out by the national institutions invited to this event.

### **Reproductive Rights are Human Rights**

In 2002, the concept "Women's Rights are Human Rights" is accepted by the vast majority of human rights

workers. Furthermore, the term is so widely accepted –at least in theory- that many people who have recently entered the field of human rights work ask themselves why it is necessary to speak of women’s human rights. Are women not humans? Are human rights not inherent to all human beings? The truth is, things were not always this way. Women have had to fight for their humanity for perhaps thousands of years. In fact, the idea of women’s rights – without the human and the international elements, is a very recent concept. Indeed, women have had to continue fighting for their humanity and their rights, even after the notion of international human rights for all was accepted. To synthesize a very complex process, it was necessary to establish at least six concepts<sup>5</sup> before women’s international human rights could become a reality:

1. Individuals first had to acquire rights before State under international law. This conceptual change came about in the nineteenth century, through international agreements that granted rights to individuals before States, with respect to slavery and war. Once this fundamental right was established, non-governmental women’s organizations were able to lobby for other agreements explicitly concerning them, such as the Conventions of 1904 and 1910, aimed at combating the traffic in women. At the time, these were not considered human rights conventions and of course, they did not guarantee women equality, nor were they gender-sensitive. These concepts came along much later.
2. The concept of international human rights had to be accepted. The magnitude of the horrors perpetrated during the Second World War and the need to protect individuals from abuses on such a huge scale, provided

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<sup>5</sup> Taken from a book under preparation: *La evolución de los derechos humanos de la mujer en la ONU*, by Alda Facio.

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sufficient incentives to States to agree on the need for an international system for the protection of human rights; this gave rise to the United Nations Charter in 1945 and the Universal Declaration of Human Rights in 1948.

3. It was necessary to consider women capable of having legal rights. This obstacle was very real, since the laws themselves had denied these to women for centuries. Throughout history, there were many people who defended women's rights, but it was not until the eighteenth century that a women's movement took shape. Two prominent women among these were Mary Wollstonecraft, who published the *A Vindication of the Rights of Woman* in 1779, and Olympe de Gouges, who in 1791 wrote her famous *Declaration of Women's Rights*, based on the principles contained in the *Declaration of the Rights of Man and the French Citizen*. Another early proclamation on women's rights was the *Declaration of Seneca Falls*, written in 1848.<sup>6</sup>
4. The idea that men and women could have equal rights had to be accepted. This does not mean that men and women have the right to have the same rights, but that they have the right to have all the rights that their humanity may require. This idea is still not universally accepted, but at least there is an international document, the *Convention on the Elimination of All Forms of Discrimination Against Women*, which is based on the belief that men and women should have equal – if not identical – rights in all spheres of life.
5. Feminism had to develop methodologies and theories to put women's lives in the forefront. The gender-sensitive

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<sup>6</sup> Of course other women who lived long before Mary and Olympe spoke out and fought against the subordination and exploitation of women, but it is not known that they specifically fought or spoke on women's "rights".

methodologies and gender theories developed during the nineteen seventies and eighties all over the world, showed that gender not only referred to the ways in which roles, attitudes, values and relationships with respect to children, women and men are constructed in our societies; they showed that gender also builds social institutions such as the law, social constraints, religion, the family, ideology, etc., which create distinguishable social positions for an unequal assignation of rights and responsibilities between the sexes. The development of gender perspectives helped to make visible the relations of power between the sexes and therefore the incredible discrimination suffered by women in all spheres of life throughout the world.

6. The androcentric bias in the theory and practice of international human rights had to be unveiled. This did not begin to happen until the end of the 1980s, when the feminist thinkers initiated their critique of the human rights paradigm. This critique not only revealed the fact that the human model was male, white, western, a father, affluent, heterosexual, with no visible disabilities, etc. but it also erased the artificial distinction between the public and private spheres. This critique of the androcentric bias in human rights also prompted the feminists to propose a more inclusive, gender-sensitive approach, to include women of all colors, ages, capacities, regions, and sexual, religious and cultural practices.<sup>7</sup>

Once the androcentric approach to the theory and practice of human rights was replaced by a gender perspective, it became easy to understand that the recognized human rights did include reproductive rights. This is because gender

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<sup>7</sup> Although it is true that many women defended human rights before the 1980s, they did not fight for their rights as women but as members of the working classes, against an empire, against dictatorships, etc.

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perspective permitted us to see a whole range of human interests and needs, as well as human rights violations, that were mainly felt by women and that had therefore been invisible from the androcentric perspective. The androcentric perspective considers only the needs and interests of men as paradigms of humanity or the needs and interests that women are believed to have, as beings without self-determination. Needs and interests such as contraception, abortion, childbirth, sterilization, etc. were defined by the feminists as human rights issues, because they directly affected the lives and bodies of female human beings. This is how it became clear that the right to health, for example, had to include the right to reproductive health if it was really going to protect and guarantee women's health also.

Indeed, a constant element in the evolution of the theory and practice of human rights has been the fact that, little by little, we have understood that more and more rights are an integral and indivisible part of recognized human rights. Furthermore, the content and scope of these rights has gradually developed and expanded. With the incorporation of a gender perspective into our analysis of reality and into the theory and practice of human rights, these human rights have gradually expanded to respond to the needs and interests of the female population – slightly more than half of the human population – and to the needs and interests of men as the male gender.<sup>8</sup> And, since the human rights of women do not just concern a “sector” of the population but all

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<sup>8</sup> It is important to note that the androcentric perspective is not based on a vision of men as a gender but of men as stereotypes or as representatives of the whole of humanity. Therefore, the needs of men, as the male gender, are also made invisible by the androcentric perspective insofar as from this perspective only human rights violations are considered those acts committed in the public sphere by agents of the State. Thus, the non-availability of vasectomies in conditions of dignity, for example, was not considered a violation of several human rights of men, such as for example, their right to decide the number and spacing of children, the right to physical integrity, etc.

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sectors -because there are female persons in all sectors - the extension of human rights to women was the most inclusive expansion that human rights have undergone in their dynamic history.

However, before the 1990s, the majority of NGOs, governments, agencies and United Nations bodies did not use the human rights system to promote the advancement of women's legal and social conditions. Prior to that decade, although certain entities were already working exclusively to improve conditions for women, they did not take the human rights perspective, but instead offered welfare-based solutions or a development approach. After the 1993 International Conference on Human Rights in Vienna, human rights became the requisite framework within which to seek improvements in the status of women. The very nature of International Human Rights Law and its procedures makes this very clear:

1. Human rights are universal. The principle of universality means that all human beings have rights inherent to their humanity; therefore, women, being equally human as men, have the right to enjoy and exercise all of these rights, including their reproductive rights.
2. The States have a legal obligation to promote, respect and guarantee human rights: they are legally responsible for their implementation and for their violation and must be accountable to the international community. Therefore, States have the duty to promote, respect and guarantee women's human rights, including their reproductive rights, and are accountable for violations of these.
3. Human rights should be guaranteed without discrimination. The principle of equality is guaranteed in all the international human rights agreements and is specifically discussed in the Convention on the Elimination of All Forms of Discrimination Against

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Women (CEDAW). Therefore, reproductive rights must be guaranteed without discrimination.

4. Human rights are not discretionary, nor are they social goals or political aspirations. Unlike the development goals relating to the situation of women, women's human rights must be promoted, protected and guaranteed by all governments. Therefore, reproductive rights are not discretionary, and States cannot justify their failure to promote and protect these on the basis of religious, cultural, or other grounds.
5. Human rights have legal and political mechanisms to establish accountability and assign responsibilities for not complying with the obligations they establish. Therefore, States and the international community are obliged to create and maintain legal and political mechanisms for women's human rights, including reproductive rights.
6. The protection and promotion of all human rights is a legitimate interest of the international community, over and above all claims of sovereignty. Therefore, women's human rights, including reproductive rights, are also above all claims of sovereignty.

Thus, the commitment to understand human rights from a gender perspective was assumed almost a decade ago at the International Conference on Human Rights in Vienna, in 1993. This exercise led the international community to realize that it also had the obligation to promote, protect and guarantee reproductive rights, because we cannot speak of women's human rights without speaking of reproductive rights, since these constitute an integral part of human rights. Therefore, all institutions charged with promoting, protecting and guaranteeing human rights, even those with very restricted mandates, must incorporate those reproductive rights that are related to their mandate into their

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actions, in order to fulfill their obligations to protect human rights without discrimination.

Given that the expansion and development of human rights in general, and of women's human rights in particular, is a dynamic process, we describe below how the human rights recognized in international instruments incorporate reproductive rights, and how these have been defined by some agencies and organs of the UN and the OAS, so that the national human rights institutions are able, as requested by the Office of the High Commissioner for Human Rights, to cooperate with the UN human rights bodies created by virtue of the treaties.

“It is clear that the National Institutions play an important role in the national arena by molding national regulations to international standards or regulations and ensuring their application. An important aspect is the supervisory role assumed by many national institutions. The national institutions also tend to play an important role insofar as they promote the ratification of international human rights treaties and advise Member States regarding the legal reservations attached to these instruments; they provide assistance in the drafting of legislation in accordance with international standards; monitor the application of international instruments at national level; contribute to the fulfillment of the States' obligations to submit reports to the committees responsible for monitoring the conventions; facilitate the follow-up process of national reports and their final observations to the committees in charge of inspecting these and contribute to the preparation of specific plans of action to reinforce the application of the approved conventions.”<sup>9</sup>

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<sup>9</sup> Report of the Secretary General to the Human Rights Commission, 2001, E/CN.4/2002/114

## **Scope and Content of Reproductive Rights**

### **a. The twelve rights that currently make up reproductive rights.**

Although the International Conference on Human Rights held in Teheran in 1968, was the first to discuss people's human right to determine freely and responsibly the number and the spacing of their children, it was not until the end of the twentieth century, at the 1994 World Conference on Population and Development, held in Cairo, that the term "reproductive rights" was coined to designate the set of human rights relating to reproductive health matters and more broadly associated with all human rights that have a bearing on human reproduction as well as those that affect the population- sustainable development binomial.

Furthermore, the Cairo Program of Action explicitly states that "reproductive rights" should be understood as follows: "[...] reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and in other relevant United Nations consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children, and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion or violence, as expressed in human rights documents. [...]"<sup>10</sup>

Although these rights are not explicitly stated as such in any international legal instrument on human rights, they are dispersed throughout all of these, and there is consensus on the applicability of fundamental rights in the sphere of

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<sup>10</sup> Cairo Program of Action, par. 7.3

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reproductive life. For this reason we can affirm that reproductive rights are recognized internationally and they are legally binding.

It is important to note that in the international sphere, the final resolutions of the committees that oversee the agreements, adopted in the context of their authority to receive and process complaints, following an equitable procedure that guarantees the defense of the interests of a State that has voluntarily accepted its jurisdiction, are mandatory. For this reason, the national human rights institutions may refer to these resolutions when they are called upon to make a pronouncement on a complaint, initiate an education campaign, conduct an investigation, etc.<sup>11</sup>

Given the dynamism inherent to the theory and practice of human rights, the universe of reproductive rights is constantly expanding. However, mindful of the purpose of this document, we have limited this universe<sup>12</sup> to the following twelve basic human rights<sup>13</sup> already recognized in international, regional and national instruments:

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<sup>11</sup> For this reason, several resolutions on reproductive rights of the different committees have been included.

<sup>12</sup> Human rights such as freedom of movement and due process can also be interpreted as forming part of the universe of reproductive rights, since the first is part of reproductive self-determination and the second is necessary to guarantee all the rights.

<sup>13</sup> For an analysis of the rights that form part of the universe of reproductive rights, this document is based on the book *Cuerpo y Derecho*, of the Center for Reproductive Rights and Public Policy (CRLP) and the Faculty of Law of the University of Los Andes, Editorial Themis, S.A., Bogota, Colombia, 2001. See specifically chapter I. Pp 17-43

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1. The right to **life**, including:
  - the right to not die from preventable causes related to childbirth and pregnancy.
2. The right to **health**, including:
  - the right to reproductive health
3. The right to personal **freedom, security and integrity**, including:
  - the right to not be subjected to torture or to cruel, inhuman or degrading treatment.
  - the right to be free of violence based on sex and gender.
  - the right to live free of sexual exploitation.
4. The right to **decide the number and spacing of their children**, including:
  - the right to reproductive self-determination.
  - the right to make a family planning choices with the assistance of a doctor or registered midwife, in a hospital or in an alternative environment.
5. The right to **privacy**, including:
  - the right of every woman to decide freely and without arbitrary interference, on their reproductive functions.
6. The right to **equality and non-discrimination**, including:
  - the right to non-discrimination in the area of life and reproductive health
7. The right to **marriage and to raise a family**, including:

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- the right of women to decide on matters related to their reproductive function in equality and without discrimination.
- right to enter into marriage or not.
- the right to dissolve a marriage.
- the right to have the opportunity and be of an age to give consent to marriage and to raise a family.

8. The right to **employment and social security**, including:

- the right to the legal protection of maternity in the area of employment.
- the right to work in an environment free of sexual harassment .
- the right to not be discriminated against on the grounds of pregnancy.
- the right to not be dismissed on the grounds of pregnancy.
- the right to not suffer discrimination in the workplace due to pregnancy or maternity.

9. The right to **education**, including:

- the right to sexual and reproductive education.
- the right to non-discrimination in the exercise and enjoyment of this right.

10. The right to **appropriate and timely information**, including:

- the right of all individuals to receive clear information about their state of health.
- the right to be informed about their rights and responsibilities in matters of sexuality and

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reproduction and about the benefits, risks and effectiveness of birth control methods and on the implications of a pregnancy in each particular case.

11. The right to **modify customs that discriminate** against women, including:
  - the right to modify the customs that harm the reproductive health of women and girls.
12. The right to **benefit from scientific progress and give her consent to be the subject of experimentation**, including:
  - the right to benefit from scientific progress in the area of human reproduction.
  - the right to not be the subject of experimentation in the area of human reproduction.

### **b. Content of reproductive rights**

#### **1. The right to life**

This right, being indispensable for the exercise of all other rights, is recognized explicitly or implicitly in all international human rights agreements. Furthermore, all these instruments establish, in one way or another, that this right be protected by law. Although it is true that a few decades ago this right was interpreted far too restrictively as prohibition of the arbitrary deprivation of life, nowadays it is understood to include the State's obligation to create and guarantee the necessary conditions to ensure that human beings do not die from preventable causes. This means that the right to life includes the right of all women not to die from preventable causes related to childbirth and pregnancy. In conclusion, the right to life includes the right to not die from preventable causes related to childbirth and pregnancy.

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Although this is such a basic right of women, it is violated every minute of the day. According to UNFPA, UNICEF and UNIFEM, one woman dies every minute due to pregnancy or childbirth, a situation that has remained virtually unchanged since 1990.<sup>14</sup> Furthermore, according to these agencies, the maternal mortality rate varies greatly between the developed countries and the developing world. While a woman who gives birth in a developing nation has a risk of dying on one of every 13 occasions, in the industrialized countries this risk is reduced to one in 4,100. It is estimated that 515,000 women die every year as a result of pregnancy and childbirth. More than 90% of these deaths occur in the developing world.

For this reason both the Human Rights Committee (HRC) and the Committee that monitors CEDAW (CEDAW Committee) have stated that the right to life cannot be understood in a restrictive manner and that protection of this right requires States to adopt “positive measures”.<sup>15</sup> These two committees, along with the committee that monitors the fulfillment of the International Covenant on Economic, Social and Cultural Rights (CESCR), have determined the State’s responsibility for the violation of women’s right to life with respect to the high maternal mortality rates and have recommended a review of the laws that penalize abortion. For example, in their final observations of the reports on Argentina, Colombia, Peru, Mexico, Nicaragua and Chile, these committees have urged these countries to adopt all necessary measures to prevent women from losing their lives as a result of restrictive abortion laws. In the case of Chile, the HRC issued the following guidelines: “a State Party has the duty to adopt the necessary measures to

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<sup>14</sup> Information taken from the web sites of these agencies.

<sup>15</sup> See General Observation No. 6 of the HRC and General Recommendation 19 of CEDAW.

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guarantee the right to life of all persons, including pregnant women who decide to interrupt their pregnancy”.<sup>16</sup> In this regard, the Inter-American Court of Human Rights has stated that the right to life imposes positive obligations on governments to prevent and avoid situations that place people’s lives at risk, as in the context of the reproductive rights of women who die from causes related to pregnancy, complications arising from a clandestine abortion and victims of domestic violence.<sup>17</sup>

### 2. The right to health

This human right includes the right to reproductive health. Reproductive health was defined in the Cairo Program of Action as: “a general state of physical, mental and social well-being, and not the mere absence of diseases or ailments, in all aspects related to the reproductive system and its functions and processes. Consequently, reproductive health implies the enjoyment of a satisfactory sex life, without risk of procreation, and the freedom to decide whether or not to have children, how many and how often. This last provision implicitly includes the right of men and women to obtain appropriate information to plan the family

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<sup>16</sup> Final Observations of the Human Rights Committee: Chile, March 30, 1999, HRC, U.N. Doc. CCPR/C/79/Add.104, par. 15, [HRC, Final Observations on Chile]. See also Final Observations of the Human Rights Committee: Colombia, April 1, 1997, HRC, U.N. Doc. CCPR/C/79/Add.76, par. 24 [Henceforward, HRC, Final Observations on Colombia]; Final observations of the Committee on Human Rights: Peru, November 18, 1996, HRC, U.N. Doc. CCPR/C/79/Add.72, pars. 15 and 22, [HRC, Final Observations of Peru]; Final observations of the Committee for the Elimination of Discrimination Against Women: Argentina, July 23, 1997, CEDAW, U.N. Doc. A/52/38 Rev.I, part II, par. 304 and 318-319 [henceforward, CEDAW Final Observations on Argentina]; Final Observations of the Committee for the Elimination of Discrimination Against Women: Colombia, February 4, 1999.

<sup>17</sup> Case Saul Godinez Cruz c. Honduras, report N. 8097, in the Annual Report of the Inter-American Court of Human Rights, August 13, 1989, par. 185.

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of their choice, as well as other methods to regulate their fertility that are not legally prohibited, and access to safe, effective, affordable and acceptable contraceptive methods, the right to receive appropriate health care services to ensure risk-free pregnancy and childbirth, and to give couples the best possibilities of having healthy children.”<sup>18</sup>

If the right to reproductive health is part of the right to health, it is obvious that the right to reproductive health is guaranteed by various international agreements, such as the Universal Declaration, the International Covenant on Economic, Social and Cultural Rights, CEDAW, and the Additional Protocol to the American Convention on Human Rights on the question of Economic, Social and Cultural Rights, known as the Protocol of San Salvador.

According to the International Covenant on Economic, Social and Cultural Rights, States Parties must create conditions that guarantee medical attention and services for all citizens, in case of illness. This provision is interpreted and discussed in General Comment 14, issued by the CESCR, which emphasizes the duty of States to offer a broad range of affordable, good quality health services, that include sexual and reproductive health services. In addition it incorporates the fundamental principle of non-discrimination based on gender in the provision of health services, and recommends that a gender perspective be incorporated into the design of health policies and programs. The Committee also notes the lack of compliance with this right in its evaluation of the fulfillment of the Covenant by various countries of the region. For example, in the case of Peru, the Committee has expressed concern over the high rates of infant and maternal mortality due to inadequate or non-existent health services and has urged the Peruvian State

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<sup>18</sup> Cairo Program of Action, par. 7.3

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to improve the health system and extend it to all sectors of the population.<sup>19</sup>

Meanwhile, Article 12, clause 1 of CEDAW requires States to “take all appropriate measures to eliminate discrimination against women in the field of health care, on a basis of equality of men and women, access to health care services, including those related to family planning.” The CEDAW Committee also refers to the State’s obligations in the area of reproductive health in its Recommendation 24 on women and health, declaring that, among other aspects, States Parties “must implement a comprehensive national strategy to promote women’s health during their entire life cycle. This shall include [...] “universal access by all women to a wide range of affordable, good quality health care services, including sexual and reproductive health services”. In its recommendations to Chile, Colombia, Mexico and Peru, the CEDAW Committee expressed concern over the sexual and reproductive health of poor, rural, indigenous and adolescent women, and on the obstacles to access to contraceptive methods.<sup>20</sup>

As to the rights of children and adolescents to obtain access to health services and counseling on sexual and reproductive health issues, the Committee on Children’s Rights (CCR) has made recommendations in this regard to several States. On the question of access to voluntary sterilization, the HRC urged Argentina to remove the obstacles to this procedure.<sup>21</sup>

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<sup>19</sup> Final observations of the Committee on Economic, Social and Cultural Rights: Peru, May 16, 1997, CESCR, U.N. Doc. E/C.12/Add.1/14, par. 16, 23 and 36.

<sup>20</sup> Final observations of the Committee for the Elimination of Discrimination Against Women: Chile, July 9, 1999, CEDAW, U.N. Doc. CEDAW/C/1999/L.2/Add.1,

<sup>21</sup> Final observations of the Committee on Human Rights: Argentina, November 3, 2000, HRC, U.N. Doc. CCPR/CO/70/ARG, par. 14.

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Various international conferences have helped to create the legal framework and policy goals for the application of women's right to reproductive health. For example, with regard to the question of abuses by health workers, the Cairo Program of Action, urges all levels of government to "implant systems of supervision and evaluation of services oriented towards users, with a view to detecting, preventing and monitoring abuses on the part of directors and providers of family planning services and to ensure constant improvements in the quality of services" (par. 7.17). To this end, governments must guarantee respect for human rights and uphold ethical and professional standards in the provision of family planning and related reproductive health services, to guarantee responsible, voluntary and well-founded consent.

For its part, the Beijing Platform for Action urges governments to "ensure that all health services and workers conform to human rights and to ethical, professional and gender-sensitive standards in the delivery of women's health services, aimed at ensuring responsible, voluntary and informed consent; encourage the development, implementation and dissemination of codes of ethics guided by existing international codes of medical ethics, as well as ethical principles that govern other health professionals" (par. 106 g). In addition, recognizing that the confidentiality and accessibility of information are critical for the implementation of women's reproductive rights, the Platform of Action urges governments to "redesign health information services and training for health workers so that they are gender-sensitive and reflect the user's perspectives with regard to interpersonal and communications skills and the user's right to privacy and confidentiality...." (par. 106, f)).

In the Inter-American system, the Protocol of San Salvador contains an important development of the right to

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health. In addition to recognizing the right of individuals to enjoy the highest possible level of physical and mental health, it establishes that States Parties should recognize health as a “public good” and describes a set of measures for the fulfillment of that right. Interpreting these measures in terms of the right to reproductive health, States are obliged to: 1-Provide basic reproductive health care and this should be available to all persons subject to the State’s jurisdiction; 2-Educate the population on reproductive health issues; and 3-Satisfy the reproductive health needs of the groups at highest risk and those whose poverty places them in a situation of particular vulnerability.

### **3. The right to personal freedom, security and integrity**

This right is established in Article 3 of the Universal Declaration of Human Rights as the right to life, liberty and security of person. It is also enshrined in Article 9 of the International Covenant on Civil and Political Rights as the right to liberty and security of person, and in Article 5 of the American Convention on Human Rights as the right to personal integrity, which includes the right not to be subjected to torture or to cruel, inhuman or degrading punishment or treatment which in turn includes the right to be free of violence based on sex and gender, which in turn includes the right to live free of sexual exploitation.

The Inter-American Convention for the Prevention, Punishment and Eradication of Violence Against Women, known as the Convention of Belem do Para, recognizes that violence against women is a manifestation of the historically inequitable relations of power between men and women, and affirms that violence against women constitutes a violation of their human rights and fundamental freedoms, specifically establishing women’s right to live free of violence based on

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sex or gender. Article 1 defines violence against women as “any action or conduct based on gender, that causes death or physical, sexual or psychological damage or suffering to women, both in the public sphere and in the private sphere.”

Gender violence in its many forms, in addition to being a direct violation of the right to life, dignity, physical integrity and to be free of torture and other cruel, inhuman or degrading punishment or treatment, is very often also a violation of women’s reproductive rights, since it affects their health and their sexual and reproductive self-determination. Sexual violence violates women’s reproductive rights, particularly their right to physical integrity, control of their sexuality and of their reproductive choices. Sexual violence also places at serious risk women’s right to health, including their physical, psychological, reproductive and sexual health. Given that sexual violence occurs both in the private as well as the public sphere, it is regarded as a violation of women’s human rights whether the perpetrator is an agent of the State or a private individual.<sup>22</sup>

In 1999, the United Nations Special Rapporteur on Violence Against Women issued a report focusing in particular on the link between violence against women and reproductive health.<sup>23</sup> The report found that many forms of violence against women give rise to violations of their reproductive rights inasmuch as they tend to endanger their reproductive capacity and/or prevent them from exercising their reproductive or sexual choices. It also noted that violations of reproductive rights of themselves constitute violence against women.

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<sup>22</sup> See Article 2 of the Convention of Belem do Para.

<sup>23</sup> See U.N. Doc. E/CN.4/1999/68/ADD.4

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According to this report:

“the practices that in themselves constitute violence against women and that could constitute serious violations of their right to reproductive health are: rape, domestic violence, female genital mutilation, early marriage and early pregnancy, abortion for the selection of sex, the infanticide of girls, the traffic in women and forced prostitution. According to this report, such practices endanger women’s freedoms and reproductive rights and can have devastating consequences for their physical and psychological health. For this reason, countries have the obligation to concern themselves with violence against women, by promulgating and ensuring the effective application of laws that prohibit and punish all forms of violence of this type, accompanied by the application of policies and programs to prevent these acts of violence.”

According to this same report:

“violence against women may occur in the context of reproductive health policies. Violence and violations of women’s reproductive health may be due to direct action by the State, in the application of harmful reproductive policies, or to the State not fulfilling its fundamental obligations to protect women. One example of direct action by the State that violate women’s reproductive rights is government regulation of the volume of the population. This may violate the freedom and security of the person if it results in forced sterilizations or forced abortions or in the penal sanction of contraception and voluntary sterilization and abortion. Similarly, a State’s failure to effectively apply laws that prohibit female genital mutilation (FGM) or not establishing a minimum legal age for marriage are examples of States not fulfilling their basic obligations. This way of “dis-empowering” women leaves them more

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exposed to the numerous forms of violence perpetrated by private individuals and institutions.

... In the context of reproductive health policy, the reports (received by the Rapporteur) indicate that State policies contribute to violence against women, which is manifested in forced abortions, forced sterilization and contraception, pregnancy through coercion and abortions in precarious conditions. Although these practices do not always result in the victim's death, all of them could cause this and violate a woman's right to life. The World Health Organization (WHO) estimates that 75,000 women die each year from excessive hemorrhaging or infections caused by abortions performed in precarious or unsafe conditions. Forced abortions, forced contraception, pregnancy through coercion and abortions in precarious conditions constitute violations of the physical integrity of women and their personal security. Moreover, in cases where government officials use physical force and/or detain women to force them to undergo such procedures, these practices may be equivalent to torture or to cruel, inhuman or degrading treatment."<sup>24</sup>

The CEDAW Committee, in General Recommendation No. 19 of 1992, stated that "violence against women is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on an equal footing with men". In this recommendation the Committee underscored the close links between violence and discrimination, expressly declaring that States should adopt the necessary measures to eliminate all forms of violence against women. It also noted that violence against women, exercised as coercion in matters of fertility and reproduction, endangers their lives and places their health at risk. Specifically, it

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<sup>24</sup> *Idem.* Par. 44 and 45

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explains that “when sterilization or abortion are obligatory, these adversely affect the physical and mental health of women and infringe on a woman’s right to choose the number and spacing of her children.” The committee specifically recommends that “States should try to ensure the application of measures to prevent coercion with respect to fertility and reproduction, to ensure that women are not forced to seek out risky medical procedures, such as illegal abortions, due to lack of appropriate birth control services.”<sup>25</sup>

The framework of protection of the right of all persons to be free of torture and cruel, inhuman or degrading punishment or treatment, also provides an essential framework for the protection of women’s right to integrity. Article 7 of the International Covenant on Civil and Political Rights protects individuals from torture and from other cruel, inhuman or degrading punishment or treatment. Similarly, Article 5, clause 2 of the American Convention offers protection against torture and cruel, inhuman or degrading treatment. In interpreting this right, the Inter-American Commission on Human Rights has established that rape may constitute torture in specific circumstances.<sup>26</sup> Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CCT) defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him, or from a third person, information or a confession, punishing him for an act he has committed or

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<sup>25</sup> See General Recommendation No. 19, U.N. Doc. CEDAW/C/1992/L.1/Add.15

<sup>26</sup> See case Raquel Martin de Mejia c. Peru, report no. 5/96, case 10.970, ruling of March 1, 1996, in the Annual Report of the Inter.-American Commission of Human Rights 1995, OEA/Ser.L/V/IL91.doc.7 rev., February 28, 1996

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is suspected of having committed, or intimidating him or other persons.” It also defines torture as coercion and intimidation against a person, for any other reason based on some form of discrimination, by or with the instigation or consent or acquiescence of a public official or of another person acting in an official capacity.

This comprehensive framework of international protection of the right to live free from violence based on sex or gender, also includes the rulings of the ad hoc tribunals for the former Yugoslavia and Rwanda, which were mandated to try individuals for genocide, war crimes and crimes against humanity after the armed conflicts that took place in those countries. These tribunals upheld the view that rape committed during an armed conflict constitutes both torture and genocide, according to international law.<sup>27</sup> The Statute of the International Criminal Court (Statute of Rome), approved in 1998, explicitly defines, for the first time in international criminal law, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and other forms of sexual violence as crimes against humanity and as war crimes<sup>28</sup>. The Statute of Rome determines that rape and other reproductive and sexual crimes are on the same level as the most heinous international crimes, in many cases tantamount to torture and genocide. In addition, it recognizes for the first time that violations of women’s right to reproductive self-determination – both forced pregnancy and forced sterilization – are regarded among the most serious crimes in accordance with international humanitarian law.

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<sup>27</sup> See for example, *Fiscal c. Akayesu*, International Criminal Court for Rwanda, 964-T, September 2, 1998.

<sup>28</sup> Statute of Rome of the International Criminal Court, opened for signing July 17, 1999, U.N. Doc. AA/CONE18319, arts. 7-8.

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In addition, the Durban Program of Action<sup>29</sup>, calls on States to recognize that sexual violence, when used systematically as a weapon of war against women, is often associated with racism, racial discrimination, xenophobia and other related forms of intolerance.

With regard to the right to be free of sexual exploitation, which is an essential component of the right to be free from violence, the Protocol to Prevent, Suppress and Punish the Trafficking in Persons defines sexual exploitation as “the capture, transportation, transfer or reception of persons, by means of threats or the use of force or other forms of coercion, capture, fraud, trickery abuse of power” or other situation of vulnerability or to the concession or receipt of payments or benefits to obtain the consent of a person having authority over another, for purposes of exploitation<sup>30</sup> and CEDAW reiterates the obligation of States Parties to take all necessary measures to eliminate the traffic and exploitation of the prostitution of women.<sup>31</sup>

Regarding sexual exploitation and its relation to reproductive rights, the Special Rapporteur on Violence Against Women found a very close link. For example, women forced into prostitution are more exposed to serious health risks, especially sexually transmitted diseases, including AIDS. Apart from the risk of infection through sexual contacts with numerous clients, the use of

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<sup>29</sup> International Conference Against Racism, Racial Discrimination, Xenophobia and related forms of Intolerance, Durban Program of Action, par. 54.

<sup>30</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which complements the United Nations Convention Against Transnational Organized Crime, A/55/383, November 2, 2000, Article 3°, lit. a. “That exploitation shall include, at least, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices analogous to slavery, servitude or the extraction of organs “.

<sup>31</sup> See CEDAW, Article 6

contraceptive injections in brothels further endangers these women, since the same needle –possibly contaminated- is used many times. When they contract AIDS and other diseases that can leave them sterile, these women may be forced to return to prostitution (because in many cultures sterile or promiscuous women cannot marry), thereby perpetuating the vicious circle of sexual servitude.

It is due to the complexity of the problem of sexual exploitation that, in addition to the protection afforded by the Convention for the Suppression of the Traffic in Persons and CEDAW, the Convention of Belem do Para, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and different conventions against slavery<sup>32</sup> provide a very broad framework of protection, in recognition of the extremely varied and numerous forms of sexual exploitation.

#### **4. The right to decide the number and spacing of their children**

This right, known as the right to reproductive self-determination, is explicitly recognized in Article 16 of CEDAW, which states that all women have the right: “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights”. It is also recognized in Article 3 of the Universal Declaration and in Article 7 of the American Convention as the right to freedom, which obviously includes the freedom to decide how many children to have and when to have them.

The CEDAW Committee has determined that this right is violated when women are denied the means to exercise the

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<sup>32</sup> See, for example, the Slavery Convention of 1926, the Forced Labor Convention of 1930, etc.

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right to control their fertility”<sup>33</sup>. Both the CEDAW Committee and the HRC have pronounced themselves in this regard in their monitoring of several Latin American and Caribbean countries. In particular, these committees have expressed concern over reports of forced or involuntary sterilizations and contraceptive methods imposed without consent, which have taken place, generally in rural or indigenous women. For example, the Final Observations on Mexico includes the following observation: “The Committee notes the high level of unsatisfied demand for contraceptive methods, especially among poor urban women, rural women and adolescents. It also notes with concern that contraceptive methods have been applied in some areas without the express consent of the women, as required by the country’s legislation.” According to the HRC, States must guarantee that those who undergo surgical contraceptive procedures give their free and informed consent<sup>34</sup> and this view is reiterated in its final observations.

The different committees have pointed out that a woman’s right to decide the number of her children is directly related to the her right to life, in cases when there are prohibitive or highly restrictive laws on the question of abortion, which generate high maternal mortality rates. It is also obvious that the right to decide the number of children is directly related to the possibility of deciding when and with whom to have sexual relations. Many women still do not have this choice. Intimidation, coercion, incest, forced prostitution, exploitation, rape and the exercise of power to

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<sup>33</sup> General Recommendation N. 24, par. 17.

<sup>34</sup> See for example, Final observations of the Committee of Human Rights: Peru, November 15, 2000, HRC, U.N. Doc. CCPR/CO/70/PER, par. 21. The Committee is concerned over the reports it has received on involuntary sterilizations, particularly of indigenous women in rural areas and of women from the most vulnerable social sectors.

achieve sexual domination are some of the circumstances that prevent women from deciding if and when to get pregnant. In situations of armed conflict, as happens now in Colombia and has happened previously in Guatemala, Mexico and other countries of the region, rape, sexual exploitation and forced pregnancy are frequent phenomena. Faced with these unwanted, unplanned and even forced pregnancies, the majority of women in the region do not have access to abortion, or even to emergency contraception.

In a recent resolution, the World Health Organization establishes that “reproductive self-determination not only includes the right to decide the number and spacing of children, but also includes the right to plan the family of one’s choice with the assistance of a doctor or registered midwife, at a hospital or in an alternative environment...”<sup>35</sup> The model of midwife-assisted births was cited by the WHO as a model whose benefits include lower costs, fewer premature births and a greater satisfaction with the experience of childbirth. According to this, States would be required to provide, and even to support, these alternative models to comply with their obligations to guarantee all men and women their right to reproductive self-determination.

#### **5. The right to privacy**

This right includes the right of every woman to decide freely and without arbitrary interference, on her reproductive functions.

The right to privacy is protected in different international human rights instruments such as Article 12 of the Universal Declaration, which states that “No one shall be subjected to

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<sup>35</sup> See WHO resolution in Global Advisory Group on Nursing and Midwifery, Report of the Sixth Meeting, Geneva 19-22 November, 2000 in EB107R2.

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arbitrary interference with his privacy, family, home or correspondence....”. Moreover, Article 16. of the Convention on the Rights of the Child establishes the same right for children, and Article 17 of the International Covenant on Civil and Political Rights establishes that “no one shall be subjected to arbitrary or unlawful interference with his privacy...”. Similarly, Article 11 of the American Convention protects the right to privacy, stipulating that everyone has a right to have his honor respected and his dignity recognized, and that no one shall be the object of arbitrary interference or abusive interference with his private life, his family, his home or his correspondence, or of unlawful attacks on his honor and reputation, and has the right to the protection of the law against such interference and attacks. In interpreting this provision, the Inter-American Commission on Human Rights has found a close connection between the right to integrity and to privacy, declaring that the protection of privacy covers “the protection of the physical and moral integrity of the individual and guarantees a sphere that nobody can invade, a field of activity that is absolutely a matter for each individual.”<sup>36</sup>

In the context of reproductive rights, this right is violated when the State or private individuals interfere with a woman’s right to make decisions about her body and her reproductive choices. It is worth noting that the European Commission of Human Rights has maintained that the decisions that each person takes concerning his/her body, and particularly decisions on reproduction, fall within the

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<sup>36</sup> See case X and Y vs. Argentina, report num. 38/96, case 10.506, sent., October 15 1996, in the Annual Report of the Inter-American Commission on Human Rights 1996, OAS/Ser.L/ 11.95, doc.7, rev., March 14, 1997, pag. 72, par. 91.

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private sphere of each individual.<sup>37</sup> The HRC has also established a connection between this right and the right to equality, noting that the right to equality may be seriously compromised when States do not respect a woman's right to privacy and when they place obstacles that limit women's ability to make decisions concerning their reproductive functions. In General Observation No.28, paragraph 20, the HRC stated: "Another area in which States might not respect women's privacy as related to their reproductive functions, is when, for example, husbands or partners are required to give their authorization on matters such as sterilization, or when general requirements are imposed for women's sterilization, such as having a certain number of children or being of a certain age, or when States require doctors or other health workers to report women who have abortions. In those cases, other rights protected in the Convention may also be at stake, such as those contemplated in Articles 6 and 7. There are also cases where private individuals interfere in women's private life, such as employers who demand a pregnancy test as a condition to employing a woman..."<sup>38</sup>

Similarly, a woman's right to privacy covers the right to have doctors respect the patient's need for confidentiality. The HRC has established that States violate the right to privacy when they fail to respect the confidentiality of the doctor-patient by requiring medical staff to report women who have abortions, and it has recommended "a review of the law, to establish exceptions to the general prohibition

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<sup>37</sup> See case *Bruggeman and Sheuten vs. Federal German Republic* (application num. 6959/75), sent., July 12 1977, in Report of the European Commission of Human Rights, vol. 3, 1977, pag. 244 and the case of *Paton vs. Great Britain* (application num. 8416/ 78), sent., May 13 1980, in Report of the European Commission of Human Rights, vol. 3, 1980, pag. 408, par. 27.

<sup>38</sup> See General Observation No. 28 of the HRC.

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against abortion and protect the confidential nature of medical information”.<sup>39</sup>

### 6. The right to equality and non-discrimination

This right includes the right to non-discrimination in the sphere of reproductive health. This right is one of the fundamental pillars of human rights, recognized in international law. Furthermore, it is recognized in nearly all international human rights instruments: in Article 2 of the Universal Declaration, Articles 2 and 3 of the International Covenant on Civil and Political Rights, Articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights, Articles 1 and 2 of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 1 of the American Convention, which explicitly protects this right. Moreover, the principle of equality between women and men is implicit in all the rest of the treaties.

However, it is CEDAW that offers the broadest and most comprehensive notion of sex discrimination and establishes the obligation of States Parties to guarantee equality before the law. Article 1 of this Convention defines discrimination against women such as “any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

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<sup>39</sup> HRC, Final observations on Chile, par. 15. For a more detailed analysis of the right to privacy of users of health services and the duty of confidentiality of healthcare service providers, see B. M. Dickens and Rebecca J. Cook, “Law and Ethics in conflict over confidentiality?”, in *International Journal of Gynecologists & Obstetrics*, 2000, pags. 385-391.

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In addition, Article 2 sets out the State's obligations with respect to this right:

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women and, to this end, undertake: a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation, if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realization of that principle; b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; c) To establish legal protection of the rights of women on an equal basis with men and to ensure, through competent national tribunals and other public institutions, the effective protection of women against any act of discrimination; d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; and g) To repeal all national penal provisions which constitute discrimination against women.”

As far as discrimination in the area of health is concerned, the CESCR has established a requirement to eliminate all types of discrimination in the area of health, and particularly in access to services. This means eliminating barriers that prevent women from gaining access to services, education and information on sexual and reproductive health.<sup>40</sup> In this

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<sup>40</sup> General Observation No. 14 on Health, pars. 18-21

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regard, General Observation 14 states, “The exercise of a woman’s right to health requires the suppression of all barriers that prevent her access to health services, education and information, particularly in the area of sexual and reproductive health...”<sup>41</sup>

In its General Recommendation No.24 on women and health, the CEDAW Committee states that “the obligation to respect these rights requires States Parties to refrain from placing obstacles in the way of measures adopted by women to achieve their objectives in health matters. States Parties shall report on the way in which those responsible for providing health care services in the public and private sectors fulfill their obligation to respect a woman’s right to gain access to medical attention. For example, States Parties should not restrict a woman’s access to medical services or to the facilities that provide these services on the grounds that she lacks the authorization of her husband, partner, parents or the health authorities, or because she is not married or because of her status as a woman “. The same recommendation adds, “laws that penalize certain medical procedures that exclusively affect women constitute an obstacle to accede to the medical care that women need, compromising their rights to equality of gender in the area of health and thereby violating a State’s international obligation to respect internationally recognized rights.”<sup>42</sup>

In several of their final observations, the CEDAW Committee and the CDN have reiterated their concern over the discrimination suffered by indigenous and rural women with regard to their reproductive health, and particularly in relation to sterilization without consent.

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<sup>41</sup> *Idem*, par. 21

<sup>42</sup> General Recommendation No.24 on women and health, par. 14

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Although the Convention on the Elimination of All Forms of Racial Discrimination also defines the right to equality and non-discrimination, its Committee has not made explicit recommendations on the relation between women's reproductive rights and racial or ethnic discrimination.

Moreover, until very recently, the combination of discrimination against women and racial discrimination and its consequences had not been the subject of detailed study. The problems were defined as a manifestation of one of the two forms of discrimination, but not of both. Using this approach, it was not possible to analyze the phenomenon in all its scope, which meant that the remedies were ineffective or inappropriate. This situation is now changing. For example, the Durban Program of Action<sup>43</sup> asks States to adopt policies and programs in consensus with indigenous and Afro descendant women and girls, to eliminate all obstacles on grounds of gender, ethnicity and race, making special reference to their mental and physical - including reproductive - health.

As to equality and non-discrimination against disabled persons, the Uniform Standards of equality of opportunities for persons with disabilities<sup>44</sup>, establishes the principle of equal rights, which means that they also have the same reproductive rights. However, there has been no explicit pronouncement on the reproductive rights of these persons by the committees that monitor the fulfillment of these agreements, though the CEDAW Committee has said that States should "pay special attention to the health needs and rights of women belonging to vulnerable groups such as [...] women with physical or mental disabilities."<sup>45</sup>

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<sup>43</sup> Conference Against Racism, Durban, 2001, par. 18

<sup>44</sup> See Doc. UN.A/RES/48/96, adopted in 1993.

<sup>45</sup> CEDAW Committee, General Recommendation No. 24.

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With regard to discrimination based on sexual orientation, in recent years some committees have considered this concept on the basis of the provisions on equality and non-discrimination contained in the international instruments. The provisions that guarantee equality and prohibit discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other social status, should be interpreted as protecting people from any form of discrimination, including sexual orientation. This view was upheld by the HRC when it unanimously established that the laws of Tasmania penalizing consensual sodomy violated the right to privacy and non-discrimination for reasons of sex, as contained in the Covenant on Civil and Political Rights.<sup>46</sup> Similarly - though this provision has since been abolished - the HRC ruled that Chile should eliminate the crime of sodomy because it violated the Covenant by “reinforcing attitudes of discrimination based on sexual orientation”.<sup>47</sup>

### **7. The right to marriage and to raise a family**

This right includes a woman’s right to decide on matters relating to her reproductive function in equality and without discrimination, as well as the right to marry or not. According to human rights agreements, the right to marriage implies the right to enter into marriage freely and to raise a family, to dissolve the marriage and to be in the capacity and of an age to give consent.

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<sup>46</sup> See case of Nicholas Toonen vs. Australia, communication num. 488/1992, April 4, 1994, United Nations Committee on Human Rights, U.N. Doc. CCPR/C/50/D/488/1992.

<sup>47</sup> Final observations of the HRC: Chile, March 30, 1999 U.N. Doc. CCPR/C/79/Add.104 par. 20

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Numerous conventions, declarations and recommendations attach great importance to the institution of the family and to the situation of equality that women should enjoy within the family unit. These include the Universal Declaration, Article 16, the International Covenant on Civil and Political Rights, Article 16 of the Convention on the Nationality of Married Women, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, etc.

This right is also established in Article 16 of CEDAW, and in General Recommendation 21 of its Committee. As to the right to raise a family and a woman's role in the family, Recommendation 21 establishes: "States Parties shall ensure that, in conformity with the laws, both parents share the same rights and responsibilities, on a basis of equality, irrespective of their marital status or whether they live with their children. A woman's responsibilities in having children and raising them affects her right to education, employment and to other activities related to personal development, as well as imposing an unfair burden of work. Similarly, the number and spacing of the children has an impact on her life and also affects her physical and mental health, as well as that of her children. For these reasons, a woman has the right to decide the number and spacing of her children....The decision to have children, though it should preferably be taken in consultation with the spouse or partner, should not, however, be imposed by the spouse, father, partner or the government...These rights should be guaranteed, irrespective of the woman's marital status."<sup>48</sup>

General Observation 28 of the HRC also forbids discrimination of women by reason of their marital status and establishes equality of rights and duties within marriage

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<sup>48</sup> CEDAW Committee, General Recommendation 21, pars. 20-29.

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and within family relations. “The right contained in Article 16, which provides that all human beings have a right to recognition of their legal status is particularly important in the case of women, since this is often violated by reason of their sex or marital status. This means that women’s right to own property, conclude a contract or exercise other civil rights...”<sup>49</sup> such as the right to decide on their reproductive function in freedom and without coercion, cannot be restricted by reason of marital status or any other reason based on discrimination.

In this sense, the HRC, the CEDAW Committee and the Committee on Children’s Rights have recommended that all countries that have submitted reports make changes to the provisions that discriminate against women in marriage and family relations. The HRC has found violations of the right to marry and raise a family in laws that discriminate against women in marriage, which still persist in the civil laws of most Latin American and Caribbean countries, as well as differences in the minimum age established for the marriage of minors. In the case of Chile, the HRC has also pointed out that the absence of a divorce law<sup>50</sup> may constitute a violation of paragraph 2, Article 23, of the Covenant on Civil and Political Rights.

As to the marriage of minors, many studies<sup>51</sup> indicate that early maternity is related to the age at “first union”. Therefore, allowing young girls to marry at ages as young as 12, as happens in some countries of the region, could violate their right to life: “pregnancy and childbirth during adolescence imply considerable risks. Studies conducted in various countries around the world show that young women

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<sup>49</sup> HRC, General Observation No. 28, par. 19

<sup>50</sup> See HRC, Final Observations on Chile, par. 17

<sup>51</sup> Family Care International (FCI) and Safe Motherhood Inter-Agency Group (1998) Fact Sheets, Delay Marriage and First Birth.

aged 15 to 19 are twice as likely to die in childbirth as women over the age of 20. In minors under 15, this probability is six times greater. The leading causes of death in young women aged 15-19 years are complications associated with pregnancy. Similarly, adolescent mothers attain lower levels of academic achievement, have less education to compete in the jobs market and as a result, have fewer possibilities of supporting themselves and their children. These facts merit analysis, together with fertility rates, and the social, cultural and economic factors that promote this situation.”<sup>52</sup>

### 8. The right to employment and social security

This includes the right to the legal protection of maternity in the field of employment, the right to work in an environment free of sexual harassment and the right to not be discriminated against on grounds of pregnancy. This right, in turn, includes the right to not be dismissed by reason of pregnancy, as well as the right to protection of maternity in employment matters and the right to not suffer discrimination in the workplace on grounds of pregnancy or maternity.

Articles 1 and 11 of CEDAW prohibit discrimination by reason of pregnancy, Article 4 states that all measures aimed at the protection of maternity shall not be considered discriminatory. The CEDAW Committee maintains that women have the right to fair and favorable working conditions. In its final observations to several countries on the region, the Committee remarked that although maternity is afforded legal protection in the field of employment, in many cases this protection is not applied in practice. This

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<sup>52</sup> *Let us talk about on sexual and reproductive health*, PROFAMILIA, March 1998, N. 2, National Bulletin, Colombia.

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means that working mothers often face numerous obstacles in their efforts to obtain and/or keep their jobs. The HRC has noted the lack of a comprehensive law in some countries of the region to prohibit discrimination in private-sector companies and both the CESCR and the CEDAW Committees have condemned a common practice identified in the *maquilas* (assembly plants) of forcing women to have pregnancy tests as a requirement to obtaining or keeping a job.<sup>53</sup>

General Recommendation 19 of CEDAW specifically includes sexual harassment as a form of violence against women, and as a form of discriminatory treatment in the workplace<sup>54</sup>, urging governments to adopt specific measures to address this problem. In this regard, the HRC has called on several countries of the region to introduce legislation characterizing sexual harassment as a crime.

For its part, the International Labor Organization (ILO) has several agreements concerning the protection of motherhood which reflect the development of the concept of maternity.<sup>55</sup> Recommendation 123 on the employment of women with family responsibilities of 1965, already reflects concern over the various types of discrimination in the workplace suffered by women workers with family responsibilities. In 1981, Convention 156 was adopted concerning workers with family responsibilities. This agreement applies to men and women workers with responsibilities towards members of their immediate family when those responsibilities reduce their opportunities to

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<sup>53</sup> CESCR, Final Observations on Mexico, pars. 21 and 37 and CEDAW Committee, Final observations on Mexico, par. 391

<sup>54</sup> CEDAW Committee, General Recommendation No.19, pars. 17-18

<sup>55</sup> See Conventions No. 3 of 1919 and 103 of 1952 on the protection of maternity and Recommendation 95, also of 1952, which, among other things, establishes protection against dismissal on grounds of pregnancy.

prepare for, enter or participate in, or advance their economic activities. The Convention recognizes that to achieve full equality between men and women it is necessary to modify the traditional roles of both men and women in society and in the family. In addition, States Parties are obliged to promote equality of opportunities and treatment for workers with family responsibilities, and to implement public policies in this regard. This instrument also establishes that family responsibilities cannot be a valid reason for dismissal. Although reproductive rights was not discussed back in 1981, this Convention clearly protects the reproductive rights of working men and women.

#### 9. **The right to education**

This right includes the right to receive sexual and reproductive education as well as the right to non-discrimination in the exercise and enjoyment of this right.

The right to education has been recognized in several international treaties, including the Universal Declaration, Article 26, the International Covenant on Economic, Social and Cultural Rights, Articles 13 and 14, the Convention on the Elimination of all forms of Racial Discrimination, Article 7 and the Convention on the Rights of the Child, Article 28. More specifically, the CESCR has established that education is a human right in itself and is indispensable for the enjoyment of other human rights. Most importantly, it plays an essential role in the empowerment of women in society.<sup>56</sup>

The right to education and its relation to other reproductive rights can be analyzed at different levels. At the first level, the right to basic education is essential in the context of reproductive rights. Women's access to basic

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<sup>56</sup> CESCR, General Observation on education, pars. 1 y 31-32.

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education contributes to their empowerment within their family and in their community; it helps women to become aware of their rights and permits them to gain access to jobs in more competitive conditions.<sup>57</sup>

Similarly, just as the right to education includes the right to receive education on reproductive health, the latter should include, among other things, information on sexual and reproductive rights, on the use of protective methods and ways of minimizing risks to ensure healthy, safe and responsible sexuality and reproduction. It should also present the views of the different religions and cultures with regard to sexual and reproductive rights.

“In addition, sexual and reproductive education should be presented in such a way as to educate women to exercise their right to decide the number and spacing of their children freely and responsibly, and men to exercise their sexuality and fatherhood in a responsible manner. In other words, sexual and reproductive education should not focus solely on women or on increasing condom use and vasectomy among men. “Involving men in sexual and reproductive health should not be limited to the use of contraceptive methods. The aim is to promote an awareness of gender equality in all spheres and encourage men to assume their sexual, reproductive, social and family roles responsibly...”

This new concept of male participation implies confronting deeply rooted cultural barriers. Males have been educated according to the stereotypes of immediate satisfaction and sexual potency, the imperatives of reproduction and being a breadwinner. Educating men for fatherhood is an urgent necessity. This education must

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<sup>57</sup> Some studies show that women with more education are better able to plan their families and protect their health, UNICEF, *State of The World's Children* 1994, pag. 43.

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include, not only assuming responsibility for their sexuality, but also exercising and enjoying elected fatherhood, and sharing with their partner all stages of the process of raising and educating children.”<sup>58</sup>

In this regard, it is important to emphasize that international judicial bodies have determined that States have an obligation to provide sexual education to adolescents and that this education should be sensitive to religious freedom and to the parents’ right to educate their children in accordance with their beliefs.<sup>59</sup> However, this does not mean that parents have the right to prevent their children from receiving sexual and reproductive education, since parents’ right to educate their children in accordance with their convictions does not override the interest of the child, nor can it be exercised in a manner that discriminates between male and female children.<sup>60</sup>

It is important to note that the Cairo Program of Action calls on countries to take the necessary steps to ensure that girls and adolescent women complete their schooling. Similarly, it requires that governments eliminate the legal, regulatory and social obstacles that prevent adolescents from receiving information on reproductive health, and that pregnant adolescents be allowed to continue their education.<sup>61</sup>

The obligation to provide education and information on sexual and reproductive health and rights, particularly to adolescents, has been reiterated by the CEDAW Committee

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<sup>58</sup> *Let us talk about on sexual and reproductive health*. PROFAMILIA, May 1998, No. 4, National Bulletin, Colombia.

<sup>59</sup> See *Kjeldsen c. Denmark*, in Report of the European Commission on Human Rights, vol. I, 1976, page. 711.

<sup>60</sup> See Article 29 clause d. Convention on the Rights of the Child.

<sup>61</sup> Cairo Program of Action, pars. 7.41-7.48 y 11 .8.

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in its recommendations to various countries of the region.<sup>62</sup> In its recommendations to Argentina<sup>63</sup> the Committee on Children's Rights also called for efforts to reduce the incidence of adolescent pregnancy. Finally, and in very concrete terms, the CESCR recommended that Mexico include courses on sexual and reproductive health in its academic programs<sup>64</sup>.

We can also identify another level at which the right to education is directly linked to the right to non-discrimination in relation to reproductive rights. CEDAW establishes women's right to education, in equality with men, in terms of access, equality in academic programs and in their options for professional careers, among others. It also specifically calls for the reduction of drop-out rates among female students. In this regard the CEDAW Committee has repeatedly stated that expulsions of pregnant students from educational establishments, the annulment of their enrollment or the assignation of tutors to these adolescent women, excluding them from their normal study groups, constitute a violation of their right to education and to equality. For example, the CEDAW Committee specifically asked the Chilean government to adopt the necessary measures, including the introduction of legislation, to prohibit the expulsion of pregnant adolescents from public and private schools.<sup>65</sup>

At the same time, Principle 10 of the Cairo Platform of Action establishes that "every person has a right to education, which should be oriented towards the full

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<sup>62</sup> See for example, CEDAW, Final observations on Chile, par. 27; CEDAW, Final observations on Mexico, par. 409; and CEDAW, Final observations on Peru, par. 51.

<sup>63</sup> CDN, Final Observations on Argentina, par. 19.

<sup>64</sup> CESCR, Final Observations on Mexico, par. 43

<sup>65</sup> CEDAW, Final observations on Chile, par. 27

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development of human resources, of human dignity and of human potential, paying special attention to women and girls. Education should be conceived in such a way as to strengthen respect for human rights and fundamental freedoms, including those related to population and development.

**10. The right to appropriate and timely information**

This right includes the right of every person to receive clear information about their state of health, their rights and responsibilities in matters of sexuality and reproduction, and concerning the benefits, risks and effectiveness of birth control methods and the implications of a pregnancy in each particular case. This right is established in several international documents, including Article 19 of the International Covenant on Civil and Political Rights. Chapter 7 of the Cairo Platform of Action also lists various measures that should be taken by States to promote this right, including the design of innovative programs to ensure that all adolescents and adult men have access to information, counseling and reproductive health services, educating men on their obligation to share the responsibilities of family planning, domestic chores and raising of the children and to accept responsibility in the prevention of sexually transmitted diseases.

**11. The right to modify customs that discriminate against women**

This right is explicitly mentioned in Article 2 of CEDAW, (clauses f and g, as well as in clause a) of Article 5, and also in Article 24 clause 3 of the Convention on the Rights of the Child. And of course it includes the right to modify customs

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that harm the reproductive health of women and girls. Chapter IV of the Cairo Platform of Action contains a list of actions that States should implement to fulfill their obligation to protect, promote and respect this right, including efforts to encourage the expansion and strengthening of self-help groups, community groups and women's support groups.

### **12. The right to benefit from scientific progress and give consent to be the subject of experimentation**

This right is enshrined in Article 15 of the International Covenant on Economic, Social and Cultural Rights and of course in the U.N. Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind. It includes the right to benefit from scientific progress in the field of human reproduction, a right explicitly contemplated in the International Covenant on Civil and Political Rights in Article 7, as well as the right to not to be subjected to experimentation in this area.

### **The Importance of the Quasi-Jurisdictional Function of the National Human Rights Institutions**

In many countries of Latin America and the Caribbean, the national institutions for the protection of human rights date back to the 1980s. In participating in the work of the national institutions, the United Nations have reached the conclusion that there is no single model of a national institution that can, or should, be recommended as an appropriate mechanism to ensure that all countries fulfill their international obligations in the area of human rights.

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In the majority of Spanish-speaking countries, these national institutions are called *Defensorias del Pueblo* or Human Rights Commissions. For example, the *Defensor del Pueblo* –People’s Defender o Advocate - is the title of the national human rights institution in several Latin American countries; in Costa Rica it is *the Defensor de los Habitantes* –Citizens Defender-, in Mexico it is the *Comisión Nacional de Derechos Humanos*, (National Human Rights Commission); in Guatemala, *Procurador de los Derechos Humanos* (Human Rights Attorney), and in El Salvador, *Procurador para la Defensa de los Derechos Humanos*. In the English-speaking Caribbean countries, these institutions are called offices of the Ombudsman: for example, in Barbados, the Office of the National Ombudsman. In the United Nations the generic term national human rights institutions is used to refer to all of the above.

Most of the National Institutions have the attributes and jurisdictions established in the Principles of Paris<sup>66</sup>, which include: issuing opinions, recommendations, proposals and reports on all matters related to the protection and promotion of human rights; promoting national laws, regulations and practices and ensuring that these are in harmony with the international human rights instruments; encouraging accession to or ratification of those instruments and ensuring their application; contributing to the preparation of the reports that States are required to submit to the organs and committees of the United Nations, as well as to the regional institutions; cooperating with the competent international, regional and national institutions in the areas of the promotion and protection of human rights; collaborating in the design of programs related to education and research in the area of human rights; and disseminating human rights.

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<sup>66</sup> These Principles were adopted by the General Assembly of the United Nations in 1993, see, A/RES/48/134 December 20, 1993

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However there are differences between the Commissions and the *Defensorias* or Offices of the Ombudsman, and between the various commissions and the different *defensorias* or ombudsman's offices. For example, the primordial function of the human rights commissions is to protect citizens against discrimination and ensure the observance of human rights, though some commissions also investigate complaints of violations of any of the rights recognized in the constitutions. The main function of the institution of the Ombudsman or the People's Advocate (though it is not exactly the same in each country), is to monitor the State in the fulfillment of its obligations to ensure the full observance of human rights. Like the Commissions, the Offices of the Ombudsman can also receive complaints from citizens. When these institutions conduct an investigation, they subsequently issue a declaration in which they formulate recommendations based on their investigation.

Although these institutions are allowed to receive complaints and issue a declaration on the same, they are not intended to replace the jurisdictional mechanism but rather to complement it. This complementary role has a parallel in the principle of subsidiary function, which is the essence of the supranational systems of protection, especially those with the jurisdiction to receive complaints and rule on *de facto* or *de iure* violations of the State's obligations.<sup>67</sup>

Prior to the creation of the national human rights institutions, there was a system for the protection of human rights composed of the jurisdictional bodies (judicial organ), and of the non-jurisdictional protection afforded by the

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<sup>67</sup> Gil-Robles, Alvaro. "El Defensor del Pueblo y su impacto en España y en America Latina ". In: Estudios Básicos de Derechos Humanos. Tome II. Compiled by Antonio A. Cancado and Lorena Gonzalez. San Jose: IIDH, 1995

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NGOs, complemented with the international protection derived from the institutions of the Inter-American System and the United Nations System.

Thus, in addition to the other functions that these institutions might have, they were also created as quasi-judicial bodies for the protection of human rights. This is how the system for the protection of human rights now offers jurisdictional, non-judicial and quasi-judicial protection, plus the subsidiary or complementary system composed by the institutions of the Inter-American System and the United Nations.

The jurisdictional function has been defined as the “public function undertaken by the competent organs of the State, as stipulated by law. This involves a hearing or trial to determine the right of the parties with the aim of settling their conflicts and controversies of legal consequence, through decisions with the authority of *Res Judicata*, which can eventually be executed.”<sup>68</sup>

The quasi-judicial function is aimed at settling disputes through the application of the law, but without elements that characterize the jurisdictional function, especially a trial, the relative lack of enforcement and the execution of the law through a sentence with the authority of *Res Judicata*.

The non-judicial function essentially corresponds to monitoring actions undertaken by civil society, particularly through the NGOs.

“The quasi-judicial procedure does not involve a trial in the procedural sense of the word, since the parties do not present themselves at a hearing to prove the legality of their conduct or to demonstrate the responsibility of another

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<sup>68</sup> Definition of Couture, in De La Rúa, Fernando. *Teoría General del Proceso*. Buenos Aires: Depalma, 1991, p. 39.

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party that might have engaged in an unlawful act. Nor is there a judge to direct the process, consider the evidence and execute the law through a sentence. The quasi-judicial protection of human rights does not therefore involve a trial, but it does imply a series of procedures different to the judicial or administrative process.”<sup>69</sup>

The absence of a trial in the quasi-judicial procedure implies the absence of the process understood as “the set of actions through which the juridical relationship established between the judge, the parties and the rest of the persons that intervene in the matter is constituted, develops and concludes; and which are aimed at settling the lawsuit brought by the parties, through a decision by the judge based on the stated and proven facts and on the applicable law”.<sup>70</sup>

Another characteristic of quasi-judicial protection is the unilateral nature of the investigation, since the parties do not participate in the same as litigants. Because there is no trial, the quasi-judicial protection has very few formalities and procedural actions, only the minimum established by law to preserve its expeditious, brief and protective character.

But the differences are not just of a procedural nature; there are also differences with regard to which particular laws may be applied in one case or another. Jurisdictional protection requires the execution of the internal or domestic laws and any international human rights agreements that may have been ratified and approved by the country, because the judicial body cannot base its sentences on other rules.

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<sup>69</sup> Rodriguez Cuadros, Manuel, *La protección quasi-judicial de los derechos humanos*, in *Debate Defensorial*, No.1, 1998, magazine of the Office of the Ombudsman of Peru, p. 38

<sup>70</sup> Ovaelle Favela, Jose. *Teoria General del Proceso*. Collection of legal texts in universities. Mexico, 1991, p. 183.

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By contrast, the very fact that the quasi-judicial mechanism of protection does not execute the law in a sentence, means it is empowered to apply all national laws and international treaties ratified and approved by the country, but in addition what are termed the “international standards of protection”. These consist of the resolutions and declarations issued by international bodies, by international common law, by consensus documents adopted at certain International Conferences and by the practices accepted as “protective” according to international consensus.

This difference between jurisdictional and quasi-judicial function is of the utmost importance in relation to reproductive rights because although the judicial organs could eventually argue that they do not recognize the definitions given in the Platforms of Action of the International Conferences of Vienna, Cairo and Beijing, or those established by UN agencies and bodies, the national human rights institutions of Latin America and the Caribbean can and should take into account all the sources of international standards of protection of human rights. And since these include, in a clear and conclusive manner, the great majority of the reproductive rights, it is imperative that the national human rights institutions become more committed to these rights, without which women would never be able to enjoy any of their fundamental rights.

#### **Promotion and Protection of Reproductive Rights Through the National Human Rights Institutions. Equilandia: a Hypothetical Case**

In this section, we have created a national human rights institution in a fictitious country called Equilandia. The National Human Rights Institution of Equilandia has a very broad mandate, equivalent to the sum of all the functions and attributions of the existing national human rights institutions

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in Latin America and the Caribbean. Obviously, since we are in Equilandia, the institution has a Joint Office on women's human rights. Its mandate is to ensure that a gender perspective is incorporated into all the institution's actions, in addition to promoting and protecting women's human rights.

The objective of this section is to help the region's national human rights institutions in their work on reproductive rights by offering ideas that can be adapted by each institution, depending on its mandate, attributions and functions. For example, institutions whose mandates include an educational function, can adopt the examples of educational strategies used in Equilandia. If they are not engaged in education, they can take examples of other functions and incorporate or adapt the actions outlined here within their institutional framework.

In accordance with the functions established by its mandate, the National Human Rights Institution of Equilandia implements its actions within a framework based on the following principles:

1. Its quasi-jurisdictional function that allows it greater scope in the task of promoting, protecting and guaranteeing the human rights of all citizens of Equilandia.
2. The difference in power between women and men in Equilandia and the rest of the world.
3. The principle of substantive equality that establishes that the State should ensure that its policies and actions are directed at achieving equality of results and not simply a formal equality.
4. Recognition that the multiple forms of oppression due to race, ethnicity, age, sexual orientation, social or economic status, disability, migratory status, etc. cannot be

addressed in isolation but form a complex web of different forms of crossed discrimination and oppression, based on gender oppression.

### **Office of the Ombudsman of Equilandia<sup>71</sup>**

#### **1. The right not to die from preventable causes related to childbirth and pregnancy**

##### **Function as promoter of human rights**

With respect to this right and in relation to its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted the creation of a National Reproductive Health Network, composed of officials from the Ministry of Health, the Ministry of Women, Social Security, the Parliamentary Women's Commission and NGOs concerned with these issues, to monitor the quality of the obstetric and gynecological services in all the country's clinics and hospitals.
2. Promoted the creation of an epidemiological monitoring system on maternal mortality by forming Standing Committees on Preventable Maternal Mortality.
3. Promoted the creation of Psychological Support Networks at community level with the participation of local governments, community associations and university students of psychology and medicine who support prenatal and post-natal health services, using a holistic approach.

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<sup>71</sup> This section is based on a book currently under preparation on *Las Instituciones de Equilandia* by Alda Facio and Ana Elena Obando.

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4. Promoted the opening of specialized services in all clinics and hospitals, including private medical centers, to treat post-abortion complications in order to prevent deaths and serious consequences in women's health. In countries where abortion is illegal, this service was offered without considering whether the abortion was induced or not.
5. Promoted secularization of the State with the intention of decriminalizing abortion and facilitating access to prejudice-free sex education from the earliest age. The goal is to bring down the high death rates of women resulting from clandestine abortions under unsafe conditions; and to help the entire population prevent unwanted pregnancies, promoting contraceptives less invasive than abortion.
6. Promoted the creation of Health Caravans composed of health workers who offered reproductive health services, including prenatal, postnatal, family planning and gynecology services.
7. Coordinated with the 911 (emergency) services and health institutions to train personnel to provide specialized emergency obstetric services.
8. Promoted the creation of various systems of supervision and evaluation of reproductive health services to detect, prevent and control abuses by directors and providers of family planning services.
9. Supported campaigns launched by other entities and NGOs such as the campaign for the humanization of childbirth, for the decriminalization of abortion, for responsible ejaculation, etc.
10. In coordination with public universities, conducted information campaigns on the risks and prevention of teen pregnancy.

11. Coordinated nutritious feeding programs for low-income pregnant women, with universities and private companies in the food industry; participating companies were offered the opportunity to provide basic foodstuffs for mothers-to-be, deducting the expenditures from their income tax.

**Function as mediator**<sup>72</sup>

*Mediate in conflicts between management and individuals with the agreement of the parties.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Trained all personnel engaged in mediation work on the importance of gender-sensitive mediation, within the context of human rights, with a special emphasis on reproductive rights.

**Educational function**

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Together with all the health institutions, implemented a mass information campaign on the excessive use of inappropriate medications during pregnancy and childbirth.
2. Along with all national and local hospitals and clinics, promoted training courses for traditional midwives and

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<sup>72</sup> Although this mediation function is only included under this right, it is the same for all reproductive rights.

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healers on modern, safe childbirth methods that prevent infections and death, to provide many women with natural options that are safe and inexpensive.

3. Set up an emergency 800-phone line within its own Office to provide information on safe motherhood and receive complaints of deficient or inaccessible services related to childbirth and pregnancy.
4. Coordinated, with all human rights institutions of the Latin American region, a regional radio campaign to inform pregnant women about the precautions they should take during pregnancy and childbirth.
5. Together with the Universities, promoted basic education on reproductive health to inform women about endemic, infectious and contagious diseases as well as non-transmissible diseases related to childbirth and pregnancy.
6. Organized Public Hearings on reproductive rights to promote the participation of women and of organized groups of women as well as the dissemination of those rights.
7. Implemented a campaign directed at government authorities to sensitize the public health authorities on the disadvantages of privatizing reproductive health services.

### **Investigative function**

*Investigate ex officio or at the request of a party, actions or omissions by authorities and public servants, which constitute human rights violations.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

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1. Conducted an *ex officio* investigation on the quality of the treatments for post-abortive complications.
2. Conducted an *ex officio* investigation on the number of women who have died due to lack of free maternal health services.
3. Conducted an *ex officio* investigation on the quality of mother-child health services provided to women prisoners or detainees.
4. Conducted an *ex officio* investigation into the number of women who are vulnerable to HIV transmission via the blood, as a result of childbirth complications, and the lack of safe techniques to prevent infection.
5. Trained all personnel who receive complaints in the theory and practice of human rights from a gender perspective and on gender violence.

**Function as promoter of reforms before the State and legislative bodies**

*Promote reforms before the organs of the State and submit draft legislation for the advancement of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted a Law on Responsible Fatherhood, which together with other actions, contributed to men being more sensitive, careful and responsible in preventing unwanted pregnancies.
2. Promoted a Bill for a Maternity Fund creating a tax to be charged by local governments, to provide low-income women access to well-equipped, free maternal health services offered by well-trained sensitive staff.

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3. Promoted a law prohibiting the privatization of reproductive health services so to ensure that women have universal access to free services of good quality.
4. Promoted a law requiring companies that produce tobacco and alcohol to provide systematic information in the media on the consequences of smoking and alcohol during pregnancy.
5. Promoted the reform of laws that penalize abortion and regulated pre-abortion and post-abortion planning services within health laws to prevent the commercialization that produced prohibition and penalization.

### **2. Right to reproductive health**

#### **Function as promoter of human rights**

With respect to this right and in relation to its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

1. Coordinated, along with other health institutions, the systematic monitoring of new methods, techniques and reproductive health services to consolidate a holistic approach to health care.
2. Promoted the creation of Inter-sectoral Committees with the participation of different sectors of civil society and of central and local governments to improve the coverage, accessibility and quality of health care for women during their reproductive process.
3. Promoted and monitored the use of hormonal methods of male contraception as well as the practice of vasectomies to place equal responsibility on men in matters of reproduction.

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4. Promoted a review of the national budget to mobilize funds assigned to armaments and the armed forces to the health system and provide more resources to the reproductive health institutions.
5. Promoted efforts to endow the health system with services to perform safe abortions, training specialized staff in an interdisciplinary manner, in order to prevent complications due to unsafe abortions and prevent serious harm to women's reproductive health.
6. Promoted nocturnal campaigns to distribute condoms in bars, restaurants and other public places to encourage their use by men.

**Educational function**

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted a Latin American regional campaign to clean up the environment and provide basic sanitation, especially potable water.
2. Opened up spaces for discussion in the different media on reproductive health and human rights to generate public debate and disseminate information on the benefits of emergency contraception.
3. Promoted ongoing training in women's health and human rights to sensitize policymakers in the area of health, thereby promoting the redesign and updating of reproductive health programs in line with the international conferences on this subject.

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4. Coordinated, with local communities, to set up stands in local parks to distribute information on the prevention of sexually transmitted diseases, HIV-AIDS and pregnancy in adolescents.
5. Organized writing and painting competitions for young people on reproductive health to help reinforce women's empowerment and self-care.
6. Promoted a campaign of radio spots to inform young men and women, in a non-stigmatizing way, about HIV-AIDS, other sexually-transmitted diseases and contraceptive methods.
7. Promoted, together with schools and colleges, the creation of a manual on satisfactory sex life to teach men and women to break through taboos about their bodies, their sexuality and their decisions and responsibilities.
8. Promoted street theater to disseminate information on reproductive health in the communities.
9. Together with the health authorities, promoted the design of reproductive health care programs with the participation of women in the management, planning and decision-making, execution, organization and evaluation of the services.
10. Promoted, together with the Universities, the participation of medical and health students in the its own Office to learn about the most common violations of women's reproductive rights.
11. Coordinated and promoted, together with the Ministries of Culture, Education and Health, as well as advertising agencies and TV networks, an overall campaign on the education of health and reproductive rights, through the production of a TV show. This way, a soap-opera – much popular TV show- was created in order to disseminate

#### PROMOTION AND DEFENSE

important knowledge for people of all ages; turning this communication medium, which is generally filled with prejudicial messages, into a creative, educational and beneficiary to the public mean (medium). The financing of the project was taken care by private companies that, at the same time, benefit from it, as well as artists of different disciplines.

#### **Investigative function**

*Investigate ex officio, or at the request of a party, actions or omissions by authorities and public servants that constitute human rights violations.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Investigated *ex officio* the way in which reproductive health services are used, the quality of these services, and the impact of programs for the prevention and promotion of reproductive health.
2. Persuaded the Ministry of Health, with the collaboration of NGOs of women and disabled people, to conduct a study to find out how many women have been left disabled due to complications in childbirth, pregnancy or abortion.
3. Collaborated in a study to determine how the way in which various types of contraception for men and women are promoted or impeded, affects women's reproductive rights.

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### **Function as promoter of reforms before the State and legislative bodies**

*Promote reforms before the organs of the State and submit draft legislation for the advancement of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted a law requiring private companies, public transport providers and local governments to inform the public on the detection, prevention and care of sexually transmitted diseases, HIV-AIDS, cervical and uterine cancer and breast cancer through announcements in the media, on products, on buses, at bus stops and on garbage cans placed in public places.
2. Promoted the creation by decree of a National Commission on Abortion to investigate the consequences of abortion, including abortions carried out in precarious conditions, post-abortion complications, the relation between socio-economic status, age and the risk of mortality from abortion and the impact on women's reproductive health.
3. Promoted a law making it a requirement for students of communications, education, health and law to learn about reproductive rights, prior to their graduation.

### **③. Right to freedom, security and personal integrity**

#### **Function as promoter of human rights**

As mentioned in Section III, this right includes the right to personal integrity, which in turn includes the right to not be subjected to torture or to cruel, inhuman or degrading

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punishment or treatment. This includes the right to be free of violence based on sex and gender, which in turn includes the right to live free from sexual exploitation.

Based on its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted a Permanent Interdisciplinary Committee composed of representatives of the justice department, police and health workers who, among other actions, drafted a protocol for common actions to deal with cases of violence against women, to facilitate the effective management of the consequences of violence on women's reproductive health.
2. Promoted the drafting of a protocol on ethical conduct to balance the unequal power in relations between doctor and patient, and consistent with internationally accepted best practice.
3. Promoted, within the national health system, the creation of community monitoring bodies for the epidemiological monitoring of violence directed at women of all ages.
4. Promoted measures to prevent coercion in relation to fertility and reproduction, and ensure that women are not forced into risky medical procedures, such as illegal abortions, or unnecessary surgery such as cesareans and hysterectomies, through a lack of appropriate services in this area.

#### **Educational function**

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

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1. Promoted the sensitization of health workers in all clinics and hospitals to respond to the emotional needs and reproductive rights of women during health care, particularly in the gynecology, obstetric and family planning services and in cases of sexual abuse or mistreatment by spouses.
2. Promoted music concerts every six months to sensitize youth on the subject of sexual exploitation, the traffic of women, boys and girls, incest and other forms of violence against women.
3. Promoted a cinema festival with films that focus on the right to women's right to liberty and security which helped to sensitize the public to the problems of reproductive health that generate violence.
4. Promoted curricular reforms in police academies and in the justice department, to introduce courses on ways to guarantee the security and freedom of women as part of their reproductive rights, thereby helping to sensitize the personnel of these institutions.

#### **Investigative Function**

*Investigate ex officio, or at the request of a party, actions or omissions by authorities and public servants that constitute human rights violations.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Introduced a methodological tool in the institutions that provide health care services to determine how many women did not continue family planning or did not ask their partners to use a condom for fear of being beaten.
2. Conducted an *ex officio* investigation into rapes of sex

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workers by police officers.

3. Promoted the compilation of statistics to determine how many battered women attend health centers, in order to sensitize health workers and help them to identify the different types of violence suffered by women who use the health services.
4. Investigated complaints of sexual harassment, forced sterilizations and other physical, psychological and sexual abuses by health workers. This led to the assignation of at least two people, one of them a woman, during appointments related to reproductive health.
5. Promoted an investigation to find out the reasons for the high rates of cesareans and hysterectomies in private clinics.

#### **Function as promoter of reforms before the State and legislative bodies**

*Promote reforms before organs of the State and submit draft legislation for the advancement of human rights*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted the creation of a law to grant tax incentives to companies that promote inexpensive educational toys instead of violent or warlike toys, thereby contributing to efforts to reduce violence in our societies.
2. Promoted a law to force the media and businesses that sponsor television soap operas, to disseminate the notion of reproductive self-determination.

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### 4. Right to decide the number and spacing of children

#### Function as promoter of human rights

With respect to this right and in relation to its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted the incorporation of a framework of respect for reproductive rights into the definition and execution of public policies on population and development.
2. Promoted the expansion and specialization of reproductive health services in all health institutions.
3. Promoted the use of Health Buses or mobile units to provide the necessary counseling and orientation to men and women on safe, effective, affordable and acceptable contraception methods, facilitating access to these services throughout the country.

#### Educational function

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted, through the Latin American Network of Ombudsman's Offices, a women's art exhibition on women's right to know, respect and love their bodies.
2. Promoted an annual march, coordinated at regional level, to promote sexuality independently of reproduction, and for the right to decide whether or not to have children, how many and how often.

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3. Promoted, together with local governments, mixed-gender community workshops to learn to negotiate the use of the condom.
4. Promoted the dissemination of information in schools on the human body, sexuality and reproduction, to help students to learn to make decisions freely and responsibly.
5. Promoted, through colleges and schools, the creation of parents' associations to organize sessions for guided discussion on sexual education between fathers, mothers, sons and daughters.
6. Organized workshops on masculinity open to the general public to encourage men's participation and responsibility in matters of sexuality and reproduction.
7. Promoted, within health institutions, the right of women to plan the family of her choice with the assistance of a doctor or registered midwife, at a hospital or in an alternative environment.

**Investigative function**

*Investigate ex officio or at the request of a party, actions or omissions by authorities and public servants that constitute human rights violations.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Investigated *ex officio* whether the information provided to women who opted to plan their families was consistent with the gender perspective and with the rights established in all the international conferences and agreements that regulate reproductive rights.

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2. Investigated *ex officio* cases where contraceptive methods were applied without the woman's express consent.
3. Investigated *ex officio* the impact of religious and cultural beliefs on the number of children that women had.

### **Function as promoter of reforms before the State and legislative bodies**

*Promote reforms before the organs of the State and submit draft legislation for the advancement of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted the reform of prohibitive or highly restrictive laws on abortion because of their harmful impact on maternal mortality and reproductive self-determination.
2. Promoted a comprehensive law on Voluntary Procreation based on principles of self-determination and reproductive freedom.

### **5. Right to privacy**

#### **Function as promoter of human rights**

With respect to this right and in relation to its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted the creation of holistic health centers throughout the country, offering humanized, confidential and respectful medical and psychological attention.

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2. Promoted a code of ethics in all health institutions to ensure that staff observe the principles of confidentiality, privacy, respect and informed consent.
3. Coordinated the preparation of ethical and professional standards in the provision of family planning and reproductive health services, aimed at guaranteeing responsible, voluntary and informed consent.

#### **Educational function**

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Conducted a radio campaign, in the form of a radio soap opera, to inform the public on the right of every woman to be treated with respect and confidentiality by public officials.
2. Conducted a campaign on the importance of respecting the privacy of families.
3. Together with the Ministry of Education, produced a series of publications for adolescents and children to help them understand the difference between privacy and confidentiality and the need to report sexual abuse within families.

#### **Investigative function**

*Investigate ex officio or at the request of a party, actions or omissions by authorities and public servants that constitute human rights violations.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

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1. Investigated *ex officio* cases in which the right to privacy and confidentiality have been violated, paying special attention to cases of HIV-AIDS, and in cases of women reported for having abortions.

### **Function as promoter of reforms before the State and legislative bodies**

*Promote reforms before the organs of the State and submit draft legislation for the advancement of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted legislation and a special protocol to provide anonymous testing on women who have aborted or have HIV-AIDS.
2. Proposed legal reforms to punish cases of forced sterilization, or sterilization performed without consent, with the suspension of the professional license.
3. Promoted the creation of a law to regulate surgical contraception or sterilization for men and women, whereby a person must express his/her willingness and consent once he/she has been informed of the irreversible consequences of this procedure. This law abolished the requirement to obtain the spouse's authorization or consent for sterilization.
4. Presented a constitutional reform to create Secular States and to prevent the intervention of Churches or other extraneous actors in public policies on reproductive health.

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5. Promoted a reform of the law to eliminate the legal or *de facto* requirements for women's sterilization, such as having a certain number of children, being of a certain age or requiring the authorization of the spouse.
6. Presented a legal review to establish exceptions to the general prohibition on all abortions and protect the confidential character of medical information.

### **6. The right to equality and non-discrimination**

#### **Function as promoter of human rights**

With respect to this right and in relation to its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted the elimination of harmful, clinically unnecessary or coercive medical procedures and the over-medication of women, providing information on the different options available to women, including advantages and side effects.
2. Promoted the elimination of discrimination in terms of access to information, education, health services and health care through continuous training workshops.
3. Promoted decision-making on reproduction without discrimination through permanent information services on reproductive health.
4. Promoted workshops on masculinity with health workers to enable them to promote responsible sexual behavior in men, with respect for the rights and reproductive health of their partners.

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### **Educational function**

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted a study of the barriers that prevent women from gaining access to services, education and information in the area of reproductive health.
2. In coordination with the judicial academies in the Latin American countries, promoted a permanent course on women's reproductive rights.

### **Investigative function**

*Investigate ex officio or at the request of a party, actions or omissions by authorities and public servants that constitute human rights violations.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted an investigation into the distribution of the health budget, given that insufficient human and economic resources have been assigned to treat diseases such as breast and uterine cancer, and to enable medical staff to perform sterilizations or treat post-abortion complications.

### **Function as promoter of reforms before the State and legislative bodies**

*Promote reforms before the organs of the State and submit draft legislation for the advancement of human rights.*

#### PROMOTION AND DEFENSE

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted the signing and ratification of all agreements that are related, in one way or another, to reproductive rights.
2. Promoted the reform of several health laws to incorporate the concept of discrimination as established in CEDAW.
3. Drafted a bill to modify or abolish laws, regulations and practices in health that discriminate against women.

### **7. Right to education**

#### **Function as promoter of human rights**

With respect to this right and in relation to its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted a Special Commission with the participation of the Ministry of Health and the Ministry of Education to set crossed policies to prevent pregnant students from discontinuing their education, given that lower educational levels result in increased adolescent pregnancy.
2. Lobbied the Ministry of Education to introduce reproductive rights education at primary school level, and in all the relevant subjects as well as courses on sexual and reproductive education for students, teachers and administrative staff.
3. Together with Public and Private Universities, promoted curricular reforms in the careers of nursing, obstetrics and

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medicine to incorporate gender and women's human rights as cross-cutting issues.

4. Promoted the design of a sexual and reproductive education module to be used in schools and colleges, emphasizing responsibility as well as the exercise and enjoyment of elected fatherhood, shared with partners, during all stages of the process of raising and educating children.
5. Together with the Ministry of Education, promoted real access by women to basic education, to contribute to their empowerment within their families and their communities, and improve their access to the jobs market in more competitive conditions.

### **Educational function**

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Trained "multiplying agents", such as health workers, promoters, students and young people in general, on HIV-AIDS and other sexually transmitted diseases.
2. Promoted educational games on women's reproductive health for use in the different health institutions.
3. Launched a mass media campaign on the right of all citizens to receive education on reproductive rights.
4. Together with the Ministry of Education, organized training courses on sexual and reproductive rights for primary and secondary school teachers, prior to allowing them to exercise their profession.

**Investigative function**

*Investigate ex officio or at the request of a party, actions or omissions of authorities and public servants that constitute human rights violations.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Investigated *ex officio* whether primary or secondary schools have explicit or implicit policies to prevent pregnant students from continuing their studies.

**Function as promoter of reforms ante the State and legislative bodies**

*Promote reforms before the organs of the State and submit draft legislation for the advancement of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted legislation to ensure that all education programs, without exception, include the right to receive education and information on sexual and reproductive rights, in order to encourage the use of protective and risk control risk factors, promote healthy, safe and responsible sexuality and reproduction and offer information on the position of the different religions and cultures on sexual and reproductive rights.
2. Presented draft legislation to prohibiting the expulsion of adolescents from public and private schools for reasons of pregnancy.

### **8. Right to marriage and to raise a family**

#### **Function as promoter of human rights**

With respect to this right and in relation to its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted workshops in primary and secondary schools, religious groups, community associations and other organizations to support families in the deferment of pregnancy or early marriages.
2. Promoted the creation of specialized units within hospitals and clinics to provide free information and treatment – both allopathic and homeopathic – of infertility.
3. Promoted a public policy on responsible parenthood (motherhood and fatherhood) for an egalitarian regulation of the rights and obligations of men and women, and to provide opportunities for education, employment and other forms of personal development for women, thereby balancing the unfair burden of work placed upon them.

#### **Educational function**

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted a national campaign to inform women that the decision to have children or the number of children, should not be limited by the spouse, father, partner or the government.

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2. Lobbied publicity companies and television channels to show images of women carrying out a broad range of tasks and men participating equitably in the domestic chores and the raising of the children.
3. Conducted a campaign to educate the population as a whole on the benefits of postponing marriage until after the age of 23.
4. Implemented a campaign to show the different types of families existing in the country.

**Investigative function**

*Investigate ex officio or at the request of a party, actions or omissions by authorities and public servants that constitute human rights violations.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Conducted an *ex officio* investigation to determine whether public health workers informed users of reproductive health services of their right to enjoy a satisfying sexuality, independent of their reproductive function, as well as their right to decide on their own fertility without external interference.
2. Investigated the causes of early marriage and motherhood in adolescent women to be able to combat these more effectively.

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### **Function as promoter of reforms before the State and legislative bodies**

*Promote reforms before the organs of the State and submit draft legislation for the advancement of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted a law granting equal rights and obligations to all non-traditional types of families.
2. Promoted legislation to standardize the age of marriage in men and women.

### **9. Right to employment and social security**

#### **Function as promoter of human rights**

With respect to this right and in relation to its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

1. With local governments, the Ministry of Labor and Banks, promoted special programs to offer access to work and credits so that pregnant adolescents can compete in the labor market.
2. Created a radio spot for women to denounce companies that demand obligatory tests for venereal diseases or pregnancy as a condition of employment.
3. Promoted the establishment of an insurance policy for accidents and diseases at work related to the violation of any reproductive rights.
4. Promoted the establishment of clean, safe, well-equipped

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and properly staffed areas in private companies and government institutions suitable for nursing mothers and for the care of the young children of workers.

5. Created a program to encourage senior citizens of both sexes to become adoptive grandparents to the children of single working mothers.
6. Promoted the incorporation of a gender perspective in occupational health policies, to strengthen the study of work-related illnesses that affect the physical and psychosocial health of women in the formal labor sector. Also to provide women workers of the informal sector with timely access to integral care reproductive health services, to evaluate an extension of subsidies for occupational risks.

#### **Educational function**

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Launched a mass information campaign throughout the country on sexual harassment in the workplace to ensure that women know their rights and know where to denounce any violations.
2. Launched a campaign on the right of workers to have a comprehensive and permanent insurance policy that guarantees free access to reproductive health services and other health services.
3. Launched a mass information campaign to combat the myth that only women of reproductive age can enjoy their sexuality.

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### **Investigative function**

*Investigate ex officio or at the request of a party, actions or omissions by authorities and public servants that constitute human rights violations.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Investigated complaints of sexual harassment by public sector reproductive health workers towards the users of these services.
2. Conducted an *ex officio* investigation to find out whether public health institutions and private companies had regulations and a policy to eradicate sexual harassment.
3. Conducted an investigation to assess the levels of sexual harassment in public institutions and private companies, with the collaboration of social science students from the universities.
4. Conducted an investigation to determine if the number and ages of a woman's children affect her employment opportunities.
5. Conducted an investigation to determine the incidence of dismissals that are "cloaked" by pregnancy and lactation.
6. Conducted an *ex officio* investigation to find out whether institutions and private companies had insured their workers for illness, occupational hazards, maternity and death.

**Function as promoter of reforms before the State and legislative bodies**

*Promote reforms before the organs of the State and submit draft legislation for the advancement of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted a law imposing fines on companies that did not protect the reproductive health of their workers and the general population, due to excessive medications, harmful foods, different types of violence, or pollution of water, air and soils.
2. Promoted a law to ban obligatory testing for venereal diseases or pregnancy as a condition to obtain or keep a job, as well as fines for companies that carried out such tests.
3. Promoted legislation so that men could apply for paternity leave to care for their children.
4. Promoted legislation to oblige public and private companies to reinstate workers dismissed by reason of pregnancy.

**10. Right to appropriate and timely information**

**Function as promoter of human rights**

With respect to this right and in relation to its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted improved techniques and methods in all the country's hospitals and clinics to provide clear

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information on the state of health, rights and responsibilities in the sphere of women's sexuality and reproduction.

2. Produced a video to be shown permanently in the health institutions to inform people about reproductive rights, including a broad range of temporary and permanent contraceptive methods available to the population.

#### **Educational function**

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted training workshops to enable health workers to inform each user about the benefits, risks and effectiveness of birth control methods as well as the implications of pregnancy in each particular case.
2. Promoted a permanent commission with the participation of the health institutions, human rights offices or institutions, non-governmental women's organizations and the media, to disseminate accurate information to the public on sexual and reproductive rights.
3. Promoted the distribution of pamphlets in primary and secondary schools about sexuality and reproduction, from a gender perspective, and to warn of the dangers of the traffic in women and children (of both sexes) for purposes of sexual exploitation. This helped to inform young people of their rights, responsibilities and available services.

**Investigative function**

*Investigate ex officio or at the request of a party, actions or omissions by authorities and public servants that constitute human rights violations.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Conducted an investigation to determine the type of information that young people receive about sexuality and reproduction.

**Function as promoter of reforms before the State and legislative bodies**

*Promote reforms before the organs of the State and submit draft legislation for the advancement of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted a reform of the laws prohibiting the release of information on the sexual and reproductive rights of young people.
2. Promoted a law granting tax incentives to companies that provide accurate and non-discriminatory information on reproductive rights.

**11. The right to modify customs that discriminate against women**

**Function as promoter of human rights**

With respect to this right and in relation to its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

Promoted a Multipartite Commission (government, women's NGOs, Ombudsman's Office and donor agencies) to design a general policy on reproductive health, with its respective plan of action, which includes strategies to modify all customs that discriminate against women and impede the enjoyment of their reproductive rights such as the models of feminine beauty, myths about sexuality, fashion, etc.

**Educational function**

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted permanent workshops, together with local governments, that modified beliefs on menstruation and menopause, the roles of fathers and mothers in the upbringing of their children, feminine beauty, etc.
2. Promoted alternative spaces in hospitals and clinics to help women learn about their bodies through various types of yoga, psychophysical exercises, group therapies and other alternative techniques that teach women to love their bodies and to detect anomalies.
3. Promoted radio spots directed at men to sensitize them about the exercise of their sexuality without discrimination, coercion or violence towards women.

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4. Promoted a Latin American regional campaign to denounce obstacles imposed by the Churches that prevent the modification of customs that discriminate against women.
5. Promoted a campaign to combat the idea that having many children is proof of great virility.

**Investigative function**

*Investigate ex officio or at the request of a party, actions or omissions by authorities and public servants that constitute human rights violations.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Conducted a diagnostic study of specific obstacles to modify discriminatory customs in reproductive health.

**Function as promoter of reforms before the State and legislative bodies**

*Promote reforms before the organs of the State and submit draft legislation for the advancement of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted legislation granting tax incentives to publicity and media companies that project non-stereotyped, non-sexist, non-racist images of men and women that do not discriminate against any human group.

**12. The right to benefit from scientific progress and to give consent to be the subject of experimentation**

**Function as promoter of human rights**

With respect to this right and in relation to its obligation to *promote, defend and monitor human rights*, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted the opening of an office to receive complaints in clinics and hospitals to denounce violence, coercion or threats that force women to participate in clinical tests, surgery or any medical procedure without consent.

**Educational function**

*Disseminate and promote knowledge of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted a campaign directed at illiterate women to inform them on the ways in which consent may be given or not, to be the subject of experimentation.
2. Encouraged the media, both the press and radio broadcasters, to provide information once a month on reproductive health issues, such as the effects of experiments on reproductive health, for example.

**Investigative function**

*Investigate ex officio or at the request of a party, actions or omissions by authorities and public servants that constitute human rights violations.*

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In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Investigated cases of women who have been subjected to experimentation without their prior consent.

#### **Function as promoter of reforms before the State and legislative bodies**

*Promote reforms ante organs of the State and submit draft legislation for the advancement of human rights.*

In relation to this right, the national human rights institution of Equilandia has implemented the following actions:

1. Promoted comprehensive legislation on assisted human reproduction, with a gender perspective and within a framework of human rights.
2. Promoted legislation so that women:
  - Were informed as to whether procedures of prognosis, diagnosis and therapy applied to them would be used as part of an education or research project, with their previous written authorization;
  - Were provided with complete and continued information, both verbal and written, and in terms readily understandable to the patient and her relatives, regarding any experimental process, including diagnosis, prognosis and treatment alternatives;
  - Could give their prior consent for any procedure, or refuse treatment, except in cases where non-intervention poses a public health risk, or when unable to take decisions, or when the urgency of the situation does not allow for delays because these might cause irreversible injuries or endanger life.

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## **Reproductive Rights and Universal Human Rights**

*Line Bareiro*<sup>73</sup>

### **Introduction**

Who is responsible for guaranteeing sexual and reproductive rights? How did rights involving sexuality and human reproduction become human rights? What part was played by science, politics and international conventions to ensure that every individual has sexual and reproductive rights? What rights, what breaches and what institutions should the Ombudsman offices monitor?

I began to consider these questions by placing myself in the position of a person working in a national human rights institution (also known as Ombudsman), whose mandate is to keep abreast of human rights. In such a position my job would be to oversee the effectiveness of these rights, some of which are fully protected under national law, but others of which are not. A professional in this position would find certain other questions emerging. What rights and what institutions should I monitor? What should I do, how can I be trained, how can I train myself in sexual and reproductive rights?

It is important first to understand how human rights were won, as they are the main source of reproductive rights, a subset of rights very particular to women. Reproductive rights entail ourselves and our bodies – very personal biological processes – and only recently have come to be considered part of universal rights.

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<sup>73</sup> Center for Documentation and Studies (CDE), Paraguay. IIHR consultant.

## **The evolution of human rights from the gender perspective**

### **a. The Rights of Man and of the Citizen: 1789-1948**

The Declaration of the Rights of Man and of the Citizen, written by Lafayette, was the basic document of the 1789 French Revolution. This declaration establishes the ideals of equality, liberty, popular sovereignty, limitations on State power, and the right to control government rulers.

All through history, we have been told repeatedly that the word “man” refers to both men and women. Perhaps to dispel any doubts, two years after Lafayette penned his treatise, Olympe de Gouge wrote and published her own Declaration of the Rights of Women and of Female Citizens. Following the Declaration of Man article by article, she offered up her own vision as an educated French woman. In many instances she added new concepts, while in others, she added the words “woman” or “female citizen” to “man” or “male citizen,” or replaced “man” with “woman.” For example, her article 1 says “A Woman is born free and is equal in rights to man...<sup>74</sup>”

This was hopelessly redundant, according to the standards of the universal male, and in the end it cost the writer her head. Olympe de Gouges was executed on the guillotine by order of Robespierre in 1793. All men, quite definitely, did not mean all women.

### **b. Human Rights in Male Code: 1948-1993**

More than 150 years elapsed before the emergence of the Universal Declaration of Human Rights, proclaimed in 1948

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<sup>74</sup> Simón Rodríguez, María Elena (1992), “Olimpia de Gouges: del sueño del pacto a la guillotina,” in Canelobre, Winter-Spring issue 1992, Spain, pp. 29-39.

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by the Member States of the United Nations, and establishing human rights as universal. Significantly, it was due in large part to the power of the former first lady of the United States, Eleanor Roosevelt, that the Declaration used the term “human rights,” more inclusive of women.

Article 2 of the Universal Declaration states: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 7 states: “All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” This means that no such discrimination is acceptable.

Much has been said and written to the effect that, despite its use of the inclusive term “human rights,” the Declaration was actually conceptualized in male terms. It is probably significant that in the same year, 1948, the countries of the Organization of American States (OAS) approved the American Declaration of the Rights and Duties of Man, reverting to a more sexist way of thinking and speaking.

The assertion that these declarations were conceptualized in male code means that they focused on violations that affected mostly male activities in the public realm or in production activities. The universal male overlooked events in the private sphere and in procreation and neglected sexual and reproductive rights altogether, with the exception of free consent to contract marriage.

These declarations were followed by covenants, protocols and conventions that bound ratifying States to mechanisms of control and oversight. The States also created an array of committees for the United Nations human rights instruments.

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In this region, the OAS in 1969 adopted the American Convention on Human Rights, known as the “Pact of San Jose.” It was not until 1978 that the Convention went into effect when the 11 required ratifications were obtained. This is the main instrument of the Inter-American system for the protection of rights, and in ratifying it, our countries accepted the binding jurisdiction of the Inter-American Court of Human Rights.

Thus, any domestic violence case that had failed to receive justice in its own country could be taken freely to the Commission or the Court as a violation of the right to humane treatment (article 5). Even so, two decades would pass before human rights instruments began to be reconsidered from the perspective of women.

### **c. Specific Rights of Women: 1979 to the present**

Shortly after adoption of the Universal and American Declarations, both systems began to approve an assortment of resolutions, declarations and exhortations on the rights of women. The move arose thanks to pressures and contributions by many women who insisted on injecting new themes, visions, ideas and reflections. It was not until 1979 that a specific instrument became available to change the very conception of human rights for women: the Convention on the Elimination of all Forms of Discrimination against Women (known by its English acronym, CEDAW). The feminist jurist Alda Facio unflinchingly brands this document the Magna Carta for all women.<sup>75</sup>

According to Facio, CEDAW was the first international human rights instrument that took the gender perspective. It

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<sup>75</sup> Facio, Alda (2002). *La Carta Magna de todas las mujeres* (mimeo). Paper given in various conferences. San Jose, Costa Rica.

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broadens State responsibility to encompass acts committed by private individuals, companies or nongovernmental, non-State institutions. It obliges the States to adopt concrete measures for eliminating discrimination against women and allows for transitory measures such as affirmative action or positive action (Facio prefers to call them corrective measures). It recognizes the role of culture and tradition in maintaining discrimination and obliges the States to eliminate stereotyped roles for men and women. Finally, it defines discrimination and introduces the idea of substantive equality.

The Convention did more than place women in a position of equality with men (as in the achievement of universal suffrage); it is conceived from a female perspective, spanning both the private and the public domains. It lays production alongside reproduction. It does not limit the notion of labor to mere employment, but also includes the work of procreation and domestic labor. This type of work, still invisible in statistics, continues to be one of the critical issues of female subordination.

More recently, in 1999, the United Nations approved an Optional Protocol to the Convention. While it does not create new substantive rights, it introduces mechanisms for filing grievances and requesting investigations. This placed the major human rights instrument for women side by side with other key human rights instruments, including the International Covenant on Civil and Political Rights.

This summary would not be complete without the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (also known as the Convention of Belem do Pará). The Belem Convention, discussed in more depth below, makes a bold assertion: “Every woman has the right to be free from violence in both the public and private spheres” (Article 3).

**d. Human Rights of Women and Men:  
1993 to the Present**

The present phase can be described as a time of human rights for men and women, when rights are no longer considered generally in male terms. The following achievements have been won during the past decade, thanks to the international women's movement:

- In 1993, the World Conference on Human Rights (Vienna) recognized that “[t]he human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.”
- The basic, broad instruments of the United Nations System, especially the International Covenant on Civil and Political Rights, have been rethought from the female perspective. In 2000, the Human Rights Committee adopted General Resolution 28 on equal rights of men and women. Critical to the text was the work of Chilean jurist Cecilia Medina, who was on the committee at that time.
- New instruments taking the perspective of gender equity came into being. The Statute of Rome, creating the International Criminal Court, is the best example.

**Factors Leading to Recognition of  
Reproductive Rights**

**a. Science**

Most peoples of the ancient world failed to understand the connection between sexuality and reproduction. They did not associate the sex act with pregnancy in women. From the time the human race became aware of the relationship between sex and procreation, domination over women arose and became established. At that point, women ceased to be

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considered magical beings and lost all control over reproduction.

Male sexuality, however, remained separate from procreation, and men took no responsibility whatsoever for paternity. As their bodies did not bear the product of sexual relations, they could flee, distance themselves, run away. Their sexual activities implied no obvious responsibility for procreation.

Change came with the birth-control pill; it was science that made the difference. Starting in the 1960s, the pill finally allowed women to disassociate sexuality from procreation. The impact on society was enormous, as women of all religions and social sectors seized this new hope. Among the wide-ranging consequences were a massive influx of women into the labor market, the fight for better working conditions, political participation, regulation of our own fertility, and the possibility of having an active sex life and being able to regulate it.

**b. Politics**

Politics were and are a critical arena for winning rights. Women's organizations and feminists created platforms, drafted proposals and, as social and political stakeholders, voiced criticisms, all oriented toward advancing the recognition of sexual and reproductive rights. It was not academia, the State or the unions that produced the new way of thinking. The entire world, men and women alike, owe a debt to the organizations that shaped these new rights and began to bring real transformation both in the legal sphere and in the world of subjectivities.

**c. International Human Rights Law**

Without a doubt, international human rights law is of primary importance in recognizing reproductive rights as true rights.

The CEDAW, cited above, entered the national law books when our countries agreed to ratify it. Now the justice system and the courts are under obligation to begin using it, and attorneys are expected to cite it.

Article 12 of the CEDAW offers a detailed discussion of the right to health. It specifies that women have the right of access to health care services, including those related to family planning (although family planning is seen primarily in terms of the number and spacing of children). It also says that States shall ensure women appropriate services in connection with pregnancy, childbirth and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Protection of pregnancy and lactation is also mentioned specifically in the Universal Declaration and the American Declaration. Article 6 of the American Convention goes on to discuss the slave trade and traffic in women, especially trafficking for prostitution.

The Convention of Belem do Pará mentioned above includes sexual violence in the definition of violence against women. This Convention is particularly important because it stipulates State obligations to prevent, punish and eradicate all types of violence against women. It includes violence within the family and community, rape, sexual abuse, forced prostitution and sexual harassment in the workplace, in educational institutions and in health facilities.

The Convention is a regional instrument that offers recourse to international jurisdiction when domestic authorities fail to provide protection. Any woman can file a

claim to the Inter-American Commission or Court against public institutions, agents of the State, or even Ombudsman institutions that fail to fulfill their obligations. Women can allege that a judge was arbitrary or the police failed to help her, and even that the Ombudsman or Human Rights Prosecutor or Human Rights Commission failed to defend her.

Meanwhile, the Statute of Rome that created the International Criminal Court broke new ground when, for the first time in history, it placed sexual violence in war on the same footing with the crime of genocide. Expressly included as crimes against humanity (which have no statute of limitations) are rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and other grave forms of sexual abuse. In its discussion of persecution of a group, the Statute includes collectivities with their own identity founded on gender, which constitutes an impressive step forward.

### **Sexual Rights and Reproductive Rights**

Before discussing the universe of these rights, it is useful to examine how our legislative systems have handled sexual crimes. For the most part, these offenses were defined and prosecuted as “crimes against honor,” and the laws stated that a rape victim had been “dishonored.” Today, many of the criminal codes have reclassified these acts as crimes against sexual freedom, and discussion revolves around what the protected good is. The law actually protects the sexual freedom of each person, that is, the right to decide what constitutes sexuality and what does not, and when and with whom to have sex. This is very important for women. Rape cases frequently founder on the argument that the woman has had regular relations with the aggressor. However, she may not have wanted to have sexual relations at that time and was

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forced to do so. The point is that we have the right to decide on that which is most basic: our own bodies.

In the case of reproductive rights, the protected good is the freedom of all individuals to decide on the number and spacing of their children, and to obtain the information and means to do so.

Below are some of the components of sexual and reproductive rights.

### **a. Sexual Rights**

- Information. Every individual has the right to be informed about sexuality.
- Education. The right to receive instruction on this topic.
- Sexual behavior. This highly complex area, not a right per se, is associated with the exercise of sexuality and freedom from discrimination. For example, adolescents who become pregnant and are expelled from school are denied the right to education. The cause of their expulsion is not strictly the pregnancy, but rather the association between pregnancy and the exercise of their sexuality. Therefore they are stigmatized and mistreated. Another problem area involves stereotypes targeting the exercise or non-exercise of sexuality in the form of jokes about those who do not exercise sexuality or about their sexual choices or preferences.
- Choice and preference. This refers to the right to homosexuality, which defends the right of all human beings to determine the object of their own libido. Each individual should be free to choose his or her own sexual orientation, free of coercion or abuse of power. This means that those who abuse children have committed a punishable crime, not because of their sexual desire, but

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for abusive exercise of power (as for example by teachers, priests, and the like).

- Sexual health. This includes protection from sexually transmitted diseases.

Finally, individuals are under obligation to exercise their sexuality responsibly. This could be called an ethics of responsibility.

The primary violations of sexual rights are:

- Incest.
- Sexual abuse.
- Forced prostitution.
- Discrimination based on sexual preference.
- Genital mutilation, probably the most brutal of violations; millions of women are subjected to genital mutilation in which a part of their body is extirpated, depriving them of the right to humane treatment, as a means of preventing them from experiencing sexual pleasure.

**b. Reproductive Rights**

- Information.
- Education.
- Scientific assistance, more than simple distribution of contraceptives.
- Health care and protection in pregnancy.
- Health care and protection in childbirth.
- Lactation. In actual practice, these three items, all of them protected under labor laws, face major barriers.
- Access to contraception.

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- Family planning.
- Fertility.
- Abortion. This can entail both a right and a violation of rights because it is highly controversial and severely restricted in this part of the world; our legal systems do not recognize the right to abortion, but only rules for decriminalization.
- Sterilization.
- High-quality health care.
- Responsible fatherhood.

The infringement of reproductive rights may take many different forms:

- Failure to inform.
- Failure to educate.
- Permitting massive rates of teenage pregnancy, a modern-day epidemic;
- Blocking access to family planning; while some countries have modernized the laws and regulations contained in their Constitutions and legal codes, others continue to resist. For example, a study by Paraguay's Senate commission on equity, gender and development found that neither the Ministry of Health nor the national budget allocated resources for family planning and sexual and reproductive health. All resources available for this work came from international assistance. The commission demanded that a line item be included in the budget.
- Failing to provide medical care for women who abort; when abortion is a crime, public institutions frequently refuse health care, and many women die as a result.
- Abortion without consent.

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- Forced pregnancy.
- Forced sterilization; a petition filed with the Inter-American Commission on Human Rights accused Peru of practicing forced sterilizations during the administration of former President Fujimori; the case was admitted by the Commission and is currently in the process of friendly settlement.
- Pregnancy testing; this involves performing gynecological exams on female job applicants to prove they are not pregnant; once the women are hired, they are subjected to such examinations on a regular basis to make sure they have not become pregnant.
- Birth control; some countries practice policies to limit the number of children, severely punishing infringers with such measures as forced abortions; this violates reproductive rights, specifically, the freedom of choice.

#### **Reproductive Rights and National Human Rights Institutions**

Ombudsman offices, Human Rights Prosecutors and Human Rights Commissions are responsible for identifying those whose job is to enforce reproductive rights, drawing attention when they fail to do so and thus safeguarding the population's ability to enjoy these rights fully. States that ratify international human rights conventions are under obligation to abide by them.

As an example, the Legislative Branch is required to legislate, review the budget and oversee expenditures. The Executive Branch holds diverse responsibilities. For example, the Ministry of Education should cover reproductive rights in the school curriculum and in the classroom. The Ministry of Health and Ministry of Culture

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also have work to do in the area of reproductive rights. The Judicial Branch is responsible for meting out swift and fair justice, consistent with each legal system, whether in labor hearings or in criminal and civil court.

We all know how difficult it is to make States abide by their obligations. NGOs have played a very important role, filing complaints in cases of noncompliance and legal loopholes, and publicizing recommendations by the different committees that monitor State-level regard for international commitments.

Nevertheless, most people continue to be extremely ignorant of their rights, of the laws that protect them, of their nation's obligations and commitments, and of the recommendations of human rights committees. This ignorance can even be found among those working in the justice system. There is much that the Ombudsman institutions can do to improve dissemination and training in human rights and reproductive rights.

## **Reproductive Rights from the Gender Perspective**

*Isabel Torres*<sup>76</sup>

### **Human Rights are Universal**

All human rights doctrine derives from a basic definition: that human rights pertain to all individuals, without distinction. This means that human rights are:

- Universal: they apply to all individuals under all political, economic and cultural systems.
- Irrevocable: they cannot be relinquished or transferred to another person.
- Integral, interdependent and indivisible: they comprise a whole, and no one right can be sacrificed to defend another.
- Legally enforceable: because they are recognized under national and international law, any individual can lay claim to them and demand that they be enforced.

In reality, sociocultural patterns form the foundation and reference point for the rules of social order and human rights doctrine itself. This means that, historically, human rights have been conceived and applied according to a male parameter and paradigm. The differences, diversity, specificities and needs of half the world's population – women – have been excluded and rendered invisible.

### **Evolution of Doctrine and Social Perceptions on the Rights of Women**

Alda Facio states that “...the extension of human rights to women was the most inclusive expansion that human rights have undergone in their dynamic history.”

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Indeed, the Inter-American and universal human rights systems now possess a vast body of legal instruments, including international commitments acquired at various world conferences, and extensive development of feminist thinking that has enriched the doctrine itself. It is no coincidence that international instruments now expressly recognize the human rights of women, including the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. The International Criminal Court was recently established under a Statute that recognizes rape and other forms of sexual violence as crimes against humanity, thus for the first time establishing a link between international humanitarian law and international human rights law.

Clearly, human rights doctrine has been evolving steadily, and the content of recognized rights has expanded and deepened. Feminist thinking has contributed greatly to this process. The incorporation of the gender approach revealed clearly that many of the distinctive characteristics of women and men are defined socially and molded by historical, cultural, economic, religious and ethnic factors. While sex differences are biological, gender differences are cultural and can be altered by shifting social relations. This perspective shed light on a whole range of human interests and needs, as well as the kinds of specific human rights violations that women may experience.

### **The Reproductive Rights of Women**

It has been shown that even where women's rights are known and recognized today, they are still not fully operational. In social and political practice, situations of discrimination and exclusion continue to occur and are even

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heightened by a number of additional factors, including ethnic identity and age. The status and position of women have improved substantially over the past 10 years, and the legal framework has undergone many meaningful changes, but enforcement of these new legal norms is still proving very difficult in practice. Much remains to be done to narrow the gap between *de jure* equality and *de facto* equality.

Reproductive rights are rooted in the most basic principles of human rights, and they cover a diversity of interests. Nevertheless, efforts to promote and protect these rights are still fraught with difficulty. The Plan of Action of the World Conference on Population and Development (1994) states that reproductive rights consist of: recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.

In other words, reproductive rights are grounded in the right to receive reproductive health care and the right to enjoy productive self-determination. A woman's productive self-determination is inseparable from her right to plan her own family, to make reproductive decisions without interference, and to be free of all types of violence and coercion.

It is critically important to recognize, promote and protect the reproductive rights of women for two main reasons: because the effective exercise of these rights enables women to recover their own bodies; and because they draw distinctions between sexuality and procreation. Furthermore, the legal recognition of rights constitutes a political statement: the full participation of women in all spheres of

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society is profoundly intertwined with their autonomy in making reproductive decisions and the availability of good reproductive health care.

Contrary to certain common assumptions, the full exercise of a woman's citizenship is more than just the right to vote. It calls for women to participate and be actively represented in shaping decisions for the societies in which they live, and in leading their own lives.

All of society is responsible for equal opportunities and equal rights for men and women. Men should contribute to reproductive rights by respecting the rights of women and sharing responsibility for the care and upbringing of their children.

### **Conclusions**

The State holds a critical responsibility: to provide services and implement public policies that will guarantee reproductive rights for women. Laws and policies create the framework by which States influence human behavior.

Article 16 of the CEDAW binds the States to provide support for exercising the right to reproductive health, reproductive choice, and freedom from discrimination in access to health care. This is why many organizations, including the IIHR, have been working for a number of years to monitor application of the CEDAW as the international framework within which the countries guarantee rights free from discrimination. They have also followed closely the process of signing and ratification of the Optional Protocol that empowers individuals to take action against States that fail to abide by their commitments.

Protection for the rights of women also opens the door to international systems for human rights protection. The Inter-

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American system has already accumulated a history of petitions involving violation of the rights of women, filed with the Inter-American Commission, producing a growing body of case law and international standards for protection.

Finally, it is important to stress that mechanisms to guarantee rights are in constant expansion. Only practice can demonstrate their shortcomings and point to the need for corrective measures. This is why it is so important for civil society to be ever vigilant of its rights and to exercise citizen oversight of the way in which rights are guaranteed. The influential judges associated with Ombudsman institutions also must be alert to see that the States are providing the necessary conditions for full exercise of citizen rights. This is what can make the State more effective and efficient so that full accountability becomes part of operating mechanisms.

## **Reproductive Rights in the Context of the Inter-American System for Human Rights Protection**

*Elizabeth A.H. Abi-Mershed*<sup>77</sup>

### **Introduction**

I think it is important to mention at the outset that, even though the Inter-American human rights system has been protecting the rights of women and men for several years now, only recently has it begun to operate within the gender perspective. In 1994, the Commission created a Special Rapporteur on the Rights of Women to focus closer attention on women's rights. The current rapporteur is Marta Altolaguirre (two of the seven members of the Commission are women: Ms. Altolaguirre and Dr. Susana Villarán). Since that time, the Rapporteur and the Commission together have taken several significant steps.

As a basis for their work, the Commission and its Rapporteur on the Rights of Women rely on the general obligations for equality and nondiscrimination that underpin the regional system. Based on these principles, and working with very limited resources, the Commission and the Rapporteur focus high-priority issues. Problems that have received close scrutiny include:

- Gender-based discrimination in various settings.
- The related problem of violence against women. The Rapporteur is currently preparing a report on the situation of violence against women in Ciudad Juárez, Mexico, as observed during her on-site visit in February 2002.

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- The role and status of women in the administration of justice.
- Issues such as access to education, health and reproductive health. The Commission lists reproductive rights and health as topics of analysis because it considers them high-priority challenges for the region.

I would like to take a quick look at the system's norms and mechanisms for protecting reproductive rights and discuss how they have progressed and are now being cited and applied in practice.

### **Regulatory and Policy Progress**

The Inter-American System poses obligations involving equality and nondiscrimination and also offers certain guarantees that are particularly important for protecting reproductive rights, beginning with the right to life and the right to humane treatment. The System has been advancing in its definitions of these rights. Today it is no longer enough for the States simply to guarantee that their agents will refrain from violating rights, but they must also take any measures necessary to safeguard them and prevent violations from occurring. For example, in "Street Children against Guatemala," the Inter-American Court outlined the scope of the States' duty to adopt measures for protecting children in high-risk situations, minimizing their vulnerability to such violations.

The System has also adopted new grounds for issuing precautionary or provisional measures. For example, the Commission called for precautionary measures requiring El Salvador to guarantee that a group of people with AIDS would receive the anti-retroviral medications they needed to survive. We have handled many cases that link the right to life and the right to humane treatment with situations of

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health risk, including cases involving the right of prisoners to receive health care, and a number of cases involving environmental pollution. Although this work does not directly involve reproductive rights, it does broaden the array of measures that the System offers for protecting fundamental rights by preventing violations, a critically important precedent for protecting reproductive rights.

Other rights recognized in the American Convention that are especially relevant for protecting reproductive rights include:

- The right to privacy and family life (article 11).
- The right to seek, receive and impart information (article 13).
- The right to marry and raised a family, and the right of the State to ensure equality of rights and the adequate balancing of responsibilities between spouses in a marriage (article 17).
- The right to judicial protection and a fair trial (articles 25 and 8).

The Inter-American System has two special components that significantly widen the framework of guarantees useful for protecting the rights of women: the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (known as the Convention of Belem do Pará); and the additional Protocol to the American Convention, which addresses economic, social and cultural rights. The Convention of Belem do Pará is critical in the protection of reproductive rights for a number of reasons, including:

- It recognizes the interconnections between gender-based violence and discrimination.

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- It covers “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.”

Even though the Convention of Belem do Pará entered into effect only recently, in 1995, it now has already receive 31 ratifications from States Parties, more than any other regional human rights agreement. In 2001, the Commission adopted its first report on the merits of a case, applying this Convention to “*María da Penha vs. Brazil*.” The case involves the right of the State to investigate, prosecute and punish violence against a woman, committed in the private sphere.

The more recent protocol on economic, social and cultural rights, which entered into effect in 1999, takes the innovative step of protecting the right to health (Article 10) and the right to formation and protection of families (Article 15). Specifically mentioned in the latter is the duty of States to “provide special care and assistance to mothers during a reasonable period before and after childbirth” (Article 15.3.a). The Commission recently set a precedent by referring to the Inter-American Court of Human Rights its first contentious case based on economic, social and cultural rights in general, citing Article 26 of the American Convention. This article describes the duty of States to adopt measures to achieve progressively the full realization of such rights. The case is known as “*Five Pensioners vs. Peru*.”

Finally, with respect to normative progress in the System, the American Convention establishes, and in some cases requires, that reference be made to other applicable instruments when its provisions are interpreted. This is to ensure that the State’s international human rights obligations are understood as a mantle of protection, and that any interpretation extends the highest level of guarantee

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available through existing guarantees. The Commission has used this principle as a basis to invoke guarantees such as those established in the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW).

### **How are guarantees applied in practice to protect Reproductive Rights?**

The Commission first invoked reproductive rights per se in 1997 in the first report of the Rapporteur on the Rights of Women. The report made brief reference to high rates of maternal death as a result of unsafe abortions and problems during pregnancy and childbirth. It stated that even though “...the reproductive health of women should occupy a place of importance with respect to legislative initiatives and national and provincial health programs,” the reports submitted revealed serious difficulties in health care for women, for reasons including “lack of resources [and] the absence of norms with respect to reproductive health.”

At about the same time, the Commission began to consider reproductive rights as a component of its examination of women’s rights in on-site visits and country reports. The new approach first appeared in the 1997 Commission report on Mexico. In 1999, the report on Colombia included a specific chapter on the status of women’s rights, focusing on the effects of the armed conflict on women and the different forms of violence that ensued. Specifically regarding reproductive health, the report states that abortion “constitutes a very serious problem for Colombian women, not only from a health perspective, but also considering their rights as women, which include the rights to personal integrity and to privacy.” More specifically, the “criminalization of abortion, together with the inadequate techniques and unhygienic conditions in

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which abortions are performed, make it the second leading cause of maternal mortality in Colombia.”

The Commission has tackled the issue of reproductive rights in other country reports as well, including its report on the status of human rights in Peru, 2000, and its report on conditions in Guatemala, 2001. The analysis given in the Peruvian report focuses on the status of women’s rights with respect to various kinds of discrimination. The main concern in the specific field of reproductive health involves family-planning programs, which were presumably voluntary, but which led to cases of forced sterilization. The Commission concluded, “...when a family planning program ceases to be voluntary and turns women into a mere object of control so as to make adjustments to population growth, it loses its *raison d’être* and instead poses a danger of violence and direct discrimination against women.”

The Commission report on the status of human rights in Guatemala also includes a chapter on women’s rights, mainly addressing the role and status of women in the context of the peace accords and outlining commitments that remain unfulfilled. Regarding reproductive rights, the Commission noted, “The disturbing levels of high risk births and maternal mortality, make clear the pressing necessity to move forward with comprehensive family planning policies.” The Commission drew particular attention to limited access to information services on family planning and noted that the “inability of many couples to readily obtain family planning services constitutes a severe constraint on their constitutional right to freely determine the number and spacing of children.”

More recently, the Commission has used the system of individual petitions for matters involving reproductive rights. The Commission feels that this is an effective way to define the content of protected rights and resulting

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obligations for the specific situation of an individual. I will not attempt here to explain the system of individual petitions in detail, except to describe the three basic outcomes it can produce:

- Petitioners and the State may reach a friendly settlement that is reviewed and approved by the Commission.
- If no friendly settlement is reached, and assuming the Commission has verified the existence of a violation of State obligations, the Commission prepares a report outlining its conclusions and recommendations. The State is obliged to abide by the recommendations in good faith, and the Commission has access to certain follow-up mechanisms to verify compliance.
- If the State has submitted to the contentious jurisdiction of the Inter-American Court, the Commission may remit the case to the Court. This option has not yet been used for cases involving women's rights, but it holds important potential.

Through its work with the case system, the Commission in recent years has begun to develop a firmer basis of case law for protecting women's rights. In some of the more significant examples, the Commission cited the use of rape as a form of torture in the case of Raquel Martín de Mejía vs. Peru (1996), and more recently, in the case of the Gonzalez Sisters vs. Mexico (2000). The Commission addressed *de jure* discrimination in the case of María Eugenia Morales de Sierra vs. Guatemala (2000), and partly as a result of the work on this case, the Civil Code of Guatemala has now received long-overdue reforms, including a balance between spouses with respect to rights and obligations for their children.

More recently, the Commission issued its first report on the merits of a case applying Article 7 of the Convention of

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Belem do Pará, a State's duty to investigate, prosecute and punish violence against women perpetrated by individuals – *María de Penha vs. Brazil*. The Commission has also invoked the rights to honor and dignity and the right to humane treatment in the use of invasive body searches, specifically in the case of *X and Y vs. Argentina* (1996). Given its experience with these cases, the Commission is now better equipped to initiate and process petitions in new areas included under reproductive rights.

The Commission is now beginning to receive more petitions on reproductive rights. Although pending petitions are generally confidential, I can share some information from press reports or other public sources. The case of *María Mamérita Mestanza Chávez vs. Peru* is one of the most recent examples involving the issue of reproductive rights per se. According to the principle claims, the victim, a 33-year-old mother of seven, died as the results of a sterilization performed without her consent, followed by negligent medical care. The IACHR admitted the case in 2000 and, as I understand it, the parties are currently negotiating the possibility of a friendly settlement. The case is very important, both at the individual and general levels, because it appears to be very representative, according to the claims of these petitioners, the Ombudsman office, and other sources that allege a systematic practice in Peru.

The Commission has also been handling a petition from *Alba Lucía Rodríguez vs. Colombia*. The petitioner was sentenced to 42 years in prison, allegedly for murdering her baby immediately following delivery. In her petition before the commission, she sustains her innocence and claims that she was convicted in a trial that entailed severe violations of due process. While the case mainly addresses issues of due process, it is important because it reveals how the law and society conceptualize women and their reproductive

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function. Incidentally, Alba Lucía was released in March of this year when the Supreme Court of Colombia handed down a dismissal.

The Commission is currently studying the admissibility of a new petition from Mexico, in accordance with the basic requirements of the System. The petitioners have dubbed it the “Paulina case.” The complaint involves a 13-year-old child who became pregnant following rape. According to Mexican law, individuals in such circumstances are exempt from penalties normally applicable for abortion; but the petitioners claim that the victim was in actual fact prevented from exercising her rights under the law as a result of actions by State officials.

### **Conclusions**

First, the IACHR is clearly just beginning to address reproductive rights directly, and its development of case law is still incipient.

Second, the regional system offers very important normative instruments for developing mechanisms to protect these rights. In particular, the Convention of Belem do Pará has helped us understand and rethink the causes and specific consequences of gender in violations of the human rights of women. The fact that the Commission is opening new avenues in its work, for example regarding reproductive rights, is in large measure a response to with the concepts set forth in this Convention.

Third, the regional system offers a broad range of procedural options, including the work of rapporteurs for specific issues, on-site visits and resulting reports on countries, and the system of individual petitions. Because of this diversity, the IACHR is able to examine a whole array of instruments and choose the one that best applies to each case,

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or it can tackle serious problems using a combination of mutually reinforcing procedures. For example, the Commission addressed the issue of forced sterilization in general terms in its report on the status in Peru, and specifically in the case of María Mamérita.

Finally, I would like to point out that the legal and procedural approaches offered by the regional system will prove more effective if they are integrated into a broad strategy in the individual countries. This is why the work done by national human rights institutions and civil society is so critical as a foundation on which the Commission can help strengthen the protection of women's rights.

## **National Human Rights Institutions and the UN Treaty Monitoring System**

*Julia Zajkowski*<sup>78</sup>

### **Introduction**

I would first like to thank the organizers and sponsors of this event for bringing us together to discuss and brainstorm on the topic of reproductive rights and the role of national level human rights institutions. The Inter-American Institute for Human Rights, UNFPA and OHCHR have done an excellent job in encouraging this dialogue and exchange of ideas and I am grateful to them for facilitating my participation.

I will begin by giving a brief introduction to the Center for Reproductive Rights, the organization where I have worked as a legal fellow and legal adviser for almost three years. The Center is a non-profit legal advocacy organization dedicated to promoting and defending women's reproductive rights worldwide. We are committed to the idea that reproductive rights are the foundation for women's self-determination over their bodies and sexual lives, and are therefore critical to women's equality. We believe that laws and policies that protect and advance these rights are essential. In our international work, we use the international human rights treaties and consensus documents as a framework to advance women's reproductive rights around the world.

The work of the International Legal Program at the Center includes global programs and work within the UN system, thematic programs that cover particular crosscutting issues, as well as regional programs that focus on Latin

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America and the Caribbean, East and Central Europe, Sub-Saharan Africa, and Asia. For each of these regions, we have published or will soon publish a report entitled “Women of the World: Laws and Policies Affecting their Reproductive Lives” which provides a survey of a wide range of national level laws and policies relating to women’s reproductive health, rights and equality. This regional study serves as a baseline from which to focus advocacy efforts such as law or policy reform.

In addition, we have completed investigations using a human rights fact-finding methodology on a number of reproductive rights issues including: forced sterilization of Rom women in Slovakia, women in prison for abortion in Nepal, the right to survive pregnancy and childbirth in Mali, and adolescent reproductive rights in Zimbabwe. In the Latin America and the Caribbean region, the Center has brought three cases on reproductive rights violations before the Inter-American Commission on Human Rights with favorable outcomes on two of the cases and the third is still pending. Moreover, the Center has recently completed a landmark publication “Bodies on Trial,” a comparative study of national-level sexual and reproductive rights jurisprudence in five Latin American countries.

#### **The UN Treaty Monitoring System**

I would next like to briefly describe the treaty monitoring process and then I will discuss the existing “jurisprudence” of the treaty monitoring bodies in further detail and outline why is it relevant for national level human rights institutions. Next, we will briefly describe the monitoring process of the human right’s international treaties, and comment on the existent legislation (expressed in them) on reproductive rights.

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It is well known that a treaty is a written agreement between nations—similar to a contract between businesses—that is governed by international law. Treaties are also referred to as “conventions” or “covenants.” A country becomes a “state party” to a treaty once its government signs and ratifies the agreement and adds it to its domestic laws. States parties are required to abide by the provisions of a treaty or, at the very least, make a “good-faith” effort to work toward compliance with the agreement.

Treaties that cover human rights create duties and responsibilities for a government to protect, promote and fulfill the human rights of its people. The United Nations (UN) is the key international body responsible for safeguarding human rights worldwide. There are six major human rights treaties negotiated by the UN member states that expand upon rights first guaranteed in the landmark 1948 Universal Declaration of Human Rights (Universal Declaration).

Each of the six major UN human rights treaties has a committee that monitors governmental compliance with its provisions. These supervising committees, called treaty monitoring bodies, are composed of experts from countries that have ratified the treaty. Though these experts are nominated by their governments, they are required to serve independently. These UN treaty monitoring bodies, or committees, monitor governmental compliance with each of the six major UN human rights treaties. While the committees are not judicial bodies, they influence governments by issuing specific observations about states’ progress and compliance with human rights obligations. Ultimately, however, committees must rely on the good faith of a government to carry out the committees’ recommendations.

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<b>Key Human Rights Treaties and their Monitoring Committees</b>	
<b>Committee</b>	<b>Human Rights Treaty</b>
Committee against Torture (CAT)	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)
Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee)	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
Committee on Economic, Social and Cultural Rights (CESCR)	International Covenant on Economic, Social and Cultural Rights (Economic, Social and Cultural Rights Covenant)
Committee on the Elimination of Racial Discrimination (CERD)	International Convention on the Elimination of All Forms of Racial Discrimination (Convention against Racial Discrimination)
Committee on the Rights of the Child (CRC)	Convention on the Rights of the Child (Children's Rights Convention)
Human Rights Committee (HRC)	International Covenant on Civil and Political Rights (Civil and Political Rights Covenant)

**The “Jurisprudence” of the Treaty Monitoring Bodies on Reproductive Rights**

What is often referred to as the jurisprudence or collective work of the committees consists of three pieces: 1) the general comments and recommendations issued by the committees; 2) the concluding observations to States parties; and 3) the individual cases decided under the individual complaint mechanisms attached to the Civil and Political Rights Covenant, CEDAW, the Convention against Torture, and the Convention against Racial Discrimination.

**a. General Comments or Recommendations**

Committees periodically and on an as-needed basis issue

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general comments or recommendations to clarify the broad rights and guarantees established by international treaties. The general comments are designed to help governments fulfill their reporting obligations by specifying the intent, meaning and content of treaty provisions and they provide a working interpretation of the rights in the treaty and apply to all States parties to that treaty.

Several committees have issued general recommendations or comments that pertain to reproductive rights. In particular, CEDAW has several General Recommendations that clarify States parties obligations to respect, protect and fulfill reproductive rights. The following are this committee's most relevant recent general comments and recommendations advancing reproductive and sexual rights standards:

### **CEDAW Committee's General Recommendation 14 on Female Circumcision (1990)**

This is the only general recommendation specifically addressing the issue of FC/FGM. The committee recognizes the cultural, traditional and economic factors that perpetuate the practice of FC/FGM. It also identifies the health-related consequences and makes recommendations to governments on how to eradicate the practice by addressing the health-related aspects of FC/FGM and by supporting educational programs to change cultural attitudes toward the practice.

### **CEDAW Committee's General Recommendation 19 on Violence against Women (1992)**

This general recommendation includes an article-by-article interpretation of CEDAW on the issue of violence against women and includes very specific

recommendations on how to eliminate it. Since CEDAW does not explicitly discuss violence against women in the context of discrimination, the analysis provided by the committee on the rights involved in cases of gender-based violence is particularly significant in defining the scope and clarifying the language of CEDAW.

**CEDAW Committee's General Recommendation 21 on Equality in Marriage and Family Relations (1992)**

This general recommendation elaborates on each subsection of Article 16 of the Convention. The recommendation clarifies governmental obligations regarding equality in marriage and provides guidelines on the committee's conception of this. The CEDAW Committee's recommendations here are particularly significant because CEDAW is the only treaty to identify 18 as the appropriate legal age of marriage for both men and women. The CEDAW Committee cites health risks in its rejection of a younger marriageable age for girls.

**CEDAW Committee's General Recommendation on Women and Health (1999)**

This general recommendation interprets gender discrimination in the context of women's health by clearly stating that gender discrimination is at play whenever a health care system neglects gender-specific services such as abortion or obstetric treatment. In this way, it furthers a more comprehensive approach to women's health by members of the international community.

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Other important general comments and recommendations that are relevant to reproductive rights include:

### **CESCR General Comment on Health (2000)**

This general comment helps define the previously vague “right to health.” The committee has used concepts such as availability, accessibility and acceptability of health care to define this right. The committee provides examples of violations of each, some relating directly to reproductive and sexual health.

### **HRC General Comment on Equality of Rights Between Men and Women (2000)**

This general comment is a clear and important demonstration of the indivisibility of all human rights. It applies the right of women to equality and non-discrimination to all other substantive rights, including those encompassing reproductive and sexual rights. The committee offers an especially groundbreaking application of the right to life to high rates of maternal mortality.

### **CERD General Recommendation on Gender Dimensions of Racial Discrimination (2000)**

This recommendation recognizes that certain forms of racial discrimination impact women differently or disproportionately. This could be a very powerful tool for upholding the reproductive and sexual rights of women from ethnic and racial minority groups who have suffered from violations of their reproductive and sexual rights.

Several committees are in the process of drafting general comments or recommendations that could serve as tools to promote and protect reproductive rights. For example, the Committee on the Rights of the Child is currently drafting a General Comment on Adolescents and Health. In addition, the Committee on Economic, Social and Cultural Rights is in the final stages of drafting and adopting a General Comment on Equality of Rights between Men and Women.

#### **b. Concluding Observations**

In addition to drafting general comments and recommendations, treaty monitoring bodies also review individual country reports. Once a committee has received the written country report, it schedules a committee session with the country's representatives. Following their examination of the report at the committee session, the committee issues concluding observations, which are an official statement about the state's compliance with its obligations, with specific recommendations for improvement.

States report to the committee every two to four years, depending on the treaty. If a State fails to submit a report, committees are often limited to making note of the breach of duty. Some committees, however, have adopted more aggressive measures. For example, HRC will review a country even if it fails to submit a report or show up for its scheduled review.

Once a country report has been submitted and scheduled for review, the committee closely examines it, along with additional materials presented by non-governmental

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organizations (NGOs) or UN agencies. Committee members ask for additional or follow-up information if the report is unclear or incomplete, and they directly pose questions to the government representative presenting the report during the committee session.

After reviewing the country report, the committee publicizes its concluding observations and recommendations. These observations generally list areas of success and specific issues of concern; they also acknowledge the obstacles to implementation that governments may face and make recommendations for better compliance.

### **c. Individual Complaints**

Some committees consider complaints from individuals or groups against a State party for violating or failing to protect its human rights obligations. A committee may review an individual complaint only if the State party explicitly agrees to recognize the committee's authority to hear individual complaints. The treaty itself may contain an optional provision on individual complaints, as is the case under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination. Another avenue is for a State to ratify an additional, related treaty called an "optional protocol," allowing its citizens to register complaints against their government. Optional protocols establishing individual complaint mechanisms are in effect for the International Covenant on Civil and Political Rights Covenant and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

**d. The Committees' Jurisprudence at the National Level**

The combined jurisprudence of the committees is relevant to institutions at the national level for several reasons. First and foremost, the jurisprudence sets forth accepted international norms and standards on a wide range of issues, including reproductive rights. In turn, the international standards found in the jurisprudence of the committees can have an important impact on the development of standards at the national level, most notably on law and policy reform. In fact, certain national level legal systems incorporate these international norms at the national level via their national constitution or legislation, allowing the national judiciary to adjudicate claims based on the international instruments.

The international norms and standards can serve as an important guide for national level institutions in their work. For example, the jurisprudence can be used to spur law reform by legislators or to support improved enforcement on the part of the executive. For quasi-independent institutions, such as national human rights commissions and Ombudsman, the jurisprudence can also be a potent tool. Depending on the institution's mandate, the jurisprudence can serve as an impetus or model for protection, education, promotion and law and policy reform on a range of issues. The jurisprudence can serve as part of a larger investigative strategy or awareness building campaign.

Finally, it is important to note that the monitoring process itself is an important dialogue between the committees and the states parties. Because the treaty monitoring system depends in large part on the "good will" of States parties to comply with their international obligations, the exchange that takes place between the monitoring committees and the governments often represents an important joint effort to improve compliance.

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### **III. BRIEF PROFILE OF REPRODUCTIVE RIGHTS ACTIVITIES BY NATIONAL HUMAN RIGHTS INSTITUTIONS IN LATIN AMERICA**

#### **Introduction**

In preparation for the seminar-workshop in Costa Rica, we conducted a survey of national human rights institutions in the countries of Latin America. The questionnaire, asking about the work these institutions have done to defend and promote sexual rights and reproductive rights, was completed by the people in charge of human rights for women, some from specialized offices and others assigned to this role. Responses painted a general picture of activities taking place in this field. The information was compiled and analyzed, producing the following general profile.<sup>79</sup>

In general terms, the survey pointed to growing levels of commitment, interest and action in many areas. The work now goes beyond typical defense and protection activities. More and more, faced with the needs and demands of concrete situations, the human rights institutions are taking an active stance in promoting sexual and reproductive rights.

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<sup>79</sup> Sistematization executed by Ana Elena Badilla and Vera Aguilar based on works of the Seminar-workshop "Promotion and protection of reproductive rights in the work of national human rights institutions in Latin America, the Caribbean and Canada." United Nations High Commissioner for Human Rights, UNFPA, IIHR. San Jose, Costa Rica, 14 to 16 May 2002.

### **The Work of National Human Rights Institutions to Defend and Protect the Human Rights of Women**

In general, national human rights institutions are very active in defending and promoting the human rights of women. The nature of their work varies considerably from one country to another, as the following examples reveal.

The office in **Argentina** has intervened in several cases of discrimination in the workplace or based on sexual orientation. A team is being set up to work with women victims of domestic violence.

The group in **Bolivia** is involved in a variety of activities:

- A working group on defense and promotion of the human rights of women was set up with representatives of civil society, public institutions and grass-roots women's organizations.
- This working group provided the Ombudsman with an agenda on the human rights of women for monitoring public policy in the following main areas: domestic violence, equal opportunity, CEDAW, and obligatory quotas for political participation.
- The Ombudsman solidified partnerships with civil society organizations working to defend the human rights of women.
- The office produced public information materials including brochures, videos, radio programs and posters.
- It conducted three studies on domestic violence, the CEDAW and equity.
- At the request of the working group, the Ombudsman created a special program on the human rights of women under the Adjunct for Special Programs and Proceedings.

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- It conducted ex officio investigations on the human rights of sex workers, domestic workers and family protection brigades.

The office in **Canada** handled complaints of discrimination due to pregnancy or other gender-related factors. The institution also has jurisdiction over equitable pay for women (equal pay for work of equal value) and equitable employment initiatives for the hiring and promotion of female employees.

The office in **Colombia** has participated in and coordinated inter-institutional working groups on protection of the human rights of women. It also monitored policies applicable to the law on quotas and political participation by women. It conducted a study of domestic violence and absence of child support. Working relationships have been consolidated between State institutions and NGOs that promote the human rights of women. Finally, the gender perspective and sexual and reproductive rights are being built into complaint management systems.

**Costa Rica's** Ombudsman has processed many complaints, charges and claims as part of its normal case load and has conducted a number of ex-officio investigations. The office is an active participant in processes to sway the Legislature (analyzing and promoting draft bills). It is engaged in legal defense, coordination among institutions and with NGOs, as well as training, promotional and public information activities.

In **Ecuador**, all activities under the project for promoting and protecting the sexual and reproductive rights of adolescents take a gender approach. The Ombudsman's Directorate for Women's Rights is distributing public information materials that include these rights.

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The office in **El Salvador** reports a variety of activities:

- A report on the status of children's rights in the port city of Acajutla, where commercial sexual exploitation emerged as one of the most serious problems.
- Field research on commercial sexual exploitation of minors.
- A national and regional campaign against commercial sexual exploitation of minors.
- Creation of a permanent forum, called the Citizen Consultation on Gender and Family, made up of unaffiliated women and State institutions and NGOs.
- Regular visits to women in prison.
- Preparation of an analytical study on 10 years of human rights violations against women in El Salvador.
- The *Albergue* project was designed to offer shelter for battered women.
- A comparative study of sexual aggression affecting men and women from zero to 14 years and 14 to 44 years of age.
- Monitoring of the national MSPAS program of comprehensive health care for adolescents.

**Guatemala** has also been very active:

- Education, training and outreach: programs to raise awareness of the human rights of women; research to support development for women; courses, workshops, seminars and informational lectures on agreements, conventions and national and international laws that protect women; training and capacity building for government institutions, civil entities and private groups; radio programs and publications on the rights of women.

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- Care for women victims of violence and aggression: the office coordinates mechanisms for prevention, care and eradication; it has designed a healthcare model for battered women.
- Legal and social: the office promotes and oversees the full exercise of women's rights, working to make changes in the law and to enforce laws that already support women's rights; it is working to compile and analyze current legislation; it promotes measures to bring domestic law into compliance with international conventions and monitors compliance.
- Economic and social: the office promotes and facilitates processes to guarantee that women can enjoy their economic and social rights; it monitors compliance of the Peace Accords with respect to women; it promotes recognition of the practical and economic needs of women.
- Strengthening the Network of Auxiliary Ombudsman offices in outlying departments: the office is introducing improvements in the processing and handling of complaints about violations of the human rights of women in these branch offices; it is strengthening and training staff and implementing support networks.

The Ombudsman in **Honduras** has performed inter-institutional coordination with entities involved in gender issues. It works in education, strengthening and enforcement of the national and international legal framework for the protection of women; staff training and awareness raising; legal services and guidance; dissemination of national and international laws and regulations via booklets, brochures, television spots, posters, and distributing copies of legal texts; awareness raising campaigns; participation in the Collective against Violence and the Oversight Commission

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for the Law against Domestic Violence; it has built linkages with the Congressional Women's Commission.

The following actions have taken place in **Nicaragua**:

- Developing a strategic plan for the Special Women's Ombudsman.
- Developing a national agenda for the human rights of women.
- Creating and installing an advisory council for the Women's Ombudsman.
- Working in conjunction with the Nicaraguan Women's Institute (INIM) for a national plan to stop violence against women.
- Setting up an inter-sectional board to coordinate implementation of a national agenda for the human rights of women.
- Appointing women to serve as liaisons for the Special Women's Ombudsman in four geographic departments.

The Ombudsman office in **Panama** played an active role in forums, workshops and meetings of organizations and institutions working for women and their rights. It signed an inter-institutional agreement with the Ministry of Youth, Women, Children and Family to participate in regulating and implementing the equal opportunity law, and the office helped develop a second equal opportunity plan.

A wide range of activities took place in **Peru**:

- The Ombudsman performed an analysis of the regulatory framework on domestic violence and sexual violence and responded to complaints and petitions regarding such offenses.

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- It published a series on sexual discrimination and enforcement of the law, including two studies of domestic violence and one of sexual violence.
- The office took part in inter-institutional initiatives of two regional offices (Ayacucho and Piura) to eradicate domestic violence.
- It participated actively in discussing a draft bill on electoral quotas, disseminating information on the new system and defending implementation.
- The office supported a number of initiatives to guarantee the presence of women in public positions.
- It conducted a study on the use of quotas in Latin America.
- It filed a complaint with the Inter-American Commission on Human Rights on failure to respect quotas during the elections of April 2001.
- It completed studies on law enforcement that demonstrated the use of sex-biased criteria in interpretation of the law.
- The Ombudsman office held in-house training workshops on gender to support analysis of gender roles and relationships within its own organizational structure and dynamics.
- It is now preparing a document on gender indicators for use in the activities of the Ombudsman office.

**Venezuela's** Ombudsman is working to promote the human rights of women, gender equity and equality. The office published two judgements: one showing that certain discriminatory articles on sexual crimes in the Criminal Code are invalid, and the other on job tenure rights under maternity laws.

### **Priorities on the Agenda of National Human Rights Institutions for Furthering the Reproductive Rights of Women**

What priority have the national human rights institutions attached to defending and furthering sexual and reproductive rights? Some, including Argentina, Bolivia, Honduras and Panama, have set no express priorities for these rights.

**Canada** is a good example of a country that does have established priorities. The role of the institution is to promote sexual and reproductive rights, and it focuses on protecting the rights of pregnant women to be free of discrimination. In particular, it protects the right to maternity leave for childcare, specifically, paid maternity leave and protection of the health and safety of pregnant women.

**Colombia** has also set high priority on protecting women's rights, including sexual and reproductive rights. It especially emphasizes teen pregnancy, the rate of pregnancy among adolescents, and government actions in this field, as well as victims of sexual crimes.

**Costa Rica** conducted ex officio studies of sterilizations and regulations for special protection of pregnant women. It also handled cases on: the right to health, right to privacy, right to information, right to personal freedom and safety, and right to employment and social welfare benefits.

Priorities in **Ecuador** center on adolescent women; educational and health services for sexual and reproductive rights; helping health and education workers develop a new vision of sexuality and an approach based on gender and rights; public information on sexual and reproductive rights, targeting adolescents, institutions and communities; opportunities have been created for teenagers to take part in this program.

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In **El Salvador**, the office monitors available information being imparted to adolescents through formal school channels.

**Guatemala** carried out a national program for education, training and promotion of rights, with an emphasis on reproductive health for women.

**Nicaragua** set top priority on promoting and defending sexual and reproductive rights among teenagers, no limited to maternity. Other topics included sexism, the gender approach, sexual rights with responsibility, and reproductive rights. The office also promoted approval of the new Criminal Code for protecting victims of child sexual exploitation and for inter-sectional coordination to promote ratification of the Optional Protocol to the CEDAW.

**Peru** has been working to protect reproductive rights, targeting sterilization without consent and establishment of an oversight system for sexual and reproductive rights.

Finally, **Venezuela** has been working on human rights for people living with HIV/AIDS, sex women workers, and people in situations of critical exclusion. More generally, the office has focused on the relationship between quality of life and human rights.

#### **Actions and Measures Executed for the Promotion and Protection of Reproductive Rights**

National human rights institutions have undertaken a wide variety of actions to promote and protect reproductive rights.

In **Argentina**, while no specific activities take place at the national level, the Ombudsman offices that are members

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of the Network for the Defense of Women's Rights of the People's Ombudsman offices have been very active.

*City of Buenos Aires:*

- The office opened a program called Youth Ombudsman, reaching adolescents through school-based human rights workshops.
- Preparation of a newsletter "*Notired de Mujeres*" by the Network for the Defense of Women's Rights of the People's Ombudsman offices of the Republic of Argentina.
- Advertising campaign under the slogan "The constitution protects your sexual and reproductive rights;" posters were distributed to hospitals and secondary schools.
- A legislative initiative for a law on sexual harassment in labor, education and therapeutic settings; the Ombudsman spoke out on laws addressing sexual and reproductive health, violence, more humane childbirth, and regulatory guidelines for authorized abortion.
- Access to health care for authorized abortions, ligation of the fallopian tubes and induced abortion in cases of life-threatening pregnancy.
- The office monitored the law on sexual and reproductive health, requesting annual reports from all public hospitals and conducting surveys of health care providers and users.
- "Citizenship and Sexuality," a program for citizen oversight of the sexual and reproductive health law, targeting women's and human rights organizations, with a manual for monitoring, training and follow-up of the pilot oversight project.

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- An *amicus curiae* for the Superior Court of the City of Buenos Aires in a proceeding to declare the law on sexual and reproductive health unconstitutional.
- The office built support among experts on tubal ligation for a move to safeguard the identity of the newborn and the mother/child bond, and to afford comprehensive healthcare to adolescents, in agreement with the Secretariat of Health of the City of Buenos Aires, to be implemented as regulations.

*City of La Plata, Province of Buenos Aires:*

- The office worked for and won an ordinance on sexual information and provision of materials for different kinds of fertility control and family planning.
- Together with organizations of the third sector, the office worked to promote a provincial law on reproductive health, which is now in effect. The provincial executive branch vetoed the educational section that calls for sex education in private schools, and an appeal is now before the legislative branch.
- In January 1999, the Ombudsman agreed to file pleas (remedies of *amparo*) to obtain a judicial resolution eliminating requirements by the Ministry of Public Health to obtain judicial authorization before practicing tubal ligation. In the interim, the court granted permission for the procedure in 70% of the cases.
- The social work department of the Universidad Nacional de la Plata, under an agreement signed with the Ombudsman, introduced a requirement into the curriculum for the final year of field work, to conduct broad environmental reports justifying intervention.

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### *City of Neuquén - Province of Neuquén:*

- The Ombudsman was opened in August 1999, and by 2000 had begun to work with tubal ligation and vasectomy in response to complaints by people who lacked the resources to attend private clinics. From 2000 to July 2003, it processed 14 actions involving tubal ligation (10) and vasectomy (4). The Ombudsman has no jurisdiction for judicial action in these cases, but it accompanies petitioners to health centers and helps them obtain authorization for the procedure.
- Awareness raising among the general public: the Ombudsman organized a seminar on reproductive health in the framework of the Network for the Defense of Women's Rights of the People's Ombudsman offices of the Republic of Argentina, with participation by experts, legislators, judges, and the public. The Ombudsman office was included on number of panels and gave newspaper interviews to disseminate information on this subject and raise awareness among the general public. It also cooperated actively with nongovernmental organizations and women of Congress working to make surgical contraception legal in the province. The law was enacted on 2 September 2003 as law number 2431, incorporating these practices into the law on sexual and reproductive health (number 2222) and the law on the professional practice of medicine, which are in effect in Neuquén.

### *Santa Fe Province:*

- The Ombudsman signed an agreement for cooperation and coordination with the Institute for Gender, Law and Development in the city of Rosario, and the two organizations together held a contest entitled "Human

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rights community: redescribing the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW);” public and private secondary and technical schools from around the province were invited to take part in the contest.

- The Ombudsman published a resolution recommending that the sexual health program be implemented in the province, giving clear guidelines to all provincial health care providers to deliver contraceptives without requesting a voluntary contribution in exchange.
- Monitoring implementation of the reproductive health law.
- In response to complaints about lack of sex education in provincial schools, the office launched an investigation to determine why the law was not being observed.
- The office took part in the International Women’s Form against Corruption in the city of Buenos Aires.

Many activities have taken place in **Colombia**:

- Workshops in primary and secondary schools and workplaces to make the general public more aware of violations of their sexual and reproductive rights and strategies to guarantee their rights.
- Public hearings on sexual and reproductive rights with an emphasis on teen pregnancy.
- Video presentations for young people on human rights, especially sexual and reproductive rights.
- Participation on the Central Technical Committee for victims of sexual crimes.
- Workshops to promote and disseminate information on sexual and reproductive rights.

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The **Costa Rican** Ombudsman has been active in many areas, especially research and legislative lobbying. It initiated studies on:

- Sterilization policies in the country's hospitals (1994).
- Comparative study on the situation of hospital sterilizations (1993-1998).
- Sterilization and human rights, which served as the basis for an executive decree on health and sexual and reproductive rights (July 1998).
- Special protection program for pregnant women (1998).
- Updating the investigation on special protection program for pregnant women (2001).
- The right to sexual and reproductive health for women at Women's Hospital (in progress).

The Costa Rica office was also involved in legislative activity:

- It promoted reform of article 95 of the Labor Code on maternity leave and child adoptions.
- It promoted and helped draft a law on sexual harassment in places of employment and teaching in public institutions and some private companies, and helped develop implementing regulations.
- It promoted a law on domestic violence.
- It promoted a responsible fatherhood law.
- It supported ratification of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Para).

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- It supported ratification of the Optional Protocol to the CEDAW.
- It was active in the process of repealing sterilization regulations.
- It helped draft the decree on health and sexual and reproductive rights.
- The office filed an action (remedy of *amparo*) against San Juan de Dios public hospital for refusing to perform vasectomies, which was received by the Constitutional Court.

The office in Costa Rica has received numerous complaints for a variety of issues involving reproductive rights, including:

- Denial, delay and corruption in medical care or in sterilization services (known as the practice of “*biombos*,” or charging illegal fees for procedures performed in state-owned social security institutions; refusal or delay of surgery).
- Denial of medication (estrogens and progesterone).
- Limited access to mammary prostheses, mammograms and suitable health-care equipment.
- Too few rooms for gynecological and obstetrical care in some hospitals.
- Lengthy delays in delivering the results of pap tests to detect cervical cancer.
- Women placed in the corridors of the obstetrical ward.
- Auscultation of nonconsenting women by physicians and students.
- Offensive, abusive questioning of women regarding their health status.

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- Difficulty gaining patient access to the content of their own files.
- Information is inaccessible and incomprehensible.
- Sexual harassment by health workers.
- Unnecessary genital examinations of women assaulted in the face and arms.
- Deep probing in violation of dignity and bodily integrity.
- Termination of employment during pregnancy and lactation.
- Workplace discrimination against interim employees who are pregnant.

In **Ecuador**, a project to promote sexual and reproductive rights among adolescents was developed along philosophical lines citing these rights as a basic principle and crosscutting issue. The Ombudsman office asked for these rights to be included as a part of its in-house exercises, and they were required of local organizations that joined the project after January 2003.

**El Salvador** developed a program to promote reproductive rights that includes training sessions, informational materials, instruction and dissemination targeting young people, custody and monitoring of women who file complaints that their reproductive rights have been violated. Through Youth Ombudsman programs, young people received training on HIV/AIDS and sex education, and a teen handbook was prepared on these subjects. The Ombudsman has begun a coordinated effort with NGOs to identify initiatives that can be undertaken for this purpose, and it submitted a study to the Legislative Assembly advocating approval of the Optional Protocol to the CEDAW.

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The office in **Guatemala** has been overseeing and monitoring laws and public policies to make sure they comply with and respect the reproductive rights of women. The Social Development Law was disseminated, including a chapter that stipulates women's rights and outlines the obligations of the State.

The **Honduran** office is developing a program on gender and women's rights as a strategic vehicle by which the Ombudsman can intervene systematically in institutional services for women, including sexual and reproductive rights.

The **Nicaraguan** Ombudsman has carried at a number of activities:

- The office coordinated with the National Council for Child Protection, contributing to the policy against sexual exploitation of minors.
- It prepared a document offering input to the new Criminal Code and presented it to the National Council for Child Protection, the National Assembly and the media.
- Seminars, conferences, panel discussions and forums on sexual exploitation.
- Publications on sexual and reproductive rights for teenagers.
- Legislative lobbying for approval of the Equal Opportunity Law, the Family Code, and others.
- A forum on media and the family with an emphasis on gender violence and the commercialization of women as a product of advertising.

In **Panama**, the Ombudsman supported the process of implementing and regulating a new equal opportunity law for women. It succeeded in improving chapter VII of the law, which stresses the importance of adopting a gender approach

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for participatory research, especially in the area of sexual and reproductive health. The office is also interested in reviewing the procedures and mechanisms of the National Commission on Therapeutic Abortion, taking into account the sexual and reproductive rights of women. It initiated an annual information campaign for rural and indigenous women, using the gender approach to safeguard health care, prevention, and treatment of sexual and reproductive health. Public employees received training seminars and workshops on gender and human rights and the sexual and reproductive rights of women. The Ombudsman also took part in discussion forums on the subject.

The Ombudsman in **Peru** has focused primarily on regulatory analysis. For example, when complaints and court-ordered investigations revealed problems in the judicial system, the office performed a study of the ways in which judicial employees were applying regulations. Two investigations have taken place, one on voluntary surgical contraception, and the other on performance of surgical contraception and reproductive rights. The Ombudsman issued judgments with recommendations and suggestions for the Ministry of Health and other agencies to protect the rights of individuals under the ministry's reproductive health and planning program. The office published two volumes on women's rights in comparative constitutional jurisprudence and was active in disseminating and promoting reproductive rights through lectures, brochures and posters. Also, as a result of recommendations by the Ombudsman, national family planning program regulations were rewritten.

The office in **Venezuela** has undertaken numerous actions and measures:

- It created a special ombudsman office with nationwide jurisdiction over labor affairs, with a vision of gender equity.

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- It published promotional pamphlets on sexual and reproductive rights.
- It supported legislative initiatives in the National Assembly, working closely with the Standing Commission on the Family, Women and Youth and the Subcommittee on Women's Rights.
- It followed through on conclusions by the regional meeting of the Latin American Parliament on labor rights of pregnant teenagers.
- It took part in training activities by the Venezuelan Medical Law Association, with a focus on human rights, health and sexual rights.

The Ombudsman has been very active in its work of defending the public. The office handled 40 complaints involving equal rights and has held numerous promotional activities including lectures, forums, workshops, and training events on sexual and reproductive rights.

Research projects in the country have focused on HIV/AIDS, sex workers, poverty, mental health, and health and participation:

- Gender equity in the Constitution
- Sexual and reproductive rights among women inmates
- National and international legal framework of the right to health
- HIV/AIDS in children and adolescents
- Sexual violence against minors
- Mental health, human rights and the Ombudsman

In its work to defend citizen rights, the Ombudsman office held panel discussions on HIV/AIDS and sex work. It has actively monitored compliance of human rights

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obligations for all people, safeguarding the current legal structure (constitution, CEDAW, reforms of the Civil Code, equal opportunity law, law on violence against women and the family, basic child protection law, basic labor law). Finally, it has given formal opinions on the draft basic health law and proposed municipal ordinances for the protection of the poor, as well as the basic law on social security.

### **Obstacles and Difficulties Found in the Promotion and Protection of Reproductive Rights**

Several countries report obstacles and difficulties they have encountered in carrying out their work to promote and protect the reproductive rights of women. In general terms, these barriers can be fall into three categories:

- Low budgets.
- Resistance among public officials.
- Absence from national agendas.
- The existence of roles and stereotypes limit the exercise of these rights and encourage discriminatory practices.

In the case of **Argentina**, these problems are receiving very little attention, and as a result, women are generally unaware of their specific rights, even professional women working in national, provincial and private institutions. Argentina also reports that, despite victories won before 2001, sexual and reproductive rights have experienced a number of setbacks more recently (a Supreme Court ban on the “morning-after pill” and changes in government structure).

Most of the problems in **Bolivia** have to do with structural poverty affecting the population and the lack of a culture of citizen exercise of rights. Even though the Ombudsman has worked to promote rights, and several

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avenues are available for defending them, the population turns to ombudsman institutions without exhausting other available remedies. Moreover, mechanisms for the protection of the human rights of women are either very weak or altogether absent.

**Canada** reports that the major obstacle is workplace discrimination against pregnant women (abuse, employment termination, refusal to hire or to renew contracts).

**Colombia** reports that people are ignorant of sexual and reproductive rights. The country's difficult sociopolitical situation also tends to shift priorities toward human rights issues other than sexual and reproductive rights. Colombia also reports a persistent streak of *machismo* culture, prejudices about sexuality and procreation, and heavy influence by the different churches that hold conservative positions on the subject.

In **El Salvador**, the main difficulties involve budgetary rigidity that leaves no margin for making creative use of funds to cover the expanded labor force in the institution, and a lack of appropriate facilities. In addition, conservative movements associated with the churches hold great political power and influence in the Legislative Assembly.

The main difficulty in **Guatemala** is the limited budget that the national Congress allocates to the entire institution.

**Honduras** reports two main constraints: resistance by more conservative church-related groups to programs and actions that support sexual and reproductive rights, and sexual notions and practices among various groups.

**Nicaragua** also reports a variety of constraints:

- The Ombudsman has a very limited budget (cut by 30% in 2003).
- Little consensus on which institution should be responsible for promoting and defending sexual and

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reproductive rights.

- Ignorance of national legislation and international commitments on human rights and reproductive rights by most officials in the Legislative Assembly, Ministry of Health, Ministry of Education, and others.
- An institutional structure still in the process of being set up and organized for ombudsman departments, areas and special-issue sections, which has delayed development of an institutional agenda.

Finally, obstacles in **Panama** include sociocultural traditions that limit equal opportunities. Moreover, the country has yet to define appropriate priorities and allocations for effective enforcement of human rights of women in the economic, political, social and cultural spheres. Administrative and judicial mechanisms to protect women victims of violence are not effective.

#### **IV. OUTLINE OF REPRODUCTIVE RIGHTS WORK BY OMBUDSMAN OFFICES IN THE CARIBBEAN**

##### **Promoting and Protecting Reproductive Rights in the Caribbean**

*Julia Zajkowski*<sup>80</sup>

##### **Introduction**

Over the past two decades, the United Nations Human Rights Treaty Monitoring Bodies have built a substantial jurisprudence that is directly relevant to the work of national human rights institutions (NHRIs). Some of the committees have issued general comments, which define the role of NHRIs in promoting and protecting all human rights, including the right to health. While these more general pronouncements are not specific to reproductive rights, they do serve to clarify national level responsibilities and illustrate the enormous potential for NHRIs to use their mandates in expansive ways. In some instances, the committees have issued recommendations to governments in the country's reporting process, acknowledging the role of NHRIs and asking for specific action.

NHRIs are uniquely placed to use the jurisprudence of the committees to define their mandate as well as to play a role

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in the implementation of the recommendations. In most cases, NHRIs have a degree of independence to interpret their mandate as it applies to the various aspects of their work including protection, education, investigation and reform. For this reason, they are particularly well situated to use the jurisprudence to inform their work and the interpretation of their respective mandates, especially in the field of reproductive rights where there is ample jurisprudence.

In addition, even when the committees' recommendations are not aimed directly at specific national-level institutions, NHRIs have an extremely important role to play in their implementation. As will be demonstrated below, the treaty monitoring bodies' recommendations made during the country reporting process are often comprehensive and do touch on the various components of NHRIs' mandate. Thus NHRIs play a crucial part in achieving the ultimate goal of the treaty monitoring process holding governments responsible for their obligations under the treaty.

### **Jurisprudence Relating to National Human Rights Institutions**

It is clear that the committees recognize the important role that national level human rights institutions –also known as Ombudsman- play in strengthening the treaty monitoring process, most notably in the implementation of their recommendations to States parties. Several of the committees' general comments and concluding observations mention the need to involve national human rights institutions in the implementation and enforcement of treaty provisions. CESCR has been particularly strong in efforts to involve national human rights institutions in follow-up to its recommendations to governments. It is the only committee to have issued a general comment specifically on the role of

NHRIs'. This committee has also congratulated States parties for establishing national level human rights commissions. The following are examples where the committees have either explicitly mentioned the role of national level institutions or have directed recommendations for improved compliance with the treaties at them.

**CESCR General Comment on the Role of National Human Rights Institutions (1998)**

59. The Committee notes that national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights.

- (a) The promotion of educational and information programmes
- (b) The scrutinizing of existing laws and administrative acts, as well as draft bills and other proposals,
- (c) Providing technical advice,
- (d) The identification of national-level benchmarks
- (e) Conducting research and inquiries
- (f) Monitoring compliance with specific rights
- (g) Examining complaints alleging infringements

**CESCR General Comment on Health (2000)**

59. Remedies and accountability

Any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations should be entitled to adequate reparation, which may

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take the form of restitution, compensation, satisfaction or guarantees of non-repetition. National Ombudsman, human rights commissions, consumer forums, patients' rights associations or similar institutions should address violations of the right to health.

### **CESCR Concluding Observations to Honduras (2001)**

5. The Committee takes note with satisfaction of the establishment of institutions, such as the *Fiscalías Especiales de Derechos Humanos*, the *Instituto Nacional de la Mujer*, the *Consejerías de la Familia* and the Ombudsman, and the adoption of important laws in the field of human rights, such as the *Ley de Igualdad de Oportunidades entre el Hombre y la Mujer*, the *Ley contra la Violencia Doméstica* and the *Ley sobre la Salud Reproductiva*.

### **Using the Jurisprudence as a Tool: Maternal Mortality**

At this time, I would like to go into further detail on the jurisprudence of the committees with respect to a particular reproductive rights issue: maternal mortality and women's right to survive pregnancy and childbirth. I have chosen this subject because it is a complex issue that links to several clusters of rights and therefore it provides a good starting point to demonstrate the utility of the jurisprudence to national level institutions. The Center has recently published "Bringing Rights to Bear: An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights" which charts the collective work of the six committees over the past decade on a wide range of

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reproductive rights topics including: rights relating to physical integrity, rights relating to reproductive and sexual health, and rights relating to due respect for differences. This report includes an in-depth analysis of what the committees have said on the issue of maternal mortality which, of course, touches on each of these rights groupings. Overall, the committees' jurisprudence on this issue furthers a rights based approach and human rights analysis of what, in the past, has been largely regarded as only a public health issue. The committees make the important linkages between women's right to control their fertility — including their right to access comprehensive reproductive health services such as contraceptives and safe and legal abortion services — and the rates of maternal mortality. In addition, the committees have taken the important step of defining the issue as a violation of women's right to life as well as their right to health. Below I will provide examples of the committee's jurisprudence on maternal mortality and further discuss why these are particularly strong.

Several of the committees' general recommendations and comments provide strong language on States parties' human rights obligations with respect to reducing maternal mortality and morbidity. Two particularly comprehensive examples are the CEDAW committee's general recommendation on women and health and HRC's general comment on equality between men and women. Each of these makes the important link between safe and legal abortion services and high rates of maternal mortality.

**CEDAW Committee's General Recommendation on Women and Health (1999)**

31. States parties should also, in particular:

(c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion;

**HRC General Comment on Equality of Rights Between Men and Women (2000)**

10. When reporting on the right to life protected by Article 6, States parties should provide data on birth rates and on pregnancy and childbirth-related deaths of women. Gender-disaggregated data should be provided on infant mortality rates. States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undertake life-threatening clandestine abortions. States parties should also report on measures to protect women from practices that violate their right to life, such as female infanticide, the burning of widows and dowry killings. The Committee also wishes to have information on the particular impact on women of poverty and deprivation that may pose a threat to their lives.

In their concluding observations to States parties, the committees have expressed concern over high rates of maternal mortality and have made recommendations to governments on implementing measures to lower the rate. The more comprehensive recommendations make the

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important linkages between lack of access to reproductive health services, high rates of teenage pregnancy, practices that are harmful to women's and girls' health, and high rates of maternal mortality. Below are several examples of how the committees have treated the issue of maternal mortality in their recommendations to particular governments, in the context of the Caribbean.

**CESCR Concluding Observations to Trinidad and Tobago (2002)**

23. The Committee is concerned that clandestine abortion is the cause of a high rate of maternal mortality due to infections and complications from procedures performed under unsanitary conditions by untrained personnel.

46. The Committee requests the State party in its next periodic report to provide detailed information based on comparative data about the problem of abortion in Trinidad and Tobago and the measures, legislative or otherwise, including the review of its present legislation, it has undertaken to protect women from clandestine and unsafe abortion.

48. The Committee recommends that the State party, in the next periodic report, should provide more detailed statistics on a disaggregated and comparative basis concerning specific health programmes devoted to reducing and preventing infant mortality and maternal mortality, as well as teenage pregnancies and back street abortions. The State party is invited to set benchmarks in this area which might form the basis of the dialogue with the Committee during the next period review.

**CEDAW Committee Concluding Observations to Antigua & Barbuda (1997)**

258. The Committee was also concerned about the continuing illegality of abortion, which would lead to unsafe abortions. It also noted with concern the lack of family planning education programmes and the fact that contraceptives were not covered by medical benefits schemes.

259. The Committee was deeply concerned about the high level of teenage pregnancy.

267. The Committee suggested that Antigua and Barbuda introduce appropriate policies and programmes for sex education and family planning education.

**CEDAW Committee Concluding Observations to Jamaica (2001)**

17. The Committee is concerned about the health of adolescents in the State party, who are at high risk of many diseases, in particular those related to sexual and reproductive health. The Committee also notes with concern the rising incidence of teenage pregnancies, leading to higher mortality rates related to abortion of unwanted pregnancies and to higher drop-out rates for girls who leave school to take care of their babies.

18. The Committee is also concerned that clandestine abortion is the cause of a large number of deaths due to infections and complications from procedures performed under unsanitary conditions by untrained personnel and that it is one of the leading factors in the high maternal mortality rate in the State party.

**CESCR Concluding Observations to Jamaica (2001)**

30. The Committee urges the State party to ensure the provision of education on sexual and reproductive health, and to facilitate access to contraceptives by adolescents where appropriate. The Committee recommends the establishment of benchmarks in this respect, on the basis of comparative data to be discussed in the next periodic report, and refers the State party to paragraphs 57 and 58 of its general comment No. 14 on the right to health.

31. The Committee requests the State party in its next periodic report to provide detailed information based on comparative data about the problem of abortion in Jamaica and the measures, legislative or otherwise, including the review of its present legislation, it has undertaken to protect women from clandestine and unsafe abortion.

The above strong examples were chosen for several reasons. First, the recommendations are very specific and therefore more likely to be implemented by the State party. The level of detail and specificity of the recommendations demonstrates that the committees had access to information on the national level situation of women. For example, in formulating its recommendations to Trinidad and Tobago, the CEDAW committee had access to statistics on clandestine abortion despite the fact that it is illegal in that country, making reliable official statistics difficult to find. This allowed the committee to make a stronger argument to the State that the procedure be decriminalized. Also, in the CEDAW committee's recommendations to Antigua & Barbuda, it is clear that the committee had received detailed information on the national health strategy and benefits

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scheme, specifically as they relate to reproductive health, and was therefore able to make a stronger recommendation to the government.

In addition, the committees' application of a rights based approach to the issue of maternal mortality is significant. Their recommendations to governments demonstrate the indivisibility and interdependence of civil and political rights with economic, social and cultural rights. In several instances, the committees frame the issue as a violation of women's rights to life, to health, as well as their right to decide freely on the number and spacing of one's children. Also, significantly, the committees recognize that high rates of maternal mortality resulting from lack of access to reproductive health information and services are indicative of discrimination against women which in turn impacts their ability to exercise all of their rights. Finally, the committees recognize that higher maternal mortality rates among low income and poor women constitutes discrimination against these populations.

The committees make important linkages between maternal mortality and other reproductive health as well as gender equality issues. They recognize that the inability to access comprehensive reproductive health services — such as contraception and safe and legal abortion — is a violation of women's rights to health and to reproductive autonomy and may impact on women's ability to exercise their right to life. In addition, the committees link the right to education, particularly reproductive health education, to higher rates of teenage pregnancy and maternal mortality among adolescents.

### **The Role of National Human Rights Institutions in Applying the Jurisprudence**

Depending on the specific mandate of national human rights institutions, the jurisprudence of the committees can help inform their work at the national level in promoting and protecting reproductive rights. As Alda Facio has pointed out in her article “Safeguarding the Future: The National Human Rights Institutions and Reproductive Rights”, the mandates of national human rights institutions vary from country to country. These institutions may be called upon to function as promoter, mediator, educator, investigator as well as impetus for law and policy reform in the realm of reproductive rights. In this case, we will look at how the committees’ jurisprudence on the issue of maternal mortality might help define and compliment the work of national level institutions, both strengthening the treaty monitoring process itself as well as positively impacting the reproductive lives of women and girls.

For national human rights institutions with a mandate to protect the rights of individuals or groups, the recommendations of the committees which are directed at their government can serve as an impetus to prioritize the issue of maternal mortality. Even if there is no jurisprudence directed at the government in question, the general recommendations and comments, which are directed at all States parties to the respective treaties, can be used as a guide. In their protecting function, national institutions can monitor whether national level courts are fulfilling the recommendations of the committees. To this end these institutions have a crucial role to play in ensuring that women, particularly low income, rural and ethnic or racial minority women, have access to the courts to complain of violations. Depending on the specific mandate, national institutions could also coordinate public tribunals including testimonies relating to specific cases of

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maternal mortality as a violation of women's reproductive rights. Furthermore, national institutions can collaborate with other government ministries such as the Ministry of Health to implement programs that promote access to reproductive health services and information.

National human rights institutions with a mandate to educate individuals, the public or government actors could play a direct role in implementing the recommendations of the committees relating to education and public awareness campaigns surrounding reproductive rights issues such as maternal mortality. For instance, national institutions could institute education campaigns surrounding the issue of unsafe and illegal abortion as a public health concern. This could involve collaboration with local women's groups and include an emphasis on reaching out to low-income, rural and young women. National institutions may also be well situated to organize training courses for public officials which could involve the Ministries of Health or Education. In addition, national human rights institutions may have a role to play in educating other government entities on the treaty monitoring system which could include training officials on the treaty monitoring system with a focus on government obligations to uphold reproductive rights such as the right to survive pregnancy and childbirth. This would serve the dual purpose of furthering awareness on reproductive rights issues as well as strengthening the treaty monitoring process.

Institutions which are mandated to investigate individual complaints or widespread violations could use the committees' jurisprudence on maternal mortality as a springboard to initiate investigations. Committee recommendations on the need to take measure to reduce maternal mortality and to provide redress to victims which are directed at the government in question could serve to support

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the investigative process by providing further credibility and legitimacy for an investigation. For example, national institutions could employ the human right analysis used by the committees with respect to the issue of abortion, and initiate a fact-finding investigation to uncover individual cases of women who resort to illegal and unsafe abortions, resulting in death or injury. In the same way, national institutions could initiate a broader, more systemic investigation regarding the accessibility and quality of health services for women, identifying violations of women's reproductive rights. Alternatively, national institutions could play a role in following the adjudication of abortion cases in the national judicial system. Upon completion of a reproductive rights investigation, the findings should be made public and recommendations put out to all implicated actors.

Some national human rights institutions play a role in law and policy reform at the national level. Those with such a mandate could work to reform national laws and policies that contribute to reduce high rates of maternal mortality and morbidity. National institutions could use the committees' jurisprudence to define laws that penalize abortion or restrict access to family planning services and information as a violation of women's human rights. This could potentially involve further study and ultimately reform of such laws. For this, national institutions could work in collaboration with local NGOs and other actors. National institutions could support campaigns initiated by NGOs or other sectors for the decriminalization of abortion or for increased access to reproductive health services and information, particularly for rural and low-income women, and adolescents. Those national institutions which are mandated to do so, could issue recommendations to the legislative and executive powers on related law and policy reform.

## **Conclusion**

In conclusion, I would like to reiterate a few key points. As I have outlined above, it is important to recognize recent major advances in the work of the committees, particularly in the field of reproductive health rights. Over the past decade, these committees have broken new ground in translating human rights standards into State responsibility on a broad spectrum of reproductive rights issues. However, it is clear there still exists a gap between these international standards and their application at the national level. In fact, this gap leaves a tremendous opportunity for national level human rights institutions. The collective work or jurisprudence of the UN treaty monitoring bodies can be a powerful tool for national level human rights institutions working to advance women's rights. It can serve as a model to advance the recognition of reproductive health issues as human rights issue at the national level. In this example, by examining the issue of maternal mortality and morbidity through the human rights lens used by the committees, it is redefined as women's right to survive pregnancy and childbirth. Once reproductive rights issues are defined, the jurisprudence of the committees can be used to spark, support and strengthen national institutions' efforts to carry out their respective mandates to protect, educate, investigate and reform. In the end, this can foster an increased respect on the part of governments for the human rights obligations they have undertaken to respect, fulfill and protect women's reproductive rights, ultimately leading to increased empowerment for women in their reproductive lives.

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## A Situation Analysis of Reproductive Health and Rights in the Caribbean and UNFPA's Priorities

Hetty Sarjeant<sup>81</sup>

“Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and child-birth and provide couples with the best chance of having a healthy infant.”

*(ICPD Programme of Action, para. 7.2)*

“Reproductive rights embrace certain human rights that are already recognized in national laws, international laws and international human rights documents and other consensus documents. These rights rest on the recognition of the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right to make decisions regarding reproductive health free of discrimination, coercion and violence, as expressed in human rights documents.”

*(ICPD Programme of Action, para. 7.3)*

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<sup>81</sup> Representative of UNFPA in the English and Dutch Speaking Caribbean.

### **Introduction**

Essential health services to ensure sexual and reproductive rights include:

- Information and counseling on human sexuality, reproductive health, and parenthood
- Family planning
- Prenatal/postnatal and delivery care
- Prevention and treatment of infertility
- Prevention and treatment of sexually transmitted infections and reproductive tract infections

### **Reproductive Health in the Caribbean**

Although there have been significant improvements in reproductive health status in the Caribbean region over the last 50 years, there are many remaining challenges. The principal population challenges are the rapid spread of HIV/AIDS; early initiation of sexual activity and its inherent problems; the effects of out-migration on resources and on the social fabric of societies; gender inequality; and a rapidly ageing population.

Teenage pregnancies, most of which are unplanned, account for a significant proportion of all births in the region. This is the case in Jamaica where adolescent pregnancy presents a serious social and health problem and, at 112 births per 1,000 women aged 15 to 19 years, is among the highest in the Caribbean. This is also true in several countries in the Eastern Caribbean where reproductive health characteristics in poor communities include a high rate of teenage pregnancy; high levels of sexual activity with multiple partners; and low contraceptive and condom use, which has serious implications for the spread of STIs and

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HIV/AIDS. Although research is scant, abortion rates among teenagers are thought to be very high in many of the English- and Dutch-speaking Caribbean countries.

Gender inequities and inequalities also persist in the subregion, despite the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Platform for Action and similar international agreements. In a number of countries, laws have been enacted regarding domestic violence and child support, but their implementation and enforcement must be strengthened.

### **Combating HIV/AIDS**

In the Caribbean, HIV/AIDS represents a significant challenge to all efforts at poverty reduction and sustainable development as the sub-region (including Haiti and Dominican Republic) has the second highest disease prevalence (2.2%) in the world second only to Sub-Saharan Africa (8.4%). HIV/AIDS is the leading cause of death in the 15-44 year age group. Wide variations in prevalence occur with the total number of persons with HIV/AIDS estimated in the Caribbean at 530,500 in the year 2000. Of this number, Haiti alone accounted for 250,000; the Dominican Republic 141,000; and Jamaica 22,000.

In many ways HIV/AIDS is as more a social problem than a health one. In this sub-region, it is primarily transmitted by sexual intercourse, an activity often shrouded in secrecy and shame. In most countries, the stigma surrounding the disease makes it difficult to help protect those at risk of contracting the virus and to care for those who are ill. Above all, HIV feeds on the deep divisions within our societies – illiteracy, ignorance, poverty and inequality between the sexes – and deepens those divisions by making communities poorer.

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Young girls are perhaps the most vulnerable to the epidemic. Not only are they physiologically more susceptible but prevailing social conditions in many countries of the Caribbean also serve to increase their risks. These include early initiation into sex, coercive sex, rape, incest, domestic violence, and the phenomenon of the predatory “sugar daddy”. Increasingly, many older men seek sex in younger girls in the belief that they are not likely to be infected with HIV, or, more ominously, in the mistaken notion that sex with a virgin is a cure for HIV/AIDS or other sexually transmitted infections.

The potential impact of the HIV/AIDS epidemic on macro-economic development in the sub-region is likely to be significant. Projections calculated by University of the West Indies (UWI) health economists in a conservative, low case scenario for Jamaica and Trinidad and Tobago suggest that gross domestic product in the two countries respectively would decline by 4.2% and 6.4%; savings would decline by 10.3% and 23.5%; investment would decrease by 15.6% and 17.4%; and labor supply would be reduced by 5.2% in both settings. On the other hand, expenditure on prevention and care would increase by 15.6% in Trinidad and Tobago and by 17.4% in Jamaica.

There are several reasons why tackling the impact of HIV/AIDS on development is such an essential part of the global response to the epidemic. Without policies, strategies and adequate resources to address the poverty-creating effect of high mortality among productive age groups, the Millennium Summit development goals cannot be reached in much of the Caribbean, where the epidemic is generalized and shows no sign of peaking. In addition, low human development, widespread poverty and inadequate access to education and health, greatly exacerbated by the epidemic, is further fuelling the spread of HIV.

## **Human Rights and HIV/AIDS**

Looked at through a human rights lens, global reports highlight tremendous concern that the rapid spread of the HIV/AIDS epidemic may lead to an infringement of the human rights of men, women and children affected by the epidemic in various ways. The overall morbidity and mortality for women from sexually transmitted diseases excluding HIV/AIDS is over 4.5 times that of men.

The onset of the HIV/AIDS epidemic has exacerbated this situation in no small way. It has opened up a whole new area of human rights violations as the epidemic depicts a congruence of two most insidious forms of human domination – gender and sexuality.

In response to this state of affairs, the Second International Consultation on HIV/AIDS and Human Rights concluded that, “the protection of human rights is essential to safeguard human dignity in the context of HIV/AIDS and to ensure an effective rights based response to the epidemic”. This conclusion was based on the recognition that when human rights are protected, less people become infected and those living with HIV/AIDS and their families can better cope with the disease.

A rights-based response ensures that we:

- confront the prevailing issues of stigma, silence and denial;
- address gender and age-based dimensions of the epidemic;
- eliminate discrimination and marginalization
- promote partnerships with civil society and the business sector
- promote full participation of people living with HIV/AIDS

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- promote participation of those in vulnerable groups and at risk, particularly young people and women
- reduce the risk factors associated with poverty and other socio-economic disadvantage
- mobilize the necessary resources for comprehensive, integrated reproductive health services

### **Gender Equity and Equality**

Prevention and care for women are often undermined by pervasive misconceptions about HIV transmission. There is a tendency to stigmatise women as “vectors of disease,” irrespective of the source of infection. As a consequence, women who are, or are perceived to be, HIV-positive, encounter violence and discrimination in public and in private life. Sex workers may also face violence and discrimination in public and in private life.

The protection of the sexual and reproductive rights of women and girls is therefore critical. This includes the rights of women to have control over and to decide freely and responsibly on matters related to their sexuality. Countries in the region should thus ensure women’s rights are upheld in matters relating to property, employment, divorce, access to economic resources so that women can leave abusive relationships which threaten them with HIV infection. This will also enable them to cope with the burden of caring for people living with HIV/AIDS in their households. An engendered human rights approach to the epidemic is therefore imperative.

### **The Role of UNFPA**

UNFPA’s mandate is to extend assistance to developing countries, countries with economies in transition and other

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countries at their request to help them address reproductive health and population issues, and raises awareness of these issues in all countries, as it has since its inception.

UNFPA's three main areas of work are: to help ensure universal access to reproductive health, including family planning and sexual health, to all couples and individuals on or after the year 2015; to support population and development strategies that enable capacity-building in population programming; and to promote awareness of population and development issues and to advocate for the mobilization of the resources and political will necessary to accomplish its areas of work.

UNFPA is guided by, and promotes, the principles of the Programme of Action of the International Conference on Population and Development (1994) as well as other rights-based international charters and the Millennium Development Goals. In particular, UNFPA affirms its commitment to reproductive rights, gender equality and male responsibility, and to the autonomy and empowerment of women everywhere. UNFPA believes that safeguarding and promoting these rights, and promoting the well-being of children and adolescents, especially girl children, are development goals in themselves. All couples and individuals have the right to decide freely and responsibly the number and spacing of their children as well as the right to the information and means to do so.

UNFPA is convinced that meeting these goals will contribute to improving the quality of life and to the universally accepted aim of stabilizing world population. We also believe that these goals are an integral part of all efforts to achieve sustained and sustainable social and economic development that meets human needs, ensures well-being and protects the natural resources on which all life depends.

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As the lead agency that advocates for sustainable development through the integration of gender-sensitive and rights-based population issues into national development and inter-sectoral planning, UNFPA has demonstrated the advantage of a comprehensive integrated approach. Successful interventions to influence long-term demographic trends invariably address: improvement in the status of women and girl children, basic education, information and communication, primary health care (including family planning), and income distribution and generation. Education, particularly for women and girls; accurate information; and access to a range of reproductive health services are central to success.

#### **UNFPA's Priorities in the Caribbean**

In assisting countries in the Caribbean region to implement the International Conference of Population and Development (ICPD) and ICPD+5 agreements, the Fund focuses on:

- Family planning—including continuing efforts to improve service quality and counselling, and helping to ensure adequate supplies of reproductive health commodities such as condoms, which are also vital for combating the spread of STIs and HIV/AIDS;
- Maternal health and maternal mortality and morbidity reduction—ensuring the availability of family planning services and commodities; guaranteeing that every woman has a skilled attendant at the time of delivery; and making sure that every woman has access to assisted delivery and emergency care in case of complications;
- Prevention and management of reproductive tract infections and sexually transmitted diseases, and prevention of HIV/AIDS—including strengthening the

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prevention, diagnosis and treatment of RTIs and STIs within primary health services; and using effective behaviour change communication strategies to help individuals change their behaviour and thus reduce their risks of contracting RTIs and STIs; support in the area of HIV/AIDS continues to focus mainly on the prevention of HIV transmission.

### **Promotion of Adolescent Sexual and Reproductive Health Rights**

UNFPA promotes the sexual and reproductive health rights of adolescents and advocates that adolescent sexual and reproductive health, including unwanted pregnancy, unsafe abortion (as defined by the World Health Organization), and STIs and HIV/AIDS, are addressed through the promotion of responsible and healthy reproductive and sexual behaviour, including voluntary abstinence as well as the provision of appropriate services and counselling specifically suitable for that age group. We encourage countries to ensure that programmes and attitudes of health-care providers do not restrict adolescents' access to the services and information they need. These services must safeguard the right of adolescents to privacy, confidentiality, respect and informed consent, while respecting cultural values and religious beliefs as well as the rights, duties and responsibilities of parents.

### **Summary**

In closing, UNFPA will continue to be an active force for the protection and promotion of reproductive rights in this region. Given our high credibility among governments and NGOs, strong field presence, influence within the UN system, and commitment to and involvement in the ICPD +

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5 process in relation to reproductive and sexual health rights, UNFPA is an ideal agency to carry out the mandate to lead the collection and analysis of data, standards, indicators and information on reproductive and sexual health.

We will continue to advocate for poverty reduction and sustainable social and economic development through the integration of rights-based, gender-sensitive and culturally responsive population and reproductive health factors into national development and inter-sectional planning.

## **Ombudsman and Human Rights: Steps Forward to Embracing a Human Rights Mandate, Recent Developments**

*Thomas Hayden*<sup>82</sup>

### **Introduction**

The Ombudsman Institution has been in existence in the Caribbean sub-region for several years. Indeed, Guyana was the first country in the Developing World to embrace the Ombudsman concept when it established an office in 1966. Since then offices have been set up in Trinidad and Tobago (1976), Jamaica (1978), Saint Lucia (1979) Barbados (1980), Antigua and Barbuda (1995) and Belize (1999). The matter is still under discussion in the Commonwealth of Dominica, the Dominican Republic and Bermuda.

### **The Role of the Ombudsman**

To a large extent, the mandate of the Offices of the Ombudsman has been to deal mainly with cases of maladministration. The functions of the Ombudsman for Antigua and Barbuda, for example, as laid out in the Ombudsman Act No. 5 of 1994 are “to investigate any complaint relating to any decision or recommendation made or any act done or omitted by any officer of the Government or Statutory body in any case in which a member of the public claims to be aggrieved, or appears to the Ombudsman to have sustained injustice as a result of the exercise of the administrative function of that officer or body.”  
Complainants may be:

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<sup>82</sup> Antigua & Barbuda Ombudsman. President of Ombudsman Offices of the Caribbean (CAROA).

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- Any aggrieved national or resident or if he is dead or for any reason unable to act for himself, any person duly authorized to represent him.
- Any member of Parliament on behalf of an aggrieved person.
- Detainees or convicts.

Maladministration includes delay, bias, unfair discrimination, failure to give proper advice, discourtesy, harassment and failure to follow recognized procedures.

It should be pointed out that the Public Defender of Jamaica has additional responsibilities which will be elaborated later on.

Jamaica also has a Political Ombudsman who deals mainly with problems arising between political parties especially near election time.

The Ombudsman has the power to investigate, criticize, recommend and publicize but not to reverse administrative action. Recommendations/Decisions are made on the basis of illegality, breach of natural justice or due process, tardiness in reply or action and/or lack of information.

Although a human rights mandate is not mentioned explicitly in many of the Ombudsman Acts, human rights issues are dealt with by the Ombudsman from time to time resulting from complaints made, for example, by the public against the police and/or prison authorities. Some of these will be dealt with later in the paper. It is important to note, however, that many cases involving maladministration are indeed concerned with the abuse of human rights.<sup>83</sup> The

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<sup>83</sup> This fact was clearly brought out by Lawrence Laurent, former Parliamentary Commissioner of Saint Lucia in a paper entitled "The Promotion and Protection of Human Rights in the Caribbean – a case study" in the book *Strengthening Ombudsman and Human Rights Institutions in Commonwealth Small and Island States* – Victor Hallen, Linda Reif and Hayden Thomas.

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Ombudsman Office therefore may be regarded as a particular type of human rights institution.

Enshrined in most if not all of the constitutions is the protection of Fundamental Rights and Freedoms of the Individual. Included in the Antigua and Barbuda Constitution Chapter III for example are the following provisions:

- Protection of right to life
- Protection of right to personal liberty
- Protection from slavery and forced labour
- Protection from inhuman treatment
- Protection from freedom of movement
- Protection from deprivation of property
- Protection of person or property from arbitrary search or entry
- Protection of freedom of expression including freedom of the press
- Protection of freedom of assembly and association
- Protection from discrimination on grounds of race, sex etc.
- Provision to secure protection of the law
- Protection of persons detained under emergency laws.

Antigua and Barbuda is also a signatory to several United Nations Human Rights Conventions. These include:

- International Convention on the Elimination of all forms of Racial Discrimination.
- International Convention on the Suppression and Punishment of the Crime of Apartheid.

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- ILO Convention (No. III) concerning Discrimination in respect of Employment and Occupation. (1958)<sup>84</sup>
- International Convention against Apartheid in Sports (1985) A/RES/40/64 G.<sup>85</sup>
- Convention on the Prevention and Punishment of the Crime of Genocide.
- Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.
- Protocol amending the Slavery Convention.
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices Similar to Slavery.
- ILO Convention (No.29) concerning Forced Labour.
- Convention relating to the Status of Refugees.
- Convention relating to the Status of Stateless Persons.
- ILO convention (No. 87) concerning Freedom of Association and Protection of the Rights to Organise.
- Convention on the Political Rights of Women.
- Convention on the Nationality of Married Women.
- Convention on the Elimination of all forms of Discrimination against Women.
- Convention on the rights of the Child (1989).

Where there is an alleged breach of any of the provisions stated above, the person may apply to the High Court for redress. A few human rights cases have actually reached as

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<sup>84</sup> United Nations Treaty Series, Vol. 362 p. 31 (Entered into force on 15 June 1960.)

<sup>85</sup> Entered into force on 3 April 1988.

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far as the Privy Council and have been reported in the Commonwealth Human Rights Law Digest (1,2) (September 2000 and December 2001).

Now it is known that in some countries there is a Human Rights Commission as well as an Ombudsman. Others have a Human Rights Commission or an Ombudsman only. Our sub-region in the main has Ombudsmen, also known as Parliamentary Commissioner (Saint Lucia) or Public Defender (Jamaica) and *Protecteur du Citoyen* in Haiti. As far as it is known, only in Bermuda is there a Human Rights Commission established.

In considering the recommended system to be adopted it will be necessary for States to consider the size of the country as well as financial constraints. For very small States such as ours the ideal situation in the future might be the consideration of a “Hybrid” system where the same institution deals with both classical Human Rights issues and Maladministration.

To date, the Courts have dealt mainly with alleged Human Rights abuses involving Freedom of Expression, Freedom of Assembly, land matters as well as the right to life. At present the Privy Council in the U.K. is the highest Court. Plans are, however, in progress to establish a Caribbean Court which will be the final Court of jurisdiction over both Criminal and Civil matters.

#### **The Role of the Ombudsman as a National Human Rights Institution**

Commenting on this role, Linda Reif in a paper entitled “Ombudsman and Human Rights Protection and Promotion in the Caribbean: Issues and strategies” quoted the United Nations as follows:

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“... Many long – established offices of the Ombudsman do not concern themselves directly with human rights in so far as they relate to their principal function of overseeing fairness and legality in public administration. Others, particularly the more recently created offices, have been given specific human rights protection mandates, often in relation to rights set forth in national constitutions or other legislation.”

“[...] while underlining the different core roles of the Ombudsman and human rights commissions – respectively, legality and fairness in public administration versus human rights protection, the U.N has stated that distinctions are becoming more and more blurred as Ombudsman offices engage in a wider range of activities for the promotion and protection of human rights. Increasingly, offices of the Ombudsman are assuming responsibilities in the area of promoting human rights, particularly through educational activities and the development of information programmes.”

I fully agree with Reif’s comments that:

“... the traditional Ombudsman deals with complaints from members of the public alleging that government administration is unfair or illegal. It is possible that administrative conduct may be illegal in that it has breached a human rights obligation of the State. A variety of government department and agency activities may have the potential to violate human rights – indeed of violating any one of a number of civil, political, economic, social and cultural rights obligations incumbent on the State. Discriminatory treatment on the basis of race, gender, etc., interference into private affairs, improper police treatment, sub-standard treatment of prisoners, denial of certain social service benefits and ill treatment of children in State care are some of the examples of public administration that may

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be the subject of a jurisdictional complaint to the Ombudsman and which involve the consideration whether the government has violated its human rights obligations as translated into domestic law.”

#### **Human Rights Cases Dealt with in Antigua & Barbuda Ombudsman`s Office**

These include:

- A case in which a mother complained that her child was administered corporal punishment by her teacher.
- A complaint that a policeman tortured the complainant while treating him as a suspect.
- Other cases of police brutality.
- Inhuman treatment in prison.
- Inordinate delay in releasing a detainee after he was bailed.
- Improper treatment of a minor at a Boys’ Reform School.
- Tardiness of the Police in enforcing Court Orders in cases involving arrears of Child maintenance.

Our office and other members of the Caribbean Ombudsman Association (CAROA) have been represented at several meetings concerned with the promotion and protection of human rights. These include – to mention two of these:

- A conference held in Copenhagen on the Work and Co-operation of Ombudsman and National Human Rights Institutions sponsored by the European Union and hosted by the Danish Ministry of Foreign Affairs.
- Commonwealth Meeting in Cambridge, England dealing with the Ombudsman and Human Rights. In this regard,

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Ms. Lawrence Laurent represented CAROA on a task force which produced a booklet on Best Practices for Ombudsman and Human Rights Institutions.

Actually CAROA was conceived at a meeting held in Antigua in 1998, sponsored by the Commonwealth Secretariat in collaboration with the International Ombudsman Institute. It was entitled Strengthening Ombudsman and Human Rights Institutions in the Commonwealth Small and Island States. The CAROA Constitution clearly reflects the importance placed on the human rights aspects of our work.

### **Conclusion**

With regard to women's reproductive rights, my office –Antigua and Bermuda Office- to date has not done much on the topic except in so far as it relates to problems dealing with women's rights generally and the rights of the child including child maintenance. The topic is so far mainly under the purview of the Division of Gender Affairs and also by an NGO in my country known as the Antigua Planned Parenthood Association. I expect however that as a result of attending this Conference the various offices of Ombudsman in the Caribbean will be able to play a more meaningful role.

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in Commonwealth Small and Island States: The Caribbean  
Experience Victor Ayeni, Linda Reif and Hayden Thomas PP  
198 – 213, Commonwealth Secretariat 2000.

## **V. RECOMMENDATIONS FOR ACTION**

### **Seminar-Workshop Resolution**

#### **“The Promotion and Protection of Reproductive Rights through the Work of the National Human Rights Institutions for Latin America, the Caribbean and Canada.”**

Representatives of the Ombudsman Offices of Latin America, the Caribbean and Canada, met in the city of San Jose, Costa Rica on May 14-16 2002, on the occasion of the Seminar-Workshop on “The Promotion and Protection of Reproductive Rights through the Work of the National Human Rights Institutions”, convened by the Office of the United Nations High Commissioner on Human Rights (OHCHR), the United Nations Population Fund (UNFPA) and the Inter-American Institute of Human Rights (IIHR).

### **I. Objectives of the Seminar-Workshop**

- Analyze the work carried out by the National Human Rights Institutions, as well as other organizations, to promote reproductive rights.
- Examine the existing structures or mechanisms in order to identify the opportunities and the obstacles faced by women in the exercise of their reproductive rights.

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- Analyze the ways in which the National Institutions can contribute to the development of an agenda for the promotion and protection of reproductive rights.
- Provide inputs to discuss and exchange experiences on the work undertaken by the National Institutions in the sphere of reproductive rights.
- Discuss and define concrete proposals to advance in the promotion and protection of women's reproductive rights.

## **II. Background to the Support of the Ombudsman Offices for Women's Human Rights**

- At the Second Congress of the Ibero-American Ombudsman Federation (FIO) held in Toledo, Spain (1997), the member organizations agreed to establish, within their respective institutions, a department or section to deal specifically with women's rights.
- At the Congresses held in Lima, Peru (1997), Oporto, Portugal (1998), Tegucigalpa, Honduras (1999) and Mexico (2000), the Ombudsmen reiterated their commitment to the principles of equality and non-discrimination among human beings and agreed to promote, in their respective countries, the necessary measures to eradicate the culture of discrimination towards women.
- During the Congress in San Juan, Puerto Rico (2001), the Ombudsmen reaffirmed their previous commitments and declared that continued and persistent forms of violation and restriction of women's rights, requires the creation or strengthening of institutional mechanisms (in cases where these exist) to contribute to the eradication of all forms of discrimination and violence against women.

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They also urged the governments of the Iberian peninsula and Latin America to ratify the Optional Protocol of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), recommending, in addition, that all Congresses of the FIO discuss these issues, incorporating a gender perspective.

**III. General Considerations Concerning the Promotion and Protection of Sexual and Reproductive Rights**

1. Universal human rights include sexual and reproductive rights.
2. The violation of people's reproductive rights restricts, interferes with and infringes upon their enjoyment of other rights, such as: the right to life, liberty, security and personal integrity; the right to decide the number and spacing of their children; the right to privacy, health, employment and social security; the right to education, development, equality and non-discrimination; the right to raise a family, to have access to appropriate, accurate and timely information, to legal protection and due process; and the right to a life without violence.
3. Given their universal, integral, indivisible and interdependent character, the promotion and protection of human rights -including sexual and reproductive rights-, should be considered in the context of the search for human development.
4. The application and effective exercise of sexual and reproductive rights is of benefit both to women and men, although women are the ones who suffer the most serious consequences of the non-observance of these rights in their daily lives.

#### **IV. Results of the Session**

The proposed objectives were accomplished satisfactorily and a valuable exchange of experiences took place. The Seminar-Workshop yielded a number of general recommendations for action, which were agreed during the plenary session and based on the consensus of the working groups.

In addition, representatives of the National Human Rights Institutions held a meeting within the context of the *Network of Women's Rights Offices* within these institutions, in order to inform, coordinate actions and expand their membership.

#### **V. General Recommendations for Action**

Follow up on the recommendations formulated during this Seminar-Workshop, which are structured for actions in the national spheres and at the regional level, as follows:

##### **In the National Spheres**

1. Strengthen the mechanisms of the National Human Rights Institutions to monitor, as far as their institutional capacities allow, the States' compliance with their commitments to promote and protect reproductive rights.
2. Follow up on the States' implementation, at national level, of their obligations with respect to the international human rights instruments, particularly in the area of reproductive rights, including the recommendations of the human rights committees or commissions and of the organs of protection of the Universal and Inter-American systems.
3. Monitor the implementation of the Convention on the Elimination of All Forms of Discrimination against

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Women (CEDAW) and promote the ratification of its Optional Protocol.

4. Promote the incorporation of a gender perspective into institutional actions.
5. Create or consolidate a specific section or department to deal with women's human rights in the National Institutions.
6. Incorporate sexual and reproductive rights into the work strategies of the National Institutions.
7. Develop working relations and strategic alliances on issues related to sexual and reproductive rights among the National Institutions, public bodies, the Legislative and Judicial Branches, local governments, organizations of civil society, non-governmental organizations (NGOs) that work specifically in that field, academic institutions and international cooperation agencies.
8. Seek closer ties, cooperation and technical assistance from international organizations and cooperation agencies (such as UNFPA and others), to support national actions for the promotion and protection of reproductive rights, adopting a process-oriented approach.
9. Design and implement an information strategy that includes the production of educational and specialized materials on topics such as sexual and reproductive rights; international instruments, national legislation and jurisprudence on this subject; public policy and existing services.
10. Promote the gathering of statistics and research on specific topics related to reproductive rights; public policies on reproductive rights and mechanisms for their implementation, including budget assignation; indicators for monitoring and evaluation .

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11. Design and implement a strategy to generate awareness and provide training (based on a process-oriented approach) on issues of women's rights and reproductive rights, directed both at personnel within the National Institutions, as well as at public sector and judicial institutions, local governments and the media.

**At the Regional Level**

1. Seek closer ties, cooperation and technical assistance from international organizations and cooperation agencies, to support national and regional actions for the promotion and protection of reproductive rights, using a process-oriented approach, for example:
  - a. Information and promotional campaigns;
  - b. Sub-regional committees to follow-up on the recommendations of this Seminar-Workshop;
  - c. Implementation of regional training seminars for the National Institutions;
  - d. Networks for the exchange of experiences and information among the National Human Rights Institutions.
2. Contribute to the strengthening of the Network of Women's Rights Offices.
3. Develop working relations and strategic alliances on issues related to sexual and reproductive rights between the National Institutions and non-governmental organizations of regional scope engaged in specialized work in this field.
4. Develop a communications strategy among the National Institutions for the exchange of information, work

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experiences, information and training materials, legislation and jurisprudence and research, among others.

5. Promote the inclusion of the subject of sexual and reproductive rights in the agendas of the Ibero-American Ombudsman Federation and the Central American Council of Human Rights Ombudsmen.

## **VI. Acknowledgements**

The National Human Rights Institutions that participated in the Seminar-Workshop wish to thank the Office of the United Nations High Commissioner for Human rights, the United Nations Population Fund and the Inter-American Institute of Human Rights for organizing this Seminar-Workshop.

We also wish to thank and acknowledge the contribution of all the institutions that shared their work experiences and knowledge on the subject of sexual and reproductive rights, specifically:

The Center for Reproductive Law and Policy (CRLP)

The Inter-American Commission of Human Rights

The Latin American and Caribbean Commission for the Defense of Women's Rights (CLADEM), regional offices of Brazil and Peru

The Center for Legal Action on Human Rights (CALDH) of Guatemala

The National Women's Institute of Costa Rica

The National Institute of the Family and Women of Uruguay

The PROFAMILIA Organization, Colombia

The Judicial Commission of Panama

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The Vice-Ministry for Gender, Generational and Family Affairs of Bolivia

**VII. Participants**

The Resolution of the Seminar-Workshop was signed by the representatives of the participating National Human Rights Institutions:

The Ombudsman Office of Argentina, Adriana Viñas

The Ombudsman Office of Bolivia, Godofredo Reinicke

The Canadian Human Rights Commission, Maureen Armstrong

The Ombudsman Office of Colombia, Beatriz Linares

The Ombudsman Office of Costa Rica, Ligia Martin

The Ombudsman Office of Ecuador, Alexandra Arroyo

The Office for the Defense of Human Rights of El Salvador, Raquel Caballero

The Human Rights Office of Guatemala, Francisca Marroquin

The Ombudsman Office of Haiti, Danielle Magloire

The National Commissioner for Human Rights of Honduras, Ana Pineda

The Ombudsman Office of Jamaica, Cory Mills

The National Human Rights Commission of Mexico, Armando Torres

The Office for the Defense of Human Rights of Nicaragua, Annabelle Sanchez and Patricia Independencia Obregon

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The Ombudsman Office of Panama, Zulima  
Fernandez

The Ombudsman Office of Paraguay, Sonia  
Fernandez

The Ombudsman Office of Peru, Lali Vicente

The Ombudsman Office of Venezuela, Asia Villegas

Done at San Jose, Costa Rica, this sixteenth day of May  
of the year two thousand two.

## **Seminar-Workshop Resolution**

### **“Promotion and Protection of Reproductive Rights through the Work of the Ombudsman Offices of the Caribbean”**

Representatives of the Ombudsman Offices of the Caribbean, met in the city of Kingston, Jamaica on March 18-20 2003, on the occasion of the Seminar-Workshop on “The Promotion and Protection of Reproductive Rights through the Work of the Ombudsman Offices of the Caribbean”, convened by the United Nations Population Fund (UNFPA), the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the Inter-American Institute of Human Rights (IHR), and facilitated by the Caribbean Ombudsman Association (CAROA).

#### **I. Objectives Seminar-Workshop**

- To provide the Ombudsman Offices with a framework for the application of human rights to reproductive and sexual health.
- To discuss critical reproductive health/rights issues within the region.
- To assess obstacles and opportunities that women and men face in the exercise of reproductive rights.
- To examine the existing structures and/or mechanisms within the Ombudsman Offices to promote and protect reproductive rights within the region.
- To encourage the development of action plans by the Ombudsman Offices for the promotion and protection of reproductive rights.

## **II. General Considerations Concerning the Promotion and Protection of Sexual and Reproductive Rights**

1. Universal human rights include reproductive/sexual and health rights.
2. The violation of people's reproductive and sexual rights restricts, interferes with and infringes upon their enjoyment of other rights, such as: the right to life, liberty, security and personal integrity; the right to decide the number and spacing of their children; the right to privacy, health, employment and social security; the right to education, development, equality and non-discrimination; the right to raise a family, to have access to appropriate, accurate and timely information, to legal protection and due process; and the right to a life without violence.
3. Given their universal, integral, indivisible and interdependent character, the promotion and protection of human rights –including sexual and reproductive rights–, should be considered in the context of the search for human development.
4. The application and effective exercise of sexual and reproductive rights is of benefit both to women and men, although women are the ones who suffer the most serious consequences of the non-observance of these rights in their daily lives.

## **III. Results of the Session**

The proposed objectives were accomplished satisfactorily and a valuable exchange of experiences took place. The Seminar-Workshop yielded a number of general recommendations for action, which were agreed during the

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plenary session and based on the consensus of the working groups.

### **IV. General Recommendations for Action**

Follow up on the recommendations formulated during this Seminar-Workshop, which are structured for actions in the national spheres and at the regional level, as follows:

#### **National Level**

1. In accordance with the definition on discrimination outlined in Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), identify cases, which have already been brought to the attention of the Ombudsman
2. Adopt the definition of Reproductive Rights as stated in paragraph 7.3 of the Programme of Action of the International Conference on Population and Development (1994); apply it in a country specific context and purposes while accepting that Reproductive Rights encompass Human Rights and wherever there are deficiencies in the law, make recommendations to the appropriate Ministry for changes
3. Disseminate information on both Reproductive and Health Rights to staff of the Ombudsman Offices in order to sensitize them to be able to identify violations when brought to their attention
4. Identifying mechanisms in place in the office of the Ombudsman for providing the necessary services for women's complaints.
5. Collaborate with all of the relevant Ministries and government agencies as well as appropriate NGOs,

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including women's groups, to disseminate information through training and public awareness campaigns.

6. To lobby legislative bodies to adopt specific provisions from the CEDAW to be enacted locally, e.g. Article No. 1 on Discrimination of Women, which will give each country better capacity to deal with discrimination issues which will impact on other areas such as labor issues.
7. Write to or meet with officials of relevant Ministries and government offices informing them of the outcome of this workshop and the need to strengthen mutual collaboration, for example: the preparation of public awareness campaigns and the promotion of legislative or constitutional changes.
8. Examine country legislation to see if there are any constraints impeding the investigation of reproductive and sexual rights and to propose changes, if necessary.
9. The offices of the Ombudsman should be involved in any ongoing review of legislation, which deals with Human Rights and Reproductive and Sexual Rights.
10. Organize seminars on the subject matter of Promotion and Protection of Reproductive Rights through the work of the Ombudsman Offices dealt within the Jamaica Workshop to sensitize the population as a whole.
11. Promote education on Human Rights and Reproductive Rights in schools through the health and family life syllabus.
12. Need to establish Woman's Division in the Ombudsman Office to deal with treatment regarding women (discrimination), where appropriate.
13. Attachments to offices of the Ombudsman and/or Human Rights Commission, and Organizations with experience in the promotion and protection of Reproductive and

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Sexual Rights should be encouraged for Caribbean Ombudsman and their staff.

14. To collect information and data by way of visits to institutions and analyze how to deal with the treatment of women in particular special groups such as prisoners.
15. To prepare reports from the Ombudsman's office to Parliament on specific areas of abuse, which need urgent and immediate redress and try to have the matter prioritized.
16. To encourage compliance with existing laws with the pertinent Human Rights Conventions, including recommendations of the United Nations Human Rights Treaty Monitoring Bodies.
17. Work closely with media to heighten women's awareness of the division in the Ombudsman office that deals specifically with their issues.
18. Re-emphasize the need for the Ombudsman's offices to be provided with adequate financial, human and technical resources.

#### **Regional Level**

1. Recommend the establishment of a regional database to allow for the monitoring of violations of Human Rights and Reproductive Rights both at the national and legislative levels. This would allow for exchange of information and collaborative action among Ombudsman offices of the region.
2. Human Rights including Reproductive Rights should be placed on the Agenda of future meetings of the Caribbean Ombudsman's Association. Follow-up meetings to monitor progress on the above recommendations at Inter-American and CAROA levels.

3. Follow-up actions to monitor progress in the above mentioned recommendations.

#### **V. Acknowledgements**

The Ombudsman that participated in the Seminar-Workshop wish to thank the Inter-American Institute of Human Rights, the United Nations Population Fund, and the Office of the United Nations High Commissioner for Human Rights, for organizing this Seminar-Workshop, with special thanks expressed to the Caribbean Ombudsman Association and the Public Defender of Jamaica for their assistance in the overall organization of the Workshop.

We also wish to thank and acknowledge the contribution of the institutions that shared their work experiences and knowledge on the subject of sexual and reproductive rights, specifically:

- The Center for Reproductive Rights (CRR)
- United Nations Latin American Institute for Crime Prevention (ILANUD)
- *Defensoria de los Habitantes* of Costa Rica

#### **VI. Participants**

The Resolution of the Seminar-Workshop was signed by the representatives of the participating Ombudsman Offices:

Antigua and Barbuda, Office of the Ombudsman,  
Hayden Thomas

Barbados, Investigations Officer. Office of the  
Ombudsman, Barbara Taylor

Bermuda, Acting Director of Human Affairs, Beverly  
Morfitt

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Bermuda, Human Rights Commission Chairperson,  
Marianne Scott

Guyana, Office of the Ombudsman, Shaik Y.  
Mohamed

Haiti, Program Officer, *Protecteur du Citoyen et de la  
Citoyenne*, Edly Pierre Canel

Jamaica, Office of the Public Defender, Howard  
Hamilton

Puerto Rico, *Coordinadora Red de Defensorías de la  
Mujer*, Carmen Lourdes Monroig, Ombudsman Office  
of Puerto Rico

Saint Lucia, Office of the Parliamentary  
Commissioner, Selwyn Vincent

Trinidad and Tobago, Office of the Ombudsman,  
George A. Edo

Caribbean Ombudsman Association, Lawrence  
Laurent

Dated, this nineteenth day of March of the year two  
thousand and three in Kingston, Jamaica.

## **VI.GOOD INSTITUTIONAL PRACTICES FOR THE PROMOTION AND DEFENSE OF REPRODUCTIVE RIGHTS**

### **A Nongovernmental Organization: PROFAMILIA in Colombia**

*Cristina Calderón*<sup>86</sup>

#### **Introduction**

Colombia is a country rife with contradictions. The national constitution offers generous recognition and guarantees of human rights, which has been further elaborated on a broad base of case law. At the same time, the country has experienced serious setbacks in laws and policies, such as the recent reforms to the Law on Domestic Violence, the Criminal Code and the National Plan for Sex Education.

Taking the latter as a case in point, the National Plan for Sex Education is compulsory nationwide and has been since 1992. However, compliance has been declining sharply under the current administration, which has allowed the Roman Catholic Church to take a broad, active role in policies on women and youth. For example, the Office of the President's Advisor on Women's Equality was left out of the budget and rendered practically invisible, while copious resources went into a national program for building peace

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<sup>86</sup> PROFAMILIA Advisor for Sexual and Reproductive Rights

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and family harmony. This program is run by the Office of the President's Adviser on Social Policy and the First Lady, and makes no mention of defense of sexual rights or reproductive rights.

Unfortunately, the 2000 population and health census revealed a rise in usually undesired teenage pregnancy, along with abortions performed under unsafe conditions. It also found significant increases in domestic violence and sexual abuse, with high rates of impunity.

### **With regard to Profamilia**

What is Profamilia and how have we incorporated sexual and reproductive rights into our work? What can we contribute to organizations working to defend the rights of women?

Profamilia is a nongovernmental organization founded in 1965, the second organization of its kind in the world. Since the beginning, it has been providing women with sexual and reproductive health services. We began working with men in the 1970s and adolescents in 1990. More recently, we extended our services to the population of women and men displaced by the internal conflict.

We run 35 centers around the country, mostly in the western region, which is the most heavily populated. We target the more remote areas and poorer regions with mobile programs on sexual and reproductive rights. We make every effort to practice a gender perspective in our centers, in public-awareness programs and in research projects.

The Institution's primary objective has been to promote the right to family planning. We work for better sexual and reproductive health and offer information and services in the framework of sexual and reproductive rights.

### **Working Strategies**

We offer our users, both men and women, a number of strategies in support of external services, including lectures, counseling, and informational and educational materials such as brochures and fliers on sexual and reproductive rights, emergency contraceptives, and the like.<sup>87</sup>

We also have strategies for publicizing rights, such as the legal service which has been in operation since 1986, the advisory office on sexual, reproductive and gender rights since 1995, and a scientific advisory service that supports all these other activities.

We have been involved in training since 1999. We began with the South-South initiative, a project that in its first three years was supported by the Kingdom of the Netherlands, and for the next four years will work as a consortium of various institutions, with support from AID. This project develops modules on human rights, including sexual and reproductive rights, targeting women, men and young people. It will produce a total of 12 modules on different subjects. Five hundred men and women students from around Latin America and the Caribbean have taken part in preparing this material. The UNFPA has also supported the initiative in several countries.

Last year we held an international seminar on sexual and reproductive rights, with support from the South-South program, Toronto University and the UNFPA. We also have a publication for announcing opportunities available through the Inter-American System to study, lodge complaints, and follow up on cases involving violation of sexual and reproductive rights.<sup>88</sup> The purpose of the international

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<sup>87</sup> All these materials can be found on our web site, [www.profamilia.org.co](http://www.profamilia.org.co).

<sup>88</sup> All this material is easy to use and readily available on CD ROM, or can be downloaded from our web page, printed, and used as support material for resolving cases.

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seminar and all this material is to encourage human rights activists, judges, and members of the judicial system to learn more about the System and be aware of all the tools it has to offer for filing complaints, to create case law and international standards of protection.

Another Profamilia project encouraging women and men to become involved as active citizens targets human rights education with an emphasis on sexual and reproductive rights. This project, active in several cities around the country, places Profamilia in partnership through joint activities with the health sector and the education sector.

We recently began a project to publicize sexual and reproductive rights. It is part of a strategy to promote safe maternity, in view of the fact that every minute, somewhere in the world, a woman dies of preventable causes. We have also been training young people to serve as agents of multiplication to promote sexual and reproductive rights.

Another more recent project called “Double Protection: Connections between Sexuality and Eroticism,” was held first with adult women and young people. The idea is to encourage the use of double protection, meaning that sexuality can be exercised without risk of undesired pregnancy, while also preventing infections and sexually transmitted diseases. We use the term “double protection” in reference to simultaneous prevention of pregnancy and sexually transmitted diseases.

We learned a number of lessons from this initiative:

- We came to understand what women think about double protection. We found that they use contraceptives to prevent pregnancy, but rarely think about disease prevention. Women always see themselves in a reproductive and nurturing role; they mentioned low levels of bargaining power and communication, and they

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believe that only men are at risk. This perception holds very serious implications for women's health.

- We asked health service providers what they thought about double protection. First, they did not understand the concept clearly or know exactly what it referred to. They thought it had something to do with both members of the couple or involved back-up contraception. Some associated it with high-risk groups, not women in general or the overall population. Service providers were more concerned about solving immediate problems, that is, doling out antibiotics or medication. We found very little knowledge on the subject of sexuality, a sociocultural setting where the taboo is still active, and that users, both men and women, want little more than a contraceptive that will prevent pregnancy. In response, we scheduled an e-mail course on sexuality for guidance counselors interested in the subject. We are currently finishing the first course, and results have been quite satisfactory.
- This work also gave us the opportunity to find out how adolescents feel about what it means to be a man or to be a woman, including how they perceive pregnancy and what they think about the risks of contracting sexually transmitted diseases. In response, we put together an information strategy to communicate available services combined with community work. The ultimate goal is to involve trusted adults in the process, including both teachers and parents.

Last year we were active in a campaign to defend the use of emergency contraception, also known as the “morning-after pill.” Although Profamilia is licensed to import and distribute the pill, two bishops from Bogotá have filed a request with the issuing institution (INVIMA) to revoke our license, arguing that the product is an abortifacient. The Institute agreed to undertake an *ex officio* review despite

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legal provisions stating that such a review may be conducted only for technical or scientific reasons, without exception. We based our defense arguments on scientific and regulatory considerations, human rights, and specifically sexual and reproductive rights. We also argued that our Constitution calls for separation between Church and State, as well as freedom of conscience and worship.

During this process, we received clear support from the women of Colombia as individuals and through women's groups and national and international scientific and academic associations. The Ombudsman office produced a special brief, and we worked closely with the media and received their support. This debate was the best publicity we had during the year, as the population came to understand about emergency contraception and its use.

### **Conclusion**

To close, I would like to emphasize the need for all interested institutions to work together, including civil society, governmental organizations and international assistance. The general population needs to remain alert to human rights and report violations. I would also like to join some of the previous speakers in this seminar in reiterating that without sexual and reproductive rights there can be no full exercise of citizenship.

## **A Governmental Institution in Costa Rica: the National Women's Institute**

*Ana Rojas*<sup>89</sup>

### **Background**

The National Women's Institute, INAMU (Instituto Nacional de las Mujeres) is a national entity created to work for the progress of women and for achieving gender equity. As such, it is the leading institution on public policies for gender equality and equity. It was created in the mid-1970s as the Center for the Development of Women and the Family. A law enacted in 1998 restructured the center as an autonomous institution renamed the National Women's Institute. Several years ago, the Executive Branch created a new cabinet-level position and, for the first time, appointed a Minister for the Condition of Women, part of whose job is to serve as president of the INAMU. This greatly boosted the status of the institution, and through its presence on the Governing Council, it acquired direct input into public policy development.

The National Women's Institute is entrusted, among other things, with promoting and protecting reproductive rights, a critical responsibility and an intrinsic part of its mission and legal mandate. The sexual and reproductive rights of women are one of the cornerstones of our work, closely intertwined with empowering women to take ownership of their own bodies. Once they claim this power, they unleash many others: recognition of the body as a source of power leads to emotional and physical autonomy and becomes a platform for achieving other forms of autonomy, including political and economic.

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We have undertaken a number of programs and projects to make these beliefs a reality:

- Strengthening networks and giving them a role in the Comprehensive Health Care Model for Women: this pilot experience is taking place in the Women's Hospital as well as health care regions in the *cantons* of Acosta, Aserrí and Desamparados. The networks maintain close ties with women leaders in these communities. The purpose of the project is to foster autonomous, participatory leadership and develop the power of women to have an impact on planning women's health programs.
- The Young Love Program: this program began under the previous administration and is currently headed by the National Youth Movement. It was coordinated with the Ministry of Public Education in the framework of its sex education training plan, offering support in the subject of sexuality for 508 professionals from various regional education offices. These professionals then implemented educational projects on sex education, targeting the student population with activities for training, information and awareness-raising. It also coordinated a project with the Costa Rican Social Security Fund, CCSS, specifically the Comprehensive Adolescent Care Program, and the National Youth Movement, holding nine community symposia to encourage teen/adult dialogue on sexuality. It launched an educational campaign on sexuality, broadcasting two television shorts and three radio spots, and promoted a CCSS telephone hotline called "Count on Me," targeting the adolescent population.
- The Building Opportunities Program: this program holds educational activities all over the country. The Training for Life courses have been attended by 4024 girls and teens, both pregnant and mothers.

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- **Responsible Fatherhood Law:** this law was enacted in March 2001 and gained international attention as landmark legislation. It marked a major turning point in human rights protection and respect for the Convention on the Rights of the Child, which Costa Rica ratified in 1990. The law offered a legal mechanism for determining the paternity of children born out of wedlock, in an administrative setting, based on an unimpeachable expert scientific test (DNA). It signaled a clear departure from the legal paradigms inherited from traditional patriarchal practices that remain common in most western countries.

The laboratory responsible for DNA tests is currently being reviewed by a national certification board to verify its infrastructure equipment. By June of this year, it is expected to be up and running. Requests by women are currently being handled through judicial channels, and tests are conducted in the laboratory of the Judicial Investigation Organization. So far, recognition has generally come about voluntarily.

By mandate of the Juvenile Code, the National Women's Institute coordinates the Technical Secretariat of the Commission on Responsible Fatherhood.

The lives and behavior of women, both individually and collectively, are determined in large measure by the degree to which they are empowered and autonomous. This applies not only to looking after their own health and developing good habits, but also, as their personal skills grow stronger, for redefining their hitherto subordinate position in gender relations. Our responsibility as an institution is to help them recognize their own power and position it.

The Institute faces the challenge of drafting and promoting a national policy for gender equality and equity, in coordination with other public institutions and State entities that run programs for women, and with social

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organizations. It has other challenges as well. It must defend the rights of women as established in international declarations, conventions and treaties as well as domestic law; promote equality between the genders; and promote actions to improve the status of women. All this is part of its mandate and institutional role.

Today the Institute is working in a number of areas. First, we focus on the legal status and protection of women's rights. We develop laws, regulations and instruments involving the status of women, and review those currently in effect, and provide legal counsel on protecting rights. In the second area, developing public policy for gender equality and equity, we focus on gender mainstreaming in public institutions, introducing the use of the gender perspective in processes of institutional planning and budgeting. The purpose of gender mainstreaming is to inject a new world view, and thus a new organizational culture, into the dominant lines of institutional thinking and action.

For this work we have developed an intervention strategy which had led us to sign inter-institutional agreements and set up high-level political and technical commissions (Executive Decree 2848 of February 4, 2001) that are promoting sectoral plans of action for gender equality and equity. As a result, our activities to achieve gender equity and equality have focused directly on such sectors as education, labor, agriculture, health, microbusiness and credit. This strategy has led us to acquire numerous skills for negotiation and for building strategic alliances even at the highest decision-making levels.

### **Sexual Health and Reproductive Health**

A high-level political commission for the health sector was set up last March 8, consisting of the Minister for the

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Condition of Women, the Deputy Health Minister and the Executive President of the CCSS. Two key factors were considered when we developed this intervention strategy: the need to study and act at the regional and local levels simultaneously, and the need to work with public institutions to incorporate the gender approach, while at the same time helping women seize their full of citizen rights and demand public policies for gender equality and equity. This is an ongoing challenge, and it has been very difficult to bring the two processes into alignment.

Today the National Women's Institute is adding its efforts to the reproductive health work that the Costa Rican government has already been doing for several decades. This is part of our perspective of health as an inalienable human right and a product of society that bridges no delay.

It is active in a number of projects:

- At promoting the practice of active citizenship and autonomous leadership among women.
- It is involved in establishing the material and nonmaterial conditions needed to give women access to the benefits of development on an equal footing with men.
- At making its voice heard in the design, implementation, evaluation and institutionalization of public policies, by introducing information systems that break down data by sex, as a basic principle for working from a gender perspective, as well as the ongoing review of regulations, protocols and laws.

It is important to understand that public policies are not neutral; their impact is often determined by sex. Public policy needs to respect the principle of diversity and allow for the fact that there is no one model of how to be a woman or how to be a man. This is why we emphasize that, before

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we can achieve equality between the genders, we first need to recognize differences.

The public policy supported by the Costa Rican government for reproductive health is not new, although it has only recently been viewed through the lens of human rights. It began to take shape in the early 1990s and gathered strength starting in 1994 as a result of the International Conference on Population and Development and the Fourth World Conference on Women. The new current brought into question the role of “beneficiary” that had been ascribed to users of public services, replacing it with a different concept: service users become the focus of attention and need to be given answers based on their own needs and interests, that is, their rights.

These new trends called for pressure to be exerted on public institutions to revise their value systems and reexamine interpersonal relationships from the gender perspective. It was time to apply the rights approach in building a new framework to govern social relations and, additionally, recognize full citizen rights of all individuals regardless of social condition, sex, ethnic identity, place of origin, disability, sexual preference, and the like.

Over the years, the State has undertaken a number of different activities involving sexual and reproductive health:

- Since the mid-1960s, the population of Costa Rica has been subject to the influence and philosophies of population control assistance programs. In this it resembles other countries in the region, and the direct result was the beginning of a demographic transition. Already in 1962, the Clínica Bíblica private hospital had set up a family-planning program. Other institutions were created at that time included the Costa Rican Democratic Association, a nongovernmental organization that played

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a critical role for several decades in publicizing and providing access to birth-control methods.

- By approximately 1982, a broader array of policies and mechanisms had been developed, and virtually all programs involving family-planning had been absorbed by the Costa Rican Social Security Fund (CCSS); thus the entire population had ready access to such services.
- Much was done in the 1980s to tackle the issue of reproductive health. A series of guides on sexuality, published for use in primary and secondary schools, came under heavy fire and the materials were eventually taken out of circulation. The Young Love Program, mentioned above, met a similar fate when the materials it had produced came under attack by representatives of the Roman Catholic Church. In the end, a special commission was set up to re-edit these educational materials.
- Controversy in the 1990s swirled around the issue of sterilization, and opportunities arose share viewpoints and thoughts with a diversity of social stakeholders. In 1992, the Constitutional Court handed down a decision concerning the requirement for spousal consent on a women's access to therapeutic sterilization. The decision sparked nationwide debate, and by 1998, conditions were ripe to introduce amendments to the regulations on sterilization.
- The Ombudsman office was actively involved in this debate through its Women's Defense Office, which produced a carefully researched document on sterilization and human rights. This report offered extensive analysis of shortcomings in the existing regulations.
- In the end, the regulations were repealed and Executive Decree 27913 was enacted in 1999. It was a major

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milestone in recognizing reproductive and sexual rights. The new decree reflected the efforts of a variety of social groups from both civil society and the State.

The new regulations established a number of mechanisms worth discussing. The first is an interinstitutional commission on health and reproductive rights, one of whose responsibilities is to provide input for developing a national policy on sexual and reproductive health. The policy has not yet been developed, but guidelines and a conceptual framework are now ready and will serve as a basis for the new policy.

Article 4 of the decree calls for a counseling service on sexual and reproductive health and rights to be made available at all levels in public and private institutions that provide reproductive health services. To the extent possible, this counseling service will consist of an interdisciplinary team responsible for designing and carrying out actions to guarantee that the reproductive and sexual rights of users and of the target population are respected.

Articles 3 and 4 call for a number of measures involving health services. The CCSS Department of Preventive Medicine has a section on Women's Health that has taken responsibility for these measures. It held a first workshop for health personnel on counseling in the use of voluntary surgical contraception.

The progress made in this field bears testimony to the work of many different entities. For example, the Constitutional Court recently gave a judgement on an appeal (remedy of *amparo*) filed by the Ombudsman Office, concerning access to vasectomies. In another example, the CCSS Department of Preventive Medicine has been working to clarify the meaning of due process in surgical interventions, along with other questions arising from this decree.

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Similarly, because there has been much resistance to the new system, the Chief Medical Officer of the CCSS issued specific guidelines on implementation. Reminders were sent on two different occasions to directors of hospitals and health clinics, urging them to honor the decree and reminding them of the need to dissolve the sterilization committees that had operated under the old regulations. The guidelines ordered them to set up the new counseling services, making them available on an equal footing to both women and men, and to follow through with other requirements about which they had been reminded constantly because of reticence by the staff.

Even though the new decree is comprehensive and multifaceted, its initial impact was to reveal a huge unmet demand for sterilizations. In many cases, the medical staff responsible for surgical procedures were reticent and even uncertain about the new decree, and as a result, the methods of implementation tended to be biased. It became clear that too little public discussion had taken place, especially in the area of sexual rights.

Some people think the decree applies only to sterilization, overlooking other elements of comprehensive sexual and reproductive health care. In 2000, the Women's Health Section conducted a study on implementation of counseling services on sexual and reproductive health, with the cooperation of the United Nations Population Fund. The purpose was to evaluate perceptions of the decree.

The study was based on a qualitative methodology to discover how health personnel understood the decree and what they thought about it. One of the respondents, a physician, said:

“The new legislation is too liberal. In the CCSS, women at risk should hold top priority, but now desire, instead of risk, is the main consideration. Our priority should still be for

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women at risk, and I am concerned about this and feel uncomfortable.”

Another physician said:

“I think this legislation falls far short. There should be more constraints, because a single woman, a woman alone, and adolescent woman, these young women are coming and being sterilized, and I think there needs to be some kind of restraint. It’s not right for a woman who has not had children. Not because I am *machista*, but there could be repercussions because of too few children or too few people. Or repercussions of sexual promiscuity that would land us with problems like sexually transmitted diseases.”

This study took an important, more in-depth look at the issue, and it has triggered careful thought about adopting new practices based on respect for human rights. It is causing health workers to make an epistemological break from the traditional paradigm within which they understood women’s health, and it is encouraging their efforts to become true facilitators able to guarantee that the user population has access to information and knowledge about the gamut of options available.

### Conclusions

Throughout history, the professionals and institutions offering family-planning and reproductive health programs have labored under a weighty institutional culture and an approach based strictly on biology, an approach that is highly restrictive and very limited. One of the main criticisms of this method is that it actually seems to block attempts to strengthen other first-tier health care practices. For example, the health sector reform program attempted to strengthen basic comprehensive health-care teams, especially to promote preventive health care. Unfortunately, despite

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extensive efforts, curative medicine continues to rule the day, to the detriment of health promotion activities. This practice places severe limits on the policy framework, and it is an inherited approach that health services inevitably reflect in the way they address reproductive health issues.

Finally, I must acknowledge that the national and international legal framework is a fundamentally important mechanism for protecting reproductive health rights in women. However, it cannot be effective without a parallel effort to adopt comprehensive strategies for promoting and protecting reproductive rights and sexual rights, approaching the issue from the perspective of cultural roles and relationships of power. It is also important to ensure a clear linkage between the users of health services and the overall population so that, with one voice, they can begin to demand sexual and reproductive rights and make sure that information is available.

## **Promotion and Defense of Reproductive Rights in Panama's Family Court**

*Ángela Russo*<sup>90</sup>

### **Panama's experiences**

Panama has had a number of important experiences promoting and defending reproductive rights, and the Family Court has played an active role.

In 1998, Panama undertook a concerted study of problems with sexual and reproductive health among the population, promoted by the United Nations Population Fund (UNFPA). The process involved around 2000 people from 200 different civil society entities, including parents, homemakers, teenagers, people with disabilities, and people of varying sexual preferences.

Upon completion, this concerted process yielded a national assessment of sexual and reproductive health, and shortly thereafter, an executive decree created the National Commission on Sexual and Reproductive Health. Standing members of the Commission are: the ministers of health, education and youth; the First Lady; directors of the Social Security Fund and the Panamanian Special Education Institute, and the president of the University of Panama. Other members serve as representatives of various NGOs including several that work for HIV/AIDS, the Coordinating Center for the Comprehensive Development of Women, the Parents' Federation, the Ecumenical Council, the Archdiocese, the Panamanian Family Planning Association, the Federation of Associations for the Elderly, the Kuna Yala community, the Gnobe Bugle Community and the National Youth Council.

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<sup>90</sup> Superior Family Court Judge, Panama.

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The tasks assigned to this commission include building consensus and mobilizing the efforts of civil society and government institutions to implement a national plan for sexual and reproductive health; disseminating information on sexual and reproductive health throughout the population; and promoting activities for information, guidance counseling, education and comprehensive health care for sexual and reproductive health.

An important recent development has been the debate triggered by a draft Law for the Protection of Pregnant Teens, supported by UNFPA. Even though the 1995 Family Code created the right of pregnant teenagers to remain in school, and an executive decree was issued with the implementing regulations for the Code, in reality only one in 10 pregnant teenage girls remains in the educational system; the rest drop out in the face of stiff opposition by educators and families.

The Legislative Assembly Committee on Women, Children and the Family, at the urging of Congresswoman Teresita de Arias, submitted a draft bill to require that pregnant teenagers remain in school and receive legal assistance to defend their rights. It also recognizes the State's obligation to provide legal and psychological assistance and guidance to teenage girls who are pregnant. The law was approved in third debate and is now awaiting signature by the President of Panama.

This draft bill sparked considerable controversy, and the media began to spread reports, newspaper articles and opinion programs opposing this move to assert the right of pregnant teenagers to remain inside the educational system. The UNFPA took the role of catalyst and set up a sub-commission to study the problem, in accordance with the decree originally creating the National Commission on Sexual and Reproductive Health, that calls for the creation of

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sub-commissions when necessary. This sub-commission decided to assemble media and journalists willing to help produce programs in favor of recognizing the rights of teenage girls, and also to inform the public about the causes and consequences of teen pregnancy. The Ministry of Education has been ordered to take a lead role in defending the rights of pregnant teenagers, as established in the Family Code.

Panama also has a law on HIV/AIDS that emerged from the work of the Commission on Sexual and Reproductive Health and indirectly from the UNFPA campaign to defend the rights of pregnant teenagers. This law expressly mandates the Ministry of Education and the Ministry of Health to provide adolescents with information and to introduce instruction on these subjects in the school curriculum. They are also required to monitor lessons taught in the schools by teachers who may not have been trained to teach on sexual and reproductive health.

The Commission feels that this type of follow-up is very important, which is why the Ministry of Education needs to be involved. The Commission is also emphasizing the use of statistics to inform the public of the extent of teen pregnancy. Finally, it recognizes the need to build alliances with the media, as neither the press nor teachers are sufficiently knowledgeable on this subject.

### **The work of Family Court**

Because it is a State institution for the administration of justice, Family Court has placed top priority on training and sensitizing its staff on gender issues. These are the people who are called upon to acknowledge rights and enforce the law for all citizens on an equal footing.

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For years now, Family Court has emphasized training through the Judicial School and with support from the Program for Women, Justice and Gender of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD). The work has focused on training trainers so that larger numbers of people can become sensitized to gender issues. The result will be real, effective recognition of the human rights of women, as equality is written into the laws and applied and recognized in real life.

The institution's occupational clinics have hosted special health promotion activities with a focus on prevention. These training sessions have included issues of HIV/AIDS.

The Court has taken a leading role in achieving full recognition of women's rights. Much of its work has been to hold training activities all over the country, targeting prosecutors, defenders and court-appointed counsel. The purpose is to raise awareness so that all these justice workers will begin to interpret and apply a gender perspective in their judgments. A Gender Committee has been set up as a multiplying agent for the courses.

Training activities continued in 2002, and the Court worked in synergy with other State institutions. For example, it signed an agreement for cooperation and technical assistance with the Ministry of Youth, Women, Children and the Family.

The Court sits on the National Council for Women, an advisory agency created in 1995 by executive decree. As a member of the Council, the Court takes part in activities organized by the National Women's Directorate, especially on International Women's Day, Nonviolence Day and Rural Women's Day.

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The Court recently played an active part in drafting implementing regulations for Law 4 of 1999, called the Law on Equal Opportunities for Women. It also helped draft the Second Equal Opportunity Plan (PIOM II). Finally, it helped create a network of public and civil institutions that produce and use statistical information, pushing for the incorporation of a gender approach in national statistics. The purpose is to facilitate the formulation, implementation, follow-up and evaluation of public policies with a gender perspective.

**A Network of Women's Organizations: CLADEM Campaign for an Inter-American Convention on Sexual and Reproductive Rights**

*Roxana Vásquez*<sup>91</sup>

**Background**

The CLADEM campaign for a Convention on Sexual and Reproductive Rights is a means to build and promote medium- and long-term reference points by defining strategies with the capacity and potential to mobilize. It is also useful for opening channels to pursue political work for building alliances and accumulating power so we can make our voices heard and forge a place for our proposals in democratic scenarios.

We see this campaign for the Convention as a political-cultural and legal-institutional strategy whose purpose is to place on the agenda for discussion those things that no one mentions or touches: sexual and reproductive rights of women.

In 1998, CLADEM decided to work for a convention to promote and protect sexual and reproductive rights. Originally seen as our own goal, it later became a partnership activity with other organizations.

The first concern that pushed us in this direction was the fragility of the legal setting in the countries. Domestic regulatory structures were fragile, and we also encountered great difficulty promoting and achieving broader, more democratic, less discriminatory laws. Examples abound, but here I will just mention that in the 1990s, abortion was fully criminalized in four countries of the region: Colombia, Honduras, Dominican Republic and Haiti. Over the

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following decade, the number of countries with full criminalization rose to six, with the addition of Chile and El Salvador. The impact on the lives of women was devastating, especially for lower-income women.

During this time and through 2000, 13 countries in the region received recommendations from human rights committees to review their legislation and decriminalize or reform abortion laws.

In the second place, our governments are increasingly willing to accept more advanced views from other countries. Nonetheless, the mentality is quite contradictory when States commit in international settings to things they are not necessarily willing to accept domestically. This can be attributed, first, to pressures that arise within institutions, and second, to national fragility. It also reflects the difficulties that we have encountered as civil society organizations and some institutions to bring about institutional mechanisms that are truly effective.

In the third place, we find that the feminist movement and the women's movement have the capacity to make use of international instruments, which although difficult to apply, are yielding good results.

We have worked with a number of groups to process information, generate ideas and engage in debate, and consequently we have reached one essential conclusion: that sexuality and control of reproduction have once again come under regulatory attention. They always have been, but at certain moments in history, tensions rise and particular results ensue. For example, public debate is currently revolving around three different cases of acephalous fetuses. One is in Argentina, where justice authorities authorized a Cesarean section to remove the fetus. Another is in Chile, where the case has prompted widespread debate and conservative sectors are using the media to push for

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continuation of the pregnancy. The last case is in Peru, where all possibilities of abortion were denied. In this case, CLADEM will be working with the Human Rights Committee, seeking legal remedies for cruel, inhuman, degrading treatment.

Other examples reveal the existence of a very intense worldwide movement posing many challenges for reproduction and sexuality:

- In England, a surrogate mother has won the first phase of a legal battle to keep the twin boys she bore for nine months.
- In London, in December of last year, the authority on human fertilization and embryology opened the way to create designer children, selected as embryos, to provide healthy cells able to save the life of a critically ill brother or sister.
- At a conference in Rome, scholars and scientists declared that the embryo is a patient.
- The Strasbourg Court acquitted the government of France of a charge of discrimination for denying adoption rights to a homosexual citizen.
- The United Nations convened a meeting to examine the crisis caused by declining world fertility.
- In Peru, a law has just been enacted to classify injury to an unborn child as a crime.

There is movement and tension in this region, taking the form of the three broad conflicts:

- The first could be called market interest versus human rights protection. More than tension, it is a profound contradiction.
- The second is a conflict between a conservative view that ascribes to the family a strategic value for preserving a

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certain order this group defends, versus progressive views that defend the exercise of freedoms and autonomy of persons. It is worth asking whether some of these progressive positions would be able to accommodate, for example, the freedom and autonomy of women in procreation.

- In the third place, the view that a given ethical or religious value system is universally valid contradicts the vision of a secular State. I would point specifically to the role and power of the Roman Catholic Church in secular States.

### **How do we visualize the Convention process?**

We see the Convention project as a long-term process of consensus building and negotiation, and we estimate that the many stages could take from 10 to 15 years. At present, we as a movement are involved in rethinking and discussing among ourselves, examining potential alliances, and encouraging debate with the general population. The strategy points directly and explicitly at strengthening the international legal framework, incorporating into it the kinds of localized actions that will have an impact on the political and cultural environment in the different countries of the region.

It is not a question of merely drafting new laws; we also face the critical need to build a political platform on which to rethink and revise a number of geopolitical and macro-political assumptions. Sexuality and procreation, which point to the most human of rights, have a highly personal and private dimension. At the same time, they require decisions of a macro-political nature. This is why we have begun to facilitate discussion, obtain reliable information, and strengthen the feminist and women's movement by improving their skills at legal and political persuasion.

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In the legal institutional sphere, we anticipate that our campaign will be involved in international or national litigation and national legal defense activities, working for interpretations that will extend the reach of sexual and reproductive rights. We have begun to work for changes in the laws, although with some difficulty. Conservative forces hold considerable political power over a number of legal issues, and the movement has very limited potential for resistance.

We have also been compiling and organizing information from the United Nations system and the OAS system. We are involved in several projects for collecting and evaluating legislation and case law in the countries that have the most advanced legislation, especially in countries of the first world. We are compiling small collections that can be used for help and reference. We have also conducted surveys in the women's movement to find out how sexual rights and reproductive rights are defined.

We have completed national assessments in 14 countries of the region: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, El Salvador, Honduras, Mexico, Panama, Paraguay, Peru, Puerto Rico and Uruguay. These studies will provide us with a point of departure for learning about the issues in each country and performing trend analysis. The assessments cover 15 items, including sex education, abortion and teenage pregnancy. With this material we can draw a provisional picture of the situation in the region to identify trends and contribute new elements for dialogue and discussion.

### **Identified Gaps**

All this work has pointed to a number of gaps:

- The gap between the formulation of laws and regulations and the development of public policies, which are often divorced from the framework of new national legislation or international instruments.
- The gap between formulation and practical application of public policy. One factor that tends to keep this gap open is limited access to public information, despite the presence of laws regulating it in some countries. Information is generally very complex, and information on the allocation and use of budgetary resources is especially elusive.
- It is also difficult to obtain information for performing gender analysis of budgets, but such information is necessary in order to follow up on the different policies and their specific target groups. Existing information on evaluations of policy implementation is also hard to find.
- Another hindrance is that the governments lack a systematic follow-up process, and the forms used to compile and analyze information are seriously defective. This makes it difficult to compile historical series in the different countries and impossible to conduct comparative analysis among countries. Citizen oversight is therefore limited to very general matters.
- Legislative and policy analysis continues to labor under a concept of sexuality and procreation that focuses exclusively on health. This introduces the risk that sexual and reproductive rights will be restricted to health concerns, without considering that they are also human rights.

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- The issues that have received the most attention have to do with human rights violations, or those things that should not be allowed. Few opportunities have become available for taking affirmative positions, that is, stating what we want and not just what we do not want.
- In most countries of Latin America, abortion is a crime. However, new views and intentions can be glimpsed in public policies that explicitly target a lowering of pregnancy-related death rates among women. This introduces several contradictions, because so long as abortion continues to be a crime, mortality will be difficult to address. Decriminalization of abortion could reveal the unknown number of illegal abortions. The second contradiction is that, even though there are information policies on contraceptive methods, these same policies state the convenience in delaying the beginning of sexual relations. As regards to HIV-AIDS and pregnancy in adolescents, for example, the use of protective methods is promoted, although there is a mandate on sexual abstinence.
- As I stated before, the initiative for the Convention campaign came from CLADEM. Because we felt it was critically important not to pursue this alone, we have encouraged alliances and have convened all the networks in the region as well as a number of organizations with which we feel the greatest affinity. In discussion with them, we agreed that there was potential for the movement to spread, and we put together what we have called the basic alliance. This is a partnership at two levels: national and regional. Other processes are also taking shape, and as a point of departure, we have agreed to develop an ethical and political framework for our alliance. We are presently at the stage of disseminating proposals.

### **Challenges for the Campaign**

This Campaign poses conceptual and political challenges for women's groups and feminist organizations. They can best be expressed as questions, most of which do not yet have answers.

The first challenge is: how can this proposal be expanded into a wider agenda and a broader movement for the defense of sexual and reproductive rights? In other words, how can we bring our proposals closer to the daily needs of people? How can we sustain regional actions that are coordinated and far-reaching, not just localized small concerns? How can we give concrete shape to the interdependence and indivisibility of human rights through a dynamic approach? We have the vision, but the means of giving it concrete form, understanding it and helping others to understand it is a challenge that has not yet begun.

In other words, how can we articulate sexual rights and reproductive rights in such a way as to capture the dynamic process by which these rights are established and enjoyed in their individual and collective dimensions, including the economic context? What do we think about the universality of human rights and the tensions involving cultural differences? What do we think about the idea of a culturally relevant universality? This is an idea expressed by Alice Miller, an attorney in the United States, and we fully agree because all these implications need to be considered whenever we examine or conceptualize such issues.

The second challenge is: how can we address the parameter of equality, even in fields where it does not exist? In other words, how is equality practiced in the field of human rights and reproductive rights? How can we achieve autonomy for sexual and reproductive rights in the health field? How do we relate these rights to responsible and healthy practices? The notion of responsible practice does

not come up for all rights, so we need ask why it seems so important here. What parameter do we use to build a vision of responsibility? After all, the idea of responsibility all too often becomes just another burden for women and reflects a very conservative moral vision.

Although we agree on the need to distinguish between sexual rights and reproductive rights, we know the two are closely interconnected. There is considerable overlap between both spheres, but very little clarity on how to manage the interaction. Inevitably, we find ourselves discussing the very name of the Convention. The use of the concept of sexual and reproductive rights has already come under theoretical and political dispute. This is because, in the first place, the expression “sexual and reproductive rights” operates under a heterosexual vision, and in second place, the assimilation of the distinct concepts of sexuality and procreation is precisely what we need to avoid. We have decided to prefer the term “sexual rights and reproductive rights,” but we are still discussing how best to work with them separately, without overlooking the areas where they intersect.

Finally, it is very important to define the essential content of sexual rights and reproductive rights. Unfortunately, such an exercise runs the risk of paralyzing the debate or replacing one type of repression with another. Therefore, we propose a different approach to the whole issue: creating mechanisms for protection and State responsibility that guarantee full, distinct, diverse and fluid exercise of sexuality and reproductive decisions.

**An Initiative by the Ibero-American Federation  
of Ombudsman: the Network of Women's  
Defense Bureaus**

*Ligia Martín*<sup>92</sup>

**Introduction**

The main purpose of my presentation is to encourage those who work in the national human rights institutions known as the Ombudsman office to follow through on the declarations your institutions signed in meetings of the Ibero-American Federation of Ombudsman (FIO). Declarations were signed at all the Federation meetings – Toledo (1997), Peru (1998), Tegucigalpa (1999), Mexico (2000) and Puerto Rico (2001).

Since the 1997 declaration in Toledo, all these declarations have established the need for a specific entity in the Ombudsman offices to oversee the protection of women's rights. Unfortunately, even though the documents have been signed, in far too many cases they remain without effect, and the commitments they entail are still pending.

**Creation of the Network**

In the framework of the first Inter-American human rights course for defenders of the people, known as the Ombudsman (held in Costa Rica in 1996), women representing Ombudsman offices in Colombia, Costa Rica, El Salvador, Guatemala, Honduras and Mexico stated that the gender perspective gives a wider vision and mandate for these national human rights institutions. We felt that if they

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incorporated the gender perspective into their work, they would be better able to create a society that was tolerant, free of violence, and respectful of human dignity.

Based on the experiences of various institutions active in this field, we were able to affirm that the situation of women in the overall region and in our particular countries was alarming. We faced widespread discrimination and numerous forms of violence against women, based on the mere fact of their being female, and other complex phenomena affecting primarily women, including forced displacement, violence and poverty.

We therefore decided to create a network to coordinate and strengthen programs for the promotion and protection of human rights for women, taking the gender perspective. The network was to be made up of the heads of women's bureaus in human rights institutions.

We later submitted a formal request to Jorge Madrazo, then president of the Federation, to add the gender perspective to the regular work of Ombudsman offices, as an institutional policy of the FIO. We were asking for national human rights institutions to create specific units, but also for gender to be included as a crosscutting issue. The two measures are quite consistent with one another. The idea is for our countries to have human rights protection institutions that take a gender perspective, and at the same time, as in the example of the Costa Rican Ombudsman, that have a specific unit for women.

Let me give an example. Some national human rights institutions have specific units whose role is exclusively to address problems that involve public services, such as trash collection, for which gender would appear to be irrelevant. However, they overlook the fact that women are the ones who need to wrangle with the municipalities to make sure services are provided properly and thus prevent problems of

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pollution. These units take a perspective that does not distinguish the living conditions of men from those of women.

Another key consideration is that women are not a group, or even an issue. Women are half the population in most of our countries, and in some cases, even more. This means that at least half the population is living under conditions absolutely different from those of the other half. Given the specific living conditions of this half, specialized entities are very much in order.

At the Costa Rica meeting in 1996, we decided to request that the FIO make the Network of Women's Defense Bureaus an official body of the Federation. This was formalized at the Toledo meeting in 1997, which approved the initiative as item 8 of the Toledo declaration officially recognizing the Network as a grouping of units or bureaus for the protection of women's rights as distinct from units whose task is to defend the rights of the family, the disabled, or the elderly.

Ombudsman offices have the power to design their own structure, depending on the conditions and needs of each country. They can create units to protect and defend the rights of women or of other populations. The Network has urged member Ombudsman offices to set up specialized teams to address the different ways in which States violate the specific rights of women.

In Costa Rica in 1997, the Network held its first meeting. The final document set forth the fundamental considerations that had led us to organize as a network and outlined our tasks and objectives. The document creating the network states:

“The gender perspective needs to be adopted whenever any individual's human rights are defended. In all their work,

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the Ombudsman offices must have specific units to defend, promote and expand the human rights of women. Discrimination against women is a condition of gender relations in society that cuts across races, ethnic groups, social classes, political and religious creeds, age groups, and the disabled; thus it stands in contrast to other types of violations against particular human groups.”

This means that in every population group, it is necessary to question whether discrimination is experienced equally by men and women. For example, when we work with the disabled, we should be asking what types of discrimination are experienced by disabled women in particular. For black or indigenous populations, which in Costa Rica are a minority, we need to consider the specific types of discrimination practiced against the women of these groups. As another example, health and reproductive rights may be conceptualized and experienced by the male population in ways that are completely different from those of the female population, because living conditions and the ways of coping with daily experiences are very dissimilar for the two.

The Network has a number of functions, from proposing policies, strategies and legal and social programs, to drafting methodologies. The IIHR was highly supportive of the meeting, which among other things developed a methodology for mainstreaming the gender perspective in the daily work of the Ombudsman offices. Nevertheless, even though four years have passed since that time, and despite many efforts in the interim, not one Ombudsman office has yet managed to mainstream gender in Latin America.

At the time the Network felt that, given the substantive role of the gender perspective in promoting and defending human rights, Women’s Defense Bureaus should be established in the Charter of each institution, at a hierarchical

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level that would give them a voice in high-level decisions. Moreover, they should be staffed with skilled, specialized people who have broad experience working with women's rights from the gender perspective, and allocated sufficient financial resources to perform their duties effectively.

We also insist that specific organizational units for defending the human rights of women be created at the same hierarchical level as other human rights units within the Ombudsman institutions.

### **Achievements of the Network**

The Network of Women's Bureaus has reached the following positive or successful milestones:

- We created the Network.
- We maintain communication among member offices, although not on a continuous basis.
- We have been recognized by the FIO.
- We have had a direct impact on the Federation's five declarations.
- In all the Ombudsman conventions, we have introduced an agenda item to discuss the situation of women in the countries, in the context of the Ombudsman's work.

Nevertheless, the participation of women's bureaus in the annual conventions of the Ombudsman offices has been inconsistent. In all the meetings since 1996, attendance by women representing women's defense bureaus has varied considerably from one country to another. Guatemala, Costa Rica, El Salvador and Mexico have been present in at least five of the meetings so far.

Other countries have attended only a few meetings, including Bolivia, Honduras and Nicaragua (where the

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bureau was created very recently). Finally, a number of countries have not created units whose essential task is to defend and promote women's rights, including Panama, Venezuela, Paraguay, the Principality of Andorra, Portugal, Belize and Bolivia.

### **Declarations of the Network**

In each meeting, the Network produces a document for the upcoming FIO convention and generally requests an opportunity to take the floor and submit its declaration in plenary. The most recent meeting in Puerto Rico in 2001 adopted the following declaration:

“Considering the agreements the Ombudsman offices have reached, as expressed in their declarations since 1997 in Toledo, we welcome the creation of bureaus to defend women's rights in various countries of the region. Nevertheless, we find that compliance with past commitments falls far short, as evidenced in the absence of specific or specialized units to address violations of the human rights of women, few actions to promote and disseminate women's rights, indifference in promoting processes to incorporate the gender perspective in the institutions' activities, and restrictive views of the various types of violations of women's rights, as a result of which, attention is limited to only a few.

This situation must not and cannot continue in the very institutions that are called to defend the human rights of men and women, especially as women constitute half the population of our countries, and their very condition as women in fact exposes them to constant forms of discrimination and violation of their fundamental rights. Therefore, the Network of Women's Defense Bureaus requests this Assembly to include the following points in

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the Puerto Rico Declaration of the Ombudsman Offices of Ibero-America:

- Reaffirm commitments assumed in earlier declarations, as violations and restrictions continue to occur, necessitating the creation or strengthening of programs to defend and promote women's rights as an institutional mechanism that will contribute directly and effectively to eradicating all forms of discrimination and violence against women (approved).
- Express their commitment to comply with Articles 15 and 16 of the bylaws of the FIO, which clearly state the need for equitable gender representation on the steering committee (not yet approved).
- Declare their repudiation of the constant, recurring violations of the human rights of people living in Vieques (an island used for military maneuvers).
- State their commitment, starting with the next FIO assembly, to include a representative of the Network of Women's Defense Bureaus on the steering committee as an entity of this Federation (not yet approved).
- Entrust the chairman of the FIO to select "discrimination and violation of the human rights of women" as the central topic for the next convention (not yet approved).
- Recommend that all FIO conventions and Ombudsman meetings address agenda items in consideration of the particular situations faced by women and men, thus incorporating the gender approach (approved).
- Urge the governments of Ibero-American that have not yet ratified the CEDAW Protocol to do so; it is an international legal instrument in support of the human rights of women, that has yet to come into effect because the Ombudsman offices in many countries have yet to ratify the Protocol (approved)."

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This declaration was signed by women from Spain, Costa Rica, Guatemala, Honduras, the municipality of Neuquen, Argentina, La Plata, Argentina, the province of Santa Fe, Argentina, Nicaragua and Puerto Rico. Other members of the Network from Colombia, El Salvador, Mexico and Peru were unable to attend due to lack of financial resources. This is the same reason why so few staff are available for the specialized fields needed for defending women's rights. Considerable financial constraints also hinder the Network from monitoring Ombudsman agreements and from holding its own meetings.

The issue of financial resources is particularly important because we have already seen that when national human rights institutions experience resource cutbacks, the areas most affected are those that defend women's rights (the rights of half the population). We therefore urge the United Nations Population Fund and the High Commissioner for Human Rights to support the Network.

The meetings of the Network provide an opportunity for capacity building among the people responsible for mechanisms to defend women's rights. They also have an impact on our own institutions. This is why we feel it is so important to participate in the Network, support it, and reinforce the task of creating specialized bureaus to guarantee defense of the gender perspective and the rights of all human beings.

**An Experience of Ombudsman Institutions:  
the Network for the Defense of Women's  
Rights of the People's Ombudsman Offices  
of Argentina**

*Dianna Maffia*<sup>93</sup> and *Gabriela Moffson*<sup>94</sup>

**The Network and its Objectives**

The Network for the Defense of Women's Rights of the People's Ombudsman offices of the Republic of Argentina was created on 9 Nov. 1999 in the city of Córdoba. It was given the following objectives:

- To work with all Ombudsman offices in the country, encouraging them to create special units for the protection of women's rights.
- To analyze and investigate current legislation at the municipal, provincial and national levels in light of agreements signed previously and international conventions and treaties regarding the rights of women.
- To conduct joint actions with nongovernmental organizations, universities, and national and international government institutions.
- To carry out educational, informational and awareness-raising campaigns on women's rights.

Since that time, the Women's Network has been working systematically, without interruption, on a variety of issues involving: sexual and reproductive health, domestic and institutional violence, equal opportunities for men and

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women, and labor, education and public policies with a gender perspective.

### **Network Actions**

Through the Women's Network, we monitor compliance with the National Reproductive Health Law. We also respond to letters and other communications requesting our assistance to resist actions by authoritarian groups that seek to nullify this law, injuring women's rights and self-determination.

We drafted a document for members of the national Congress, urging approval of the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women.

In 2001 we entered into an agreement for cooperation and assistance between the People's Ombudsman offices and the National Women's Council. It was in the framework of this agreement that we monitored compliance with the quota law applicable to the 2001 legislative elections.

The Women's Network was actively involved in all-day seminars on women's rights, organized on several different occasions by the Ombudsman offices of Córdoba, Buenos Aires, Vicente López, Neuquén and Tucumán. Local Ombudsman offices selected a topic that would be of particular interest, and developed a specific training module with the participation of nongovernmental organizations and authorities from the local or host jurisdiction. This approach served to train human resources and strengthen ties among Ombudsman offices.

We have contacted the Association of Ombudsman Offices of the Republic of Argentina (ADPRA) and the Ibero-American Federation of Ombudsman (FIO) to include the Women's Network as a working program.

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We also publish a bulletin containing general information, an agenda, news items, publications, notes of special interest, and so forth. It is distributed electronically to Network members.

### **Conclusions**

By meeting regularly, we are able to work together closely, facilitate an exchange of experiences, and develop a better understanding of our different problems, which vary according to the social, economic and cultural conditions under which each Ombudsman is working. The meetings also give us an opportunity to share resources for conflict resolution and effective intervention.

Regular contact among Network members makes it possible to maintain constant, fluid communication. We are able to work actively, which facilitates our handling of issues, problem-solving and follow-up on all matters affecting our rights.

By functioning as a Network, we are able not only to share information, but to strengthen our work for women's rights (particularly sexual and reproductive rights). Despite our very limited material and human resources, we are able to transfer valuable knowhow, and together we have maintained steady growth.

This successful experience has been carried out with creativity and a commitment to structure institutional linkages, even with very few material resources. It reveals the very exciting potential of consolidating the Network of Women's Defense Bureaus in the framework of the FIO. Such a move will help strengthen all the Ombudsman institutions that defend women's rights, and give regional scope and coverage to the valuable, effective initiatives in each country.

## **VII. The Institutionalization of Sexual and Reproductive Rights in Ombudsman Offices of Latin America: Proposed Methodology**

*Diana Maffia*<sup>95</sup> and *Gabriela Moffson*<sup>96</sup>

### **Introduction**

This paper will look at working models used in Ombudsman offices and identify traits specific to such institutions in Latin America and their essential role in defending human rights. In this region, income inequality remains stubbornly high, standards of living are extremely uneven, and broad population groups live under conditions of exclusion and discrimination.

In examining the rights of women and the services women receive from Ombudsman institutions, it is important to consider not only gender differences, but also gaps between different groups of women in access to the resources they need to exercise their rights. Such inter-gender differences, like the intra-gender gap, are particularly visible in the area of sexual and reproductive rights, where

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women need explicit policies and the presence of the State is indispensable.

The women who make up the majority of low-income populations face ever greater marginalization and discrimination. Poverty weighs most heavily on them, as they receive smaller food rations, less education, less medical care, less medication, and must bear the risks of pregnancy and childbirth.

They suffer from discrimination simply because they are women, compounding the impact of discrimination due to their social class, race, ethnic group or age: girls and teens, poor women, indigenous women and Afro-descendants, displaced and migrant women, disabled women and the elderly. Only by introducing a gender perspective that cuts across all public policies can we begin to understand the differential impact that policy decisions have on women and begin to develop affirmative action measures that will ensure equal opportunity and equal treatment.

This is why it is essential for Ombudsman institutions in Latin America to expand their working agendas and include issues pertaining to protection of women's rights, including sexual and reproductive rights. The gender perspective for the exercise of these rights holds specific implications, and many different people are involved in implementing public policies that shape the conditions under which these rights can be exercised. This is why Ombudsman institutions need to create and promote working areas that target this area expressly.

This document will set forth suggested strategies and instruments for developing a working program on sexual and reproductive rights, both inside and outside the institution, incorporating a gender approach in all cases as an essential tool for achieving equality between men and women.

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Finally, we will cite a number of positive experiences in this field by various Ombudsman institutions, whether they are called Defenders of the People, Public Attorneys or Human Rights Commissions. This information, together with the previous chapter on the Network for the Defense of Women's Rights of the People's Ombudsman offices of the Republic of Argentina, includes clear examples of the commitment to defend sexual and reproductive rights and gender policies.

Great thinkers in the 16<sup>th</sup> century agonized over the question of whether women had a soul. In the 18<sup>th</sup> and 19<sup>th</sup> centuries, they pondered whether we had a brain. In the 20<sup>th</sup> century, they wondered whether we had rights. Today these rights have been enshrined in the constitutions and laws of our countries and in international treaties and agreements. All that remains is to become familiar with them, exercise them and demand them.

#### **The Ombudsman Institution in Latin America**

Most of the countries of Latin America adopted the Swedish and Spanish model of the Ombudsman, enhancing it with certain features relevant to our own region. Unlike the situation in the rest of the world, these institutions in Latin America were not created exclusively to control a malfunctioning public administration in a setting of weak, incipient and ineffective institutions. They had an additional assignment: to work in societies suffering from massive human rights violations. They stand up to the systematic, institutional corruption deeply embedded in all sectors of State power. Their battles are against disregard for rules and regulations and a public that is distrustful and unconvinced of the role pertaining to the State and the political system itself.

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Some countries of Latin America have implemented an Ombudsman not only nationally, but also at the central, provincial and municipal levels of government. The trend began in Argentina and Mexico, which granted their Ombudsman institutions permission to develop throughout the land. These locally-based institutions are able to facilitate citizen participation and quickly detect the types of specific problems that arise in their area or region. Mexico has established Human Rights Commissions in 32 states. Argentina has set up People's Ombudsman Offices in 11 provinces and 16 municipalities.

All these offices (state, provincial and municipal), like their national counterparts, are expected to monitor, protect, promote and publicize human rights. They are independent of the national institutions and retain functional and budgetary autonomy. They concentrate their actions within the limits of their jurisdiction and join associations that unite them and represent them, such as the Mexican Federation of Public Human Rights Agencies, the Association of People's Ombudsman Offices of the Republic of Argentina (ADPRA) and the Association of Public Defenders of the Metropolitan Region of Argentina. By working together, they lend greater strength to their own interventions. Within their jurisdictions, they remain close to their local neighbors and the public policies that affect them. At the same time, as members of a wider group, they are able to address regional problems (such as those involving public services) and augment their bargaining power on non-litigious strategies for settling conflicts.

Most of the Ombudsman offices of Latin America work in countries where over half the population lives below the poverty line and lacks of the most basic services: housing, food, access to basic health and education services, access to justice. In these situations, the role of the Ombudsman is to

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demand attention to State neglect, remain vigilant for signs of corruption, and strengthen awareness of human rights.

In summary, the Ombudsman institution in Latin America is essentially linked to protecting and promoting human rights because it operates in societies that are in the midst of a profound and worsening situation of emergency and marginalization. Their critical condition stems primarily from economic adjustment models imposed by international financial agencies that give economic policies precedence over social policies. Under these models, the State either overlooks or neglects its social responsibilities, affecting quality of life for the population and further deepening inequality.

Ombudsman offices cannot prevent poverty, but they can pressure the State to fulfill its responsibility for guaranteeing equal opportunity and equal rights. They can play a lead role in the fight against discrimination and social exclusion. They must also monitor compliance with the international human rights commitments the States have acquired, and make sure the governments adapt national law to the provisions of these treaties.

Women's rights are protected primarily through two instruments: the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and its Optional Protocol, as well as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Even though many countries of our region ratified these instruments and added their provisions to the national constitution and laws, thus committing themselves to accept and respect them, a wide gap continues to separate formal equality from real equality.

The Optional Protocol to the CEDAW will allow women to file claims of gender discrimination directly to the United Nations Committee when their rights are violated. Many

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countries in Latin America have yet to sign or ratify, making the Convention much less effective. As this example demonstrates, the Ombudsman offices need to keep a close eye on the State to make sure it fulfills its international obligations. They must undertake whatever actions they can to facilitate the approval and ratification of protocols, conventions and covenants. They must monitor the implementation of these conventions by means of national and provincial laws and municipal regulations. They also need to ensure State compliance with the recommendations of the various committees that oversee international human rights treaties.

The only way to transform the letter and spirit of these treaties into specific actions that will allow our populations, and particularly the women, to exercise their rights fully is to move beyond words and principles, approving mechanisms and instruments to guarantee that States comply with their obligations. One strategy the Ombudsman offices can use to improve the effective exercise of international human rights instruments is to cite them in formal arguments when they submit recommendations and petitions. This also serves an educational purpose both for the officials and institutions that have failed to apply such provisions, and for the common citizens affected by noncompliance. Dissemination of these recommendations will spread human rights education and demonstrate that these international rights are legally effective and applicable.

Identifying closely with the defenselessness in which much of society lives, the Ombudsman offices of Latin America are turning into ideal vehicles for resolving many problems. They serve as mediators between society and the public power, nurturing greater social justice and fostering respect for rights and guarantees established in our constitutions.

### **Sexual and Reproductive Rights of Women: a Critical Issue for Ombudsman Institutions in Latin America**

Even though legal systems should protect the sexual and reproductive rights of women and men equally, there is no denying that only women face the risks of pregnancy, childbirth and postpartum. The United Nations Population Fund (UNFPA) estimates that every year, over 23,000 women in Latin America and the Caribbean die in their childbearing years as a result of complications associated with pregnancy, childbirth and postpartum. Many are left with disabilities or chronic illness. Tragically, most of these cases of mortality and morbidity are preventable.

Under the weight of sex discrimination and cultural stereotypes, women find themselves bearing full responsibility for preventing pregnancy. Many are too powerless to assert their will or decide whether they want to have sexual relations or use contraception; they live out gender roles that expose them to subordination and violence from their partners, spouses or boyfriends. Their sexual and reproductive rights simply go unmet, and they are in no position to enjoy their sexuality without fear or risk of undesired pregnancy or various types of diseases. Women are at greatest risk of contracting the HIV virus through sexual encounters. Women are also more likely to become victims of domestic violence, and tend to request and receive medical care only when they are seriously ill. They are still responsible for raising the children and caring for the family.

According to the World Health Organization (WHO), the most profound differences between developed countries and developing countries are revealed in maternal health statistics (a woman born in Latin America is 27 times as likely as a woman born in the United States to die as a result of maternity); even within developing countries, clear

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differences mark the social class to which each woman pertains and whether she lives in a rural or urban setting. These differences are the most telling sign of health inequalities among women. Throughout their lifetimes, the poorest are at greatest risk of dying from complications of pregnancy, childbirth or unsafe abortion. The likelihood in Africa is 1 in 15; in Asia, 1 in 105; in Latin America and the Caribbean, 1 in 150; in Europe, 1 in 1895; and in the United States, 1 in 3750.

It is the low-income women who have no access to high-quality health services or contraception. These are the ones who receive no information before, during or after pregnancy and childbirth. They are less likely to make their own decisions about their health and their bodies, or to decide freely and responsibly the number and spacing of their children. Today 20,000 to 30,000 women die every year in Latin American and the Caribbean from complications associated with pregnancy, childbirth and postpartum. In many countries, these continue to be among the five most frequent causes of death among women from 15 to 49 years of age.

For every death during pregnancy and childbirth, another 30 to 100 cases of maternity-related illness or disability occur. The prevention of maternity-related deaths and diseases is a matter of social justice and human rights. It can be achieved only if the rights of women are fully guaranteed and respected. Significantly, neglect by the State and setbacks in respecting economic, social and cultural rights also need to be classified as human rights violations that acutely affect women.

The full exercise of women's rights, including sexual and reproductive rights, would make a substantial contribution to bringing down rates of maternal death from preventable causes and slowing the spread of sexually transmitted

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diseases. Solving this problem, however, calls for long-term engagement by many social and institutional actors and a commitment by the State to abide by its international obligations. The Ombudsman offices have an important role to play as trustworthy institutions able to serve as watchdogs over the implementation of these commitments.

Another significant problem in the region is the sexual and reproductive rights of adolescents. According to UNFPA, of Latin America's population of nearly 540 million, nearly 25% are between 10 and 19 years of age. Worldwide, 70,000 adolescents marry every day, many against their will; nearly 40,000 give birth and 6000 contract the HIV/AIDS virus. Every year, 4 million teenagers undergo abortion, often in the worst conditions. The causes are social, cultural and economic. When they lack education and accurate information on sexuality, adolescents become highly vulnerable to sexually transmitted diseases, unwanted pregnancy, abortion and violence.

Early marriage and early pregnancy bring serious health risks, curtailing these young people's opportunities and personal development. Adolescents often find themselves denied access to sexual and reproductive health services, despite the existence of the Convention on the Rights of the Child that defines them as subjects of rights. This barrier keeps them from exercising their right to safeguard their health. Many such practices persist. Pregnant girls are barred from school health centers, and there is great resistance to offering sex education in the schools. All these factors exacerbate the vulnerability of this population and prejudice their rights.

In such a setting, Ombudsman institutions are faced with the great challenge of expanding their toolbox and innovating, creating or adopting new mechanisms to protect and promote sexual and reproductive rights as human rights.

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This challenge demands a profound commitment to the struggle against injustice and inequality. It is perhaps the only hope for the millions of women living at risk.

### **Incorporating Defense of Sexual and Reproductive Rights into the Organizational Structure of Ombudsman Institutions**

We have seen that the different Ombudsman offices in Latin America all possess certain peculiar features. Each Public Defender, People's Attorney or Human Rights Commission is embedded in a social, political, economic and cultural milieu different from all the others. This is true even for those that operate at different levels of a single country, as in the case of the People's Ombudsman Offices of Argentina or the Human Rights Commissions of Mexico. Because each of these agencies lives and works in a setting different from that of other provinces or states, it faces unique local problems, or even similar problems requiring unique local solutions. Moreover, because their reach differs depending on whether they have national, provincial or municipal jurisdiction, they also have highly varying capacities for working with the courts and with the State.

Each institution must grapple with its own situation, working within the conditions and limits placed upon it. They were all created under differing sets of laws or ordinances, and some have more faculties than others for the work they do. Some have legal standing before the courts, as in Bolivia, Costa Rica, Ecuador, Guatemala and Panama; others have a voice in parliament, including Colombia, El Salvador, Nicaragua, Peru or Venezuela. Some are also responsible for defending consumer rights and monitoring privatized entities that lend public services, including Argentina and the Dominican Republic. Others, such as

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Paraguay, can judge and order indemnification for victims of human rights violations under past dictatorships.

Some were created by laws and ordinances that call for them to set up an Adjunct for Human Rights or Women's Rights. This is the case in the city of Buenos Aires or in Colombia and El Salvador. In others, the Ombudsman creates an area, office or section assigned to women's rights, including sexual and reproductive rights. Examples include Argentina, Bolivia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Panama and Peru. Some lack both resources and infrastructure to establish a section or area designed specifically to work with sexual and reproductive rights.

Regardless of the specific type of institutional structure each one has set up, as determined by its own conditions, all the Ombudsman institutions would be well advised to mainstream women's rights and sexual and reproductive rights. This means they should incorporate the gender perspective into all their work and use it in the recommendations and petitions they address to their authorities.

Argentina, with the advantage of a broad-based network of 27 People's Ombudsman Offices, developed an excellent alternative: each institution appointed a representative to serve as the focal point in the Network for the Defense of Women's Rights to make sure these problems were not overlooked in the working agenda of the Ombudsman institutions. In this sense, the Argentine experience is highly positive. People's Ombudsman Offices are distributed throughout the country, and this gives the Network considerable clout. As a result, it was able to enter into an agreement with the National Women's Council so that the Council would train each local Ombudsman Office, while the Ombudsman Offices pledge to protect and disseminate

women's rights and monitor public policies targeting women.

**a. Mainstreaming the gender approach in  
Ombudsman institutions of Latin America**

Mainstreaming means ensuring that all activities are comprehensive and intersectoral. All areas and sectors at every level of the institution are thus committed to incorporating gender issues so that power relations between the sexes and discrimination against women are brought into the light, in both public and private spheres.

Mainstreaming is an innovative tool that gives each area or sector an active role in eliminating discriminatory practices. It means that every legal instrument, whether regulatory or technical, every investigation, every procedure for conflict resolution, every publication and every recommendation and petition addressed to public administration authorities must consider the needs, expectations and interests of women. They must remove all barriers, whether in the law or in practice, that interfere with real equality of opportunities and equal treatment between men and women, or impede the full exercise of rights.

No one specific area can possibly assume the commitment or take responsibility for changing all the concepts, attitudes and traditions that populate the collective unconscious. Every sector of the institution needs to cooperate and become so steeped in the gender approach that they all, through their actions, can understand, articulate and propose changes to eliminate factors that exclude and subordinate women in social policies, education, communications, health, and more.

**b. How can the gender perspective be introduced into the mainstream?**

Implementation can take place through the following actions:

- Training personnel in gender theory and differential analysis of gender relations – interpersonal, social and institutional.
- Establishing procedures, instruments and methodologies for intervention.
- Coordinating the work of the Ombudsman carefully to make sure the actions conducted by all areas or sections are consistent, and that the common denominator is a gender approach that cuts across all measures, actions and policies of the institution.
- Monitoring, evaluating, conducting case analysis and even correcting errors that arise in implementation.

Ombudsman offices can sign agreements with government women's institutions (councils, ministries, institutes or secretariats, whether at the national level or, if they are decentralized, locally), universities and women's organizations. This would allow all these institutions and agencies to interact with the Ombudsman through staff training or by communicating their concerns, taking part in assessment studies, and monitoring relevant public policies and policy implementation. The resulting dialogue among actors will ensure that the differing capacities available in all the participating institutions are put to good use.

Finally, if the gender approach is to be implemented successfully, it must be:

- Institutionalized: incorporated into organization policy and always present in the mission, objectives, priorities and strategies.

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- Mainstreamed: incorporated into activities, interventions and actions in every sphere of the organization's work.

### **Working Procedures for Defending Reproductive Rights in Each Jurisdiction**

Once the Ombudsman office has decided which specific department (adjunct, area or office) or qualified persons (such as the focal point for the Network for the Defense of Women's Rights) will focus on sexual and reproductive rights, it needs to develop guidelines for the work. The Ombudsman will not start to take on jobs that pertain to the executive branch or replace other government agencies. However, the office does need information to understand current situations better and offer recommendations to correct errors, fill in gaps or address omissions in the work of government entities. The office also needs to serve as a watchdog on the application of public policies and compliance with existing legislation.

The Ombudsman has three core functions to keep this work orderly and systematic:

#### **1. Situation assessment**

This is the point of departure. The first step for developing a strategic work plan is to understand the situation of sexual and reproductive rights in the city, region or country where the Ombudsman works. The result will be a strategic plan that addresses the true needs and interests of women. The idea is to find out what we have, what we lack and what we want in order to achieve equity.

The Ombudsman can perform this situation assessment by:

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- Obtaining statistics on the socioeconomic status of women, health conditions, cases of violence, maternal and infant morbidity and mortality, health care for abortion, adolescent pregnancy, sexually transmitted diseases, HIV/AIDS.
- Drawing attention to laws, regulations, decrees, plans and programs at the national, provincial and municipal levels, on sexual health, responsible procreation, family planning, sex education.
- Examining the degree to which these laws and their regulations are respected.
- Monitoring compliance with international treaties, provisions and obligations.
- Determining whether public policies in the civil, political, economic, social, labor, educational and cultural spheres take a gender perspective to guarantee equal opportunity and fair treatment between men and women and promote comprehensive care for sexual and reproductive health.

In all these activities, it is very important for Ombudsman institutions to maintain working relations with social and academic organizations that target the same issues, to avoid duplicating their efforts and make better use of existing capacities.

## **2. Education**

Legal, medical and regulatory barriers to information on sexual and reproductive health need to be removed, and access to relevant practices needs to be unhindered. Certain religious or moral precepts should also be avoided if they might obstruct the implementation of public policies, interfere with the provision of services or dissuade the public from seeking needed education or treatment for sexual and

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reproductive health. In a setting of religious freedom, people have the right to choose.

World statistics show a picture of women's education far inferior to that of men. The figures reveal that of nearly 120 million children denied access to schooling, two thirds are girls. A total of 875 million adults have no education, and two thirds are women.

Research proves the critical role of education in improving the reproductive health of women, including survival of newborns and healthy growth of children. An educated, knowledgeable young woman initiates sexual activity at a later age, waits longer before having children and runs a lower risk of maternal or infant death. The enjoyment of sexual and reproductive rights is also a condition for the exercise of other economic, social and cultural rights associated with personal ambitions for education, work and culture.

This is why it is so important to remove the barriers that keep married women, pregnant teenagers and adolescent mothers out of school. Children and teens need to receive clear information and education, especially regarding sexuality, procreation and contraception. The emphasis must be to prevent unwanted pregnancy, unsafe abortions, sexual violence and sexually transmitted diseases.

All teaching and learning, whether in primary and secondary schools or in higher education, needs to be freed from traditional sexist stereotypes based on gender inferiority or superiority, whether in the curriculum, methodologies, content and language of textbooks, illustrations, or educational materials. One area of particular concern is the "hidden curriculum" expressed as differential treatment for boys and girls, different opportunities to exercise leadership in the classroom, and educators whose expectations of their students vary according to sex.

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These educational changes must target males (partners and husbands), community leaders, legislators and all officials in the executive and judicial branches, raising their awareness and giving them a greater sense of their own responsibility.

Ombudsman institutions can sponsor opportunities for dialogue and discussion between government authorities and various members of society. They can facilitate closer relations among all parties, find out what they are doing and help them grapple with current issues to foster greater commitment and consensus for solving problems. They can coordinate and promote effective joint actions to reduce maternal mortality rates and improve sexual and reproductive health, as well as improve the social status of women.

A closer working relationship of this kind requires cooperation and coordination by Ombudsman institutions. The unconditional support of the Ombudsman is critical for joint activities by the executive, legislative and judicial branches, academic organizations, civil society groups and nongovernmental organizations working with specific issues of sexual and reproductive rights. Indeed, this is an important strategy for generating and more easily promoting the changes needed to guarantee recognition and full exercise of sexual and reproductive rights.

The following actions are very useful for implementing this kind of shared work:

- Those Ombudsman offices that have a voice in the legislature can introduce draft bills to amend or repeal laws that contradict or undermine the exercise of sexual and reproductive rights, and lobby for bills to educate, sensitize and raise awareness among women in particular and society in general concerning sexual and reproductive rights.

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- Support the implementation and regulation of existing laws, such as laws on sexual health and responsible parenting, equal opportunities between men and women, family planning, and responsible fatherhood.
- Work with teacher training programs to include sexual and reproductive rights with the gender perspective in the curriculum, and monitor the effective handling of these issues.
- Help train teachers at every level to identify and eliminate male bias, sexism and stereotyped images. Both the teaching and the learning will convey a positive, participatory image of women and equitable sharing of roles between men and women in the family and in society.
- Promote instruction about sexual and reproductive rights with a gender perspective in the primary and secondary school curriculum, and monitor effective compliance.
- Encourage and safeguard school attendance by pregnant teenagers and young mothers, and facilitate childcare.
- Help men to understand the role they play in sexual and family life and encourage an attitude of responsibility.
- Organize discussion meetings with authorities from ministries, secretariats and directorates of education and health; legislators; officials of the judicial branch; health teams from hospitals and health-care facilities and clinics; and social organizations and nongovernmental organizations. Because the Ombudsman is a judicial institution that enjoys some degree of influence and power of persuasion, it is ideally suited to foster dialogue among the different actors and sectors, bringing them closer together.

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- Hold meetings, lectures and seminars with experts on the subject to address technical, medical, legal, bioethical and social concerns.
- Organize lectures or debates in primary and secondary schools, with the participation of school authorities, teachers, family members and students.
- Enter into cooperation and technical assistance agreements with (provincial or municipal) government entities responsible for the status of women, children and youth, university research centers, government agencies and nongovernmental organizations, to carry out programs for promotion, training and improvement to guarantee the elimination of all forms of discrimination.
- Set up specific programs to procure funding from international organizations and to promote horizontal exchange in the region.
- Work for public policies that promote gender equity in the public and private spheres. For example: change family leave benefits for male employees, giving them more days to take responsibility for their families; rid the schools of stereotypes concerning appropriate jobs for women and men and provide sex education with a gender perspective; set up programs in the schools to authorize absences for pregnancy and lactation; create programs to accompany women at health centers during labor, delivery and postpartum; establish free provision of safe, effective contraceptives that consider the needs of women.
- Prepare or help prepare documents and reports to publicize progress, setbacks and difficulties involving the human rights of women, especially sexual and reproductive rights. This is associated with local and international implementation of strategies to guarantee

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effective compliance with the Convention on the Limitation of all Forms of Discrimination against Women (CEDAW).

### **3. Promotion and dissemination**

The Ombudsman institutions need to inform, promote and disseminate sexual and reproductive rights. All sectors of the population need to understand their rights and be able to exercise them freely and responsibly.

Government officials and civil society alike need to be familiar with legal instruments that guarantee the rights of men and women, including national constitutions, laws, decrees, regulations and international treaties. Knowledge is the indispensable tool without which these rights will pass unnoticed and unclaimed.

Women need full guarantees of their sexual and reproductive rights and the right to information. This requires mass dissemination of information concerning the rights that pertain to them and resources available. Access to health services requires not only the existence of such services, but readily available information on how to use services promptly and appropriately.

Ombudsman institutions can do this in a number of ways:

- Prepare recommendations and petitions for the government, whether in response to complaints or claims filed with the Ombudsman office, or at its own initiative.
- Promote dissemination of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Monitor local implementation of the Convention and other recommendations issued by the United Nations CEDAW Committee. Work for ratification of the Optional Protocol as a mechanism to

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guarantee enforceability of substantive rights granted in the Convention.

- Promote dissemination of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Pará), and monitor implementation of this Convention.
- Sign agreements with other Ombudsman institutions in the region to exchange information and experiences, including state, provincial and municipal Ombudsman offices. This will encourage horizontal cooperation.
- Develop communication strategies to guarantee that women's issues remain on the public agenda; and to make sure that all sectors, especially women, have access to information about sexual and reproductive rights and available resources. This can be done with posters, brochures, publications and videos. Encourage schools, health centers, community organizations, state agencies and the media to distribute these materials.
- Build relationships with the media to make sure they have expert knowledge and can publicize Ombudsman activities to protect women's rights.
- Set up a toll-free "1-800" telephone hot line to provide information and guidance free of charge.
- Organize awareness-raising campaigns on sexual and reproductive rights, for example, have government officials, legislators and judges sign a "certificate of commitment."
- Prepare handbooks and guides on such topics as contraception, free legal services and health services.
- Hold lectures, all-day training activities, workshops and seminars on reproductive rights.

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- Become an active member of the Network of Women's Defense Bureaus of the Ibero-American Federation of Ombudsman (FIO).

### **Achievements of Ombudsman Institutions in the Field of Sexual and Reproductive Health**

This section offers a compilation of good practices by various Ombudsman offices to reduce maternal death rates and improve the sexual and reproductive health of women.

Chapter VI of this publication provides much more in-depth information on the work of Ombudsman institutions in the field of reproductive rights; this chapter contains only a few selected examples.

#### **Argentina**

Although no specific activities are taking place at the national level, numerous effective initiatives were found among the various People's Ombudsman Offices that are members of the Network for the Defense of Women's Rights of the People's Ombudsman offices of the Republic of Argentina.

##### *City of Buenos Aires*

Advertising campaign under the slogan "The constitution protects your sexual and reproductive rights;" the Ombudsman distributed posters to hospitals and secondary schools in the city of Buenos Aires and published the Women's Agenda.

The office monitored the law on sexual and reproductive health, requesting annual reports from all public hospitals and conducting surveys of health service directors.

"Citizenship and Sexuality," a program for citizen oversight of the sexual and reproductive health law; it offered women's and human rights organizations a manual for monitoring, training and follow-up of the pilot oversight project.

**Argentina**

*City of Neuquén - Province of Neuquén:*

Awareness raising among the general public: the Ombudsman organized a seminar on reproductive health in the framework of the Network for the Defense of Women's Rights of the People's Ombudsman offices of the Republic of Argentina, with participation by experts, legislators, judges, and the public. The Ombudsman office was included on number of panels and gave newspaper interviews to disseminate information on this subject and raise awareness.

It also cooperated actively with nongovernmental organizations and women of Congress working to make surgical contraception legal in the province. The law was enacted on 2 July 2003 as law number 2431, incorporating these practices into the law on sexual and reproductive health (number 2222) and the law on the professional practice of medicine, which are in effect in Neuquén.

**Argentina**

*City of La Plata, Province of Buenos Aires:*

The office worked for and won an ordinance on sexual information and provision of materials for different kinds of fertility control and family planning. When the provincial government enacted a law on Reproductive Health, the municipality complied fully. The methods do not include tubal ligation.

Together with organizations of the third sector, the office worked to promote a provincial law on reproductive health, which is now in effect. The provincial executive branch vetoed the educational section that calls for sex education in private schools, and an appeal is now before the legislative branch.

### **Argentina**

#### *Santa Fe Province:*

The Ombudsman signed an agreement for cooperation and coordination with the Institute for Gender, Law and Development in the city of Rosario, and the two organizations together held a contest entitled “Human rights community: redescribing the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW);” public and private secondary and technical schools from around the province were invited to take part in the contest.

In response to complaints about lack of sex education in provincial schools, the office launched an investigation to determine why the law was not being observed.

### **Bolivia**

The Ombudsman expressed special concern about maternal mortality rates, citing shortages of personnel, infrastructure and equipment, medicines, inputs and funds, that prevented health centers from providing adequate medical care.

A working group on defense and promotion of the human rights of women was set up with representatives of civil society, public institutions and grass-roots women’s organizations.

### **Colombia**

The Ombudsman is taking part in a program by the president called “Make Peace,” whose objective is to eradicate the domestic violence and sexual abuse that are affecting women as an offshoot of the armed conflict.

Public hearings and workshops in primary and secondary schools and workplaces to make the general public more aware of violations of their sexual and reproductive rights and strategies to guarantee their rights.

### **Costa Rica**

The Ombudsman was involved in drafting a decree on health and sexual and reproductive rights.

The office conducted research on sterilization policies in the country's hospitals; comparative studies on the situation of hospital sterilizations (1993-1998); and the special protection program for pregnant women.

It promoted laws for responsible fatherhood and against domestic violence.

### **El Salvador**

The Ombudsman submitted a study to the Legislative Assembly advocating approval of the Optional Protocol to the CEDAW Convention.

It monitored information being imparted to adolescents through formal school channels.

### **Ecuador**

The Ombudsman worked for sexual and reproductive rights of adolescents in educational and health facilities and in the community.

It signed an agreement with the National Women's Council and other public agencies to make sure that students and the unschooled population are able to exercise fully their rights to education and health.

### **Guatemala**

Publication of the Social Development Law including a chapter that stipulates women's reproductive rights and outlines the obligations of the State.

Strengthening the Network of Auxiliary Ombudsman offices in outlying departments for the purpose of introducing improvements in the processing and handling of complaints about violations of the human rights of women in these branch offices, training staff and implementing support networks.

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**Honduras**

Inter-institutional coordination with entities involved in gender issues, working to educate, strengthen and enforce the national and international legal framework for the protection of women.

Dissemination via booklets, television spots, posters, legal services and guidance, and distributing copies of legal texts.

**Panama**

Support for the process of regulating a new law on equal opportunities for women and men.

An annual information campaign for rural and indigenous women, using the gender approach to safeguard prevention, health care and treatment of sexual and reproductive rights.

**Peru**

The Ombudsman intervened to keep teenage girls in school during pregnancy.

It was very active on issues of forced sterilization and challenged the underlying principles and application of the Reproductive Health and Family Planning Program, claiming: failure to guarantee freedom of choice regarding contraceptive methods; government promotion and sponsorship of campaigns in favor of tubal ligation; failure to provide post-surgical care; falsified signatures on documents authorizing contraceptive intervention; and numerous cases of death among women undergoing surgical contraception.

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**Venezuela**

Organization of lectures, forums, workshops and training events on sexual and reproductive rights, HIV/AIDS and human rights, sex work and human rights.

Monitoring compliance with the Constitution, CEDAW, equal opportunity laws, and the law on violence against women and the family.

**Nicaragua**

Promoting and defending sexual and reproductive rights among teenagers (sexism, the gender approach, sexual rights with responsibility, and reproductive rights above and beyond maternity).

Inter-sectoral coordination to promote the Optional Protocol to the CEDAW.

Legislative lobbying for approval of the Equal Opportunity Law, the Family Code, and others.

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**Annex 1**  
**Principles Relating to the Status and**  
**Functioning of National Institutions for**  
**Protection and Promotion of Human Rights**  
**(The Paris Principles)**

**Introduction**

The United Nations is engaged in a wide range of activities aimed at fulfilling one of its principal purposes—the promotion and protection of human rights. Of great importance is the complex machinery which has been set up under various international covenants and conventions to establish standards, monitor implementation, promote compliance and investigate violations of human rights. In addition to these activities, the United Nations also provides practical assistance to States in their efforts to protect and promote human rights, and informs the public about the rights to which it is entitled.

These structures and activities permit the United Nations to play a pivotal role in the realization of human rights and fundamental freedoms. However, it is important to acknowledge that the United Nations has finite resources and inherent limitations on its capacity for direct action, particularly in individual cases. As a practical matter, one organization can never hope to keep an eye on every situation. Neither can it investigate every alleged violation of human rights or bring relief to all victims.

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For these reasons, the international system relies heavily on the support it receives from regional human rights systems such as those operating in Europe, Africa and America. Additional support comes from Governments and from concerned non-governmental organizations. Each of these groups has a special role to play in the development of a universal culture of human rights. Non-governmental organizations, for example, by their very nature, have a freedom of expression, a flexibility of action and a liberty of movement which allow them to perform tasks which Governments and intergovernmental organizations are unable or may even be unwilling to perform. Regional human rights systems have reinforced international standards and machinery by providing the means by which human rights concerns can be addressed within the particular social, historical and political context of the region concerned.

The role of national Governments in the realization of human rights is particularly important. Human rights involve relationships among individuals, and between individuals and the State. Therefore, the practical task of protecting and promoting human rights is primarily a national one, for which each State must be responsible. At the national level, rights can be best protected through adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions. In addition, the most effective education and information campaigns are likely to be those which are designed and carried out at the national or local level and which take the local cultural and traditional context into account.

When States ratify a human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the

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obligations contained therein. Therefore, universal human rights standards and norms today find their expression in the domestic laws of most countries. Often, however, the fact that a law exists to protect certain rights is not enough if these laws do not also provide for all of the legal, powers and institutions necessary to ensure their effective realization.

This problem of effective implementation at the national level has, particularly in recent times, generated a great deal of international interest and action. The emergence or re-emergence of democratic rule in many countries has focused attention on the importance of democratic institutions in safeguarding the legal and political foundations upon which human rights are based.

It has therefore become increasingly apparent that the effective enjoyment of human rights calls for the establishment of national infrastructures for their protection and promotion. Official human rights institutions have been set up by many countries in recent years. While the tasks of such institutions may vary considerably from country to country, they share a common purpose and for this reason are collectively referred to as *national institutions for the protection and promotion of human rights*.

The following pages do not provide an exhaustive description of the full range of existing national institutions. A separate manual on this subject, containing practical, detailed advice to Governments interested in establishing or strengthening such institutions is being developed by the Centre for Human Rights. This Fact Sheet takes a more general approach to national institutions-describing, and attempting to explain their emergence in the context of the general evolution of efforts to protect and promote human rights both within and outside of the United Nations system.

### **The United Nations and National Institutions for the Protection and Promotion of Human Rights**

While the world-wide interest in national institutions is a relatively recent phenomenon, the original concern of the United Nations with such institutions dates back to 1946 when the issue was first addressed by the Economic and Social Council. The Council asked Member States to consider “the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights”.

In 1960 the Economic and Social Council, in a resolution which recognized the unique role national institutions could play in the protection and promotion of human rights, invited Governments to encourage the formation and continuation of such bodies as well as to communicate their ideas and information on the subject to the Secretary-General. This process is an on-going one and reports on information received are regularly submitted by the Secretary-General to the Commission on Human Rights, the General Assembly and to Member States.

As standard-setting in the field of human rights gained momentum during the 1960s and 1970s, discussions on national institutions became increasingly focused on the ways in which these bodies could assist in the effective implementation of these international standards. In 1978, the Commission on Human Rights decided to organize a seminar on national and local institutions to draft guidelines for the structure and functioning of such bodies. Accordingly, the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights was held in Geneva from 18 to 29 September 1978 during which a series of guidelines was approved. These guidelines

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suggested that the functions of national institutions should be:

- a)* To act as a source of human rights information for the Government and people of the country;
- b)* To assist in educating public opinion and promoting awareness and respect for human rights;
- c)* To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the Government may wish to refer to them;
- d)* To advise on any questions regarding human rights matters referred to them by the Government;
- e)* To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities;
- f)* To perform any other function which the Government may wish to assign to them in connection with the duties of that State under those international agreements in the field of human rights to which it is party.

In regard to the structure of such institutions, the guidelines recommended that they should:

- a)* Be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights;
- b)* Function regularly, and that immediate access to them should be available to any member of the public or any public authority;
- c)* In appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

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The guidelines were subsequently endorsed by the Commission on Human Rights and by the General Assembly. The Commission invited all Member States to take appropriate steps for the establishment, where they did not already exist, of national institutions for the protection and promotion of human rights, and requested the Secretary-General to submit a detailed report on existing national institutions.

Throughout the 1980s, the United Nations continued to take an active interest in this topic, and a series of reports, prepared by the Secretary-General, was presented to the General Assembly.<sup>(1)</sup> It was during this time that a considerable number of national institutions were established—often with the assistance of the Advisory Services Programme of the Centre for Human Rights.

In 1990, the Commission on Human Rights called for a workshop to be convened with the participation of national and regional institutions involved in the protection and promotion of human rights. The workshop was to review patterns of cooperation of national institutions with international institutions, such as the United Nations and its agencies, and to explore ways of increasing their effectiveness. The conclusions of this important workshop, held in Paris in October 1991, are summarized in the annex to this Fact Sheet.

#### **What is a “national human rights institution”?**

Today, human rights considerations are relevant to almost every sphere of governmental activity and indeed, to many other areas of public and private life. The number and range of “institutions” concerned with human rights issues reflects this reality. The activities of churches, trade unions, the mass media and many non-governmental organizations touch

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directly on human rights issues, as do those of most government departments, the courts and the legislature.

The concept of a national human rights institution is, however, far more specific-referring as it does to a body whose functions are specifically defined in terms of the promotion and protection of human rights. While no two institutions are exactly the same, a number of similarities can be identified which serve to separate these institutions from the various entities mentioned above. The national institutions being considered here are all administrative in nature-in the sense that they are neither judicial nor law-making. As a rule, these institutions have on-going, advisory authority in respect to human rights at the national and/or international level. These purposes are pursued either in a general way, through opinions and recommendations, or through the consideration and resolution of complaints submitted by individuals or groups. In some countries, the Constitution will provide for the establishment of a national human rights institution. More often, such institutions are created by legislation or decree. While many national institutions are attached, in some way or another, to the executive branch of government, the actual level of independence which they enjoy will depend on a number of factors including membership and the manner in which they operate.

The majority of existing national institutions can be grouped together in two broad categories; "human rights commissions" and "ombudsmen". Another less common, but no less important variety are the "specialized" national institutions which function to protect the rights of a particular vulnerable group such as ethnic and linguistic minorities, indigenous populations, children, refugees or women. These three categories of national institutions are considered in detail below.

### **Human rights commissions**

In many countries, special commissions have been established to ensure that the laws and regulations concerning the protection of human rights are effectively applied. Most commissions function independently from other organs of government, although they may be required to report to the legislature on a regular basis.

In keeping with their independent nature, commissions are generally composed of a variety of members from diverse backgrounds but each with a particular interest, expertise or experience in the field of human rights. Each country may have its specific requirements or restrictions for the selection of members, such as quotas on the number of representatives or candidates from different professional categories, political parties, or localities.

Human rights commissions are concerned primarily with the protection of nationals against discrimination and with the protection of civil and other human rights. The precise functions and powers of a particular commission will be defined in the legislative act or decree under which it is established. These laws or decrees will also serve to define the Commission's jurisdiction by specifying the range of discriminatory or violative conduct that it is empowered to investigate. Some commissions concern themselves with alleged violations of any rights recognized in the constitution. Others may be able to consider cases of discrimination on a broad range of grounds including race, colour, religion, sex, national or ethnic origin, disability, social condition, sexual orientation, political convictions and ancestry.

One of the most important functions vested in a human rights commission is to receive and investigate complaints from individuals (and occasionally, from groups) alleging human rights abuses committed in violation of existing

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national law. In order to properly carry out its tasks, the commission will usually be capable of obtaining evidence relating to the matter under investigation. Even if only used rarely, this power is important in that it guards against the possibility of frustration through lack of cooperation on the part of the person or body complained against. While there are considerable differences in the procedures followed by various human rights commissions in the investigation and resolution of complaints, many rely on conciliation and/or arbitration. In the process of conciliation, the commission will attempt to bring the two parties together in order to achieve a mutually satisfactory outcome. If conciliation fails to resolve the dispute, the commission may be able to resort to arbitration in which it will, after a hearing, issue a determination.

It is not usual for a human rights commission to be granted authority to impose a legally binding outcome on parties to a complaint. However, this does not mean that the settlement or appropriate remedial steps recommended by the commission can be ignored. In some cases, a special tribunal will hear and determine issues outstanding from an unresolved complaint. If no special tribunal has been established, the commission may be able to transfer unresolved complaints to the normal courts for a final and binding determination.

Another important function of a human rights commission is systematically to review the government's human rights policy in order to detect shortcomings in human rights observance and to suggest ways of improving it. Human rights commissions may also monitor the State's compliance with its own and with international human rights laws and if necessary, recommend changes. The ability of a commission to initiate enquiries on its own behalf is an important measure of its overall strength and probable

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effectiveness. This is particularly true in regard to situations which involve persons or groups who do not have the financial or social resources to lodge individual complaints.

The realization of human rights cannot be achieved solely through legislation and administrative arrangements. In recognition of this fact, commissions are often entrusted with the important responsibility of improving community awareness of human rights. Promoting and educating about human rights may involve informing the public about the commission's own functions and purposes; provoking discussion about various important questions in the field of human rights; organizing seminars; holding counselling services and meetings; as well as producing and disseminating human rights publications.

#### **The ombudsman**

The office of ombudsman is now established in a number of countries. The ombudsman (who may be an individual or a group of persons) is generally appointed by the parliament acting on constitutional authority or through special legislation. The primary function of this institution is to protect the rights of individuals who believe themselves to be the victim of unjust acts on the part of the public administration. Accordingly, the ombudsman will often act as an impartial mediator between an aggrieved individual and the government.

While the institution of ombudsman is not exactly the same in any two countries, all follow similar procedures in the performance of their duties. The ombudsman receives complaints from members of the public and will investigate these complaints provided they fall within the ombudsman's competence. In the process of investigation, the ombudsman is generally granted access to the documents of all relevant

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public authorities. He or she will then issue a statement of recommendation based on this investigation. This statement is given to the person lodging the complaint, as well as to the office or authority complained against. In general, if the recommendation is not acted upon, then the ombudsman may submit a specific report to the legislature. This will be in addition to an annual report to the same body which may include information on problems which have been identified and contain suggestions for legislative and administrative change.

While any citizen who believes that his or her rights have been violated may submit a complaint to the ombudsman, many countries require that the complainant first exhaust all alternate legal remedies. There may also be time limits imposed on the filing of complaints, and while the ombudsman's authority usually extends to all aspects of public administration, some are not empowered to consider complaints involving presidents, ministers or the judiciary.

Access to the ombudsman also varies from country to country. In many countries individuals may lodge a complaint directly with the ombudsman's office. In other countries complaints may be submitted through an intermediary such as a member of parliament. The complaints made to the ombudsman are generally confidential, and the identity of the complainant is not disclosed without that person's consent.

The ombudsman is not always restricted to acting upon complaints and may be able to commence an investigation on his or her own initiative. Self-initiated investigations often relate to issues which the ombudsman may have determined to be of broad public concern, or issues which affect group rights and are therefore not likely to be the subject of an individual complaint.

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In many respects, the powers of the ombudsman are quite similar to those of human rights commissions. Both may receive and investigate individual complaints. In principle, neither has the power to make binding decisions. There are nevertheless some differences in the functions of the two bodies which explain why some countries establish and simultaneously maintain both types of institution.

In most cases, the primary function of the ombudsman is to ensure fairness and legality in public administration. Human rights commissions are more specifically concerned with discrimination, and in this respect will often address themselves to the actions of private bodies and individuals as well as the government. In general, the principal focus of activity for an ombudsman is individual complaints. However, ombudsmen are increasingly engaged in a wider range of activities for the protection and promotion of human rights.

### **Specialized institutions**

Vulnerable and minority groups differ from country to country, but the most common problem affecting them all is that of discrimination. Members of the community who are most often recognized by governments as needing specialized human rights institutions to protect their interests are persons belonging to ethnic, linguistic and religious minorities, indigenous populations, aliens, migrants, immigrants, refugees, children, women, the poor and the disabled.

In general terms, such specialized institutions are established to promote government and social policy which has been developed for the protection of that particular group. For the most part, these institutions perform functions similar to those of the less specific human rights

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commissions and ombudsmen described above. They are usually authorized to investigate instances and patterns of discrimination against individuals in the group and against the group as a whole. While generally able to investigate complaints brought by a member of the group against another person or against a government body, these specialized agencies are, like other national human rights institutions, rarely empowered to make binding decisions or to initiate legal action.

As well as providing material and consultative assistance on an individual and collective basis, such agencies will frequently be responsible for monitoring the effectiveness of existing laws and constitutional provisions as these relate to the group. In this way, they often act as consultants and advisors to parliament and the executive branch of government.

#### **Some final points . . .**

There are some who see no good reason for establishing special national machinery devoted to the protection and promotion of human rights. They may argue that these bodies are not a wise use of scarce resources and that an independent judiciary and democratically elected parliament are sufficient to ensure that human rights abuses do not occur in the first place.

Unfortunately, history has taught us differently. A body that is in some way separated from the responsibilities of executive governance and judicial administration is in a position to take a leading role in the field of human rights. By maintaining its real and perceived distance from the government of the day, such a body can make a unique contribution to a country's efforts to protect its citizens and

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to develop a culture respectful of human rights and fundamental freedoms.

Some countries have a long tradition of protecting human rights at the national level through the creation of such organs as human rights commissions or ombudsman offices. The majority of institutions, however, have been set up since the 1980s. This trend, which has been actively encouraged by the United Nations, is evidence of a growing momentum, both national and international, in support of human rights. Increasing interest in national human rights institutions should also be viewed in light of recent democratization and reform processes which have been taking place in a great number of countries.

In the course of its involvement in the work of national institutions, the United Nations has come to realize that no single model of national institution can, or should, be recommended as the appropriate mechanism for all countries to fulfil their international human rights obligations. Although each nation can benefit from the experience of others, national institutions must be developed taking into account local cultural and legal traditions as well as existing political organization.

The United Nations has also recognized that not all States eager to develop or strengthen national institutions have the necessary technical and financial capacity to do so. The Centre for Human Rights, under its Programme of Advisory Services and Technical Cooperation, has provided expert and material assistance in this area to a number of countries in the last few years. It encourages Member States to request assistance for building or strengthening national institutions for human rights. Practical assistance for that purpose may be made available in the context of the advisory services programme of the Centre for Human Rights.

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Human rights machinery of the kind described in this Fact Sheet cannot be expected to solve those problems which governments and the international community have been unable effectively to address. Neither are they set up to replace the human rights organs of the United Nations or non-governmental organizations working in the same area. Their role is clearly complementary, and a strengthening of such institutions can only enhance the effectiveness of both national and international systems for protection and promotion of human rights.

**Principles relating to the status and functioning of national institutions for protection and promotion of human rights (The Paris Principles)**

In October, 1991, the Center for Human Rights convened an international workshop to review and update information on existing national human rights institutions. Participants included representatives of national institutions, States, the United Nations, its specialized agencies, intergovernmental and non-governmental organizations.

In addition to exchanging views on existing arrangements, the workshop participants drew up a comprehensive series of recommendations on the role, composition, status and functions of national human rights instruments. These recommendations, which were endorsed by the Commission on Human Rights in March 1992 (resolution 1992/54) and by the General Assembly in its resolution [A/RES/48/134](#) of 20 December 1993, are summarized below.

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**A. Competence and responsibilities**

1. A national institution shall be vested with competence to protect and promote human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, *inter alia*, have the following responsibilities:
  - (a) To submit to the government, parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

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- (ii) Any situation of violation of human rights which it decides to take up;
  - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
  - (iv) Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government;
- b)* To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
  - c)* To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
  - d)* To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
  - e)* To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;
  - f)* To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

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- g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

**B. Composition and guarantees of independence and pluralism**

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
  - Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
  - Trends in philosophical or religious thought;
  - Universities and qualified experts;
  - Parliament;
  - Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises,

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in order to be independent of the government and not be subject to financial control which might affect this independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

**C. Methods of operation**

Within the framework of its operation, the national institution shall:

1. Freely consider any questions falling within its competence, whether they are submitted by the government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,
2. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
3. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
4. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly consulted;
5. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

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6. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions);
7. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to protecting and promoting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

**D. Additional principles concerning the status of commissions with quasi-jurisdictional competence**

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

1. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

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3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations or administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

**Note:**

1. A/36/440 (1981), A/38/416 (1983), E/CN.4/1987/37 (1987), E/CN.4/1989/47 and Add. 1(1989), E/CN.4/1991/23 and Add. 1(1991).

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## **Annex 2**

### **Bibliography**

#### **Presentation**

One of the academic services that the Inter-American Institute of Human Rights provides is its specialized Library and Documentation Center. The Library is co-owned by the Inter-American Court of Human Rights.

The Library's collection begun with 250 books on April 1981, and currently consists of over 17,000 titles, focusing on topics such as public international law, human rights law, constitutional law and electoral-political law. It is also the depositary of documents from the Organization of American States and the Human Rights Organization of the United Nations System.

The Documentation Center was established in March 1992. Its bibliographical collection (constituted by 12.000 titles) has a multidisciplinary focus. It covers areas such as human rights education (theory, experiences, and didactic material); reports on the situation of the Latin-American countries; vulnerable groups (migrants, internal displaced populations, women, young people, indigenous people); sociopolitical actors (human rights, governmental, non-governmental and international organizations; governments, armed forces and law enforcement officials); context (economic and social policies, poverty, structural

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adjustment, and elections); and other topics such as citizen security, environment, and peace processes).

The present bibliography was elaborated by request of the Department of Public Institutions of the Inter-American Institute of Human Rights. The bibliography offers information for the participants of the workshop on the promotion and protection of reproductive rights through the work of the Ombudsman of the Caribbean.

Each bibliographic reference includes the following information: author or authors, title of the book or article, place where it was published, publishing house, year and number of pages. When reference is made to a part of a book or to an article of a magazine, the title of the main piece is introduced with the preposition “in”. Some important web pages are also included.

Consultations to the materials can be made by visiting the headquarters of both units of information in San Jose, Costa Rica. It is also possible to acquire the books and magazines published by the IIHR. Photocopies of the materials have a charge of US\$ 0.10 per page.

The shipping and handling of the materials must be covered by the interested person. Please direct your inquiries to: Documentation Center, IIHR, P.O. Box 10.081-100, San José, Costa Rica; Tel. (506) 280-9365; fax (506)2340955; e-mail: [lmolina@iidh.ed.cr](mailto:lmolina@iidh.ed.cr)

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### **Annex 3**

#### **List of Participants in the Seminar-Workshops for Latin America and the Caribbean**

##### **Seminar-Workshop**

**“The Promotion and Protection of Reproductive Rights through the Work of the National Human Rights Institutions for Latin America, the Caribbean and Canada”. (San Jose, Costa Rica, 2002)**

The Ombudsman Office of Argentina, Adriana Viñas

The Ombudsman Office of Bolivia, Godofredo Reinicke

The Canadian Human Rights Commission, Maureen Armstrong

The Ombudsman Office of Colombia, Beatriz Linares

The Ombudsman Office of Costa Rica, Ligia Martin

The Ombudsman Office of Ecuador, Alexandra Arroyo

The Office for the Defense of Human Rights of El Salvador, Raquel Caballero

The Human Rights Office of Guatemala, Francisca Marroquin

The Ombudsman Office of Haiti, Danielle Magloire

The National Commissioner for Human Rights of Honduras, Ana Pineda

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The Ombudsman Office of Jamaica, Cory Mills

The National Human Rights Commission of Mexico,  
Armando Torres

The Office for the Defense of Human Rights of Nicaragua,  
Annabelle Sanchez and Patricia Independencia Obregon

The Ombudsman Office of Panama, Zulima Fernandez

The Ombudsman Office of Paraguay, Sonia Fernandez

The Ombudsman Office of Peru, Lali Vicente

The Ombudsman Office of Venezuela, Asia Villegas

**Exponents and Observers**

The Center for Reproductive Law and Policy (CRLP)

The Inter-American Commission of Human Rights

The Latin American and Caribbean Commission for the  
Defense of Women's Rights (CLADEM), regional offices of  
Brazil and Peru

The Center for Legal Action on Human Rights (CALDH) of  
Guatemala

The National Women's Institute of Costa Rica

The National Institute of the Family and Women of Uruguay

The PROFAMILIA Organization, Colombia

The Judicial Commission of Panama

The Vice-Ministry for Gender, Generational and Family  
Affairs of Bolivia

**Seminar-Workshop**

**“Promotion and Protection of Reproductive Rights through the Work of the Ombudsman Offices of the Caribbean” (Kingston, Jamaica, 2003)**

The Ombudsman Office of Antigua and Barbuda, Hayden Thomas

The Ombudsman Office of Barbados. Investigations Officer, Barbara Taylor

Acting Director of Human Affairs, Bermuda, Beverly Morfitt

The Human Rights Commission of Bermuda. Chairperson, Marianne Scott

The Ombudsman Office of Guyana, Shaik Y. Mohamed

Protecteur du Citoyen et de la Citoyenne, Haiti, Program Officer, Edly Pierre Canel

The Office of the Public Defender, Jamaica, Howard Hamilton

The Ombudsman Office of Puerto Rico, Coordinadora Red de Defensorías de la Mujer, Carmen Lourdes Monroig

The Office of Parliamentary Commissioner Saint Lucia, Selwyn Vincent

The Ombudsman Office of Trinidad and Tobago, George A. Edoe

Caribbean Ombudsman Association, Lawrence Laurent

**Exponents and Observers**

- The Center for Reproductive Rights (CRR)
- United Nations Latin American Institute for Crime Prevention (ILANUD)
- Defensoria de los Habitantes of Costa Rica

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