

Reproductive Rights in the Inter-American System for the Promotion and Protection of Human Rights

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The past few decades have seen significant advances in women’s human rights throughout the Americas, but the struggle is not over. The inter-American system for the promotion and protection of human rights which includes a commission and a court, has tremendous potential to make women’s rights a reality in the region. The inter-American system can improve women’s rights throughout Latin America in at least three ways:

- By articulating and applying international and regional standards on women’s rights when these rights are not adequately protected at the national level;
- By guaranteeing reparations for victims whose rights have been violated; and
- By encouraging countries to undertake legislative and policy changes to better protect reproductive rights.

This briefing paper will examine the inter-American system’s work on reproductive rights since its inception. This paper will also discuss the cases and reports brought before the inter-American system by the Center for Reproductive Rights and partner organizations.

I. Structure of the Inter-American System

The inter-American system for the promotion and protection of human rights has played a crucial role in advancing and safeguarding human rights in Latin America and globally. The current challenge for the inter-American system is how to use its jurisdiction, mandate, and resources to remain at the forefront of advances in both legislation and jurisprudence pertaining to women’s human rights around the world.

American Declaration on the Rights and Duties of Man

Adopted by the Ninth International Conference of American States in Bogotá, Colombia, in 1948, which also created the Organization of American States (OAS).

The Declaration is technically not a legally binding agreement under international law. However, it is a source of legal obligations for OAS member states and has legal ramifications for those member states that have not yet ratified the American Convention on Human Rights. Available at <http://www.iachr.org/Basicos/basic2.htm> (last visited Sept. 24, 2002).

American Convention on Human Rights (American Convention)

Signed at the Inter-American Specialized Conference on Human Rights in San José, Costa Rica, November 22, 1969 and entered into force July 18, 1979.

The American Convention was the first binding instrument in the inter-American system on human rights. It defines protected rights and the duties of the states, formalizes the structure, functions and procedures of the Inter-American Commission on Human Rights, and creates the Inter-American Court of Human Rights. Available at <http://www.iachr.org/Basicos/basic3.htm> (last visited Sept. 24, 2002).

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)

Signed in San Salvador, El Salvador, November 17, 1988, at the 18th regular session of the General Assembly of the OAS, and entered into force November 16, 1999.

The protocol addresses the rights and conditions of work, social security, health, environment, food, education, culture, family, as well as the rights of children, the elderly and the handicapped. Available at <http://www.iachr.org/Basicos/basic5.htm> (last visited Sept. 24, 2002).

Inter-American Convention for the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará)

Adopted in Belém do Pará, Brasil, June 9, 1994, at the 24th regular session of the OAS General Assembly, and entered into force March 5, 1995.

The Convention of Belém do Pará is the only international treaty in the world that specifically addresses violence against women. The Convention defines violence against women in broad terms and establishes the obligations of states in preventing, investigating, and punishing violations of women's physical, sexual and psychological integrity, and other related rights, with the intention of eliminating violence against women. The Convention also obligates states to take necessary legislative measures to guarantee these rights. Available at <http://www.iachr.org/Basicos/basic13.htm> (last visited Sept. 24, 2002).

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The Inter-American Commission on Human Rights was created by the Organization of American States (OAS)¹ in 1959² in response to a growing regional and international interest—rising out of the political crises in the Caribbean and neighboring countries at that time—in creating mechanisms for the protection of human rights.³ While the main purpose of the Commission was to promote human rights in the region, it initially lacked a clear mandate and it was not until 1965 that it was granted the power to hear individual petitions related to violations of the rights established by the American Declaration on the Rights and Duties of Man (American Declaration).⁴

In 1967, an amendment to the OAS Charter strengthened the role of the Commission by designating it the principal human rights organ of the OAS.⁵ With the adoption of the American Convention on Human Rights (American Convention) in 1969, the Commission was granted the legal authority to issue binding decisions.⁶ The American Convention's entry into force in 1978 broadened the Commission's jurisdiction to monitor states parties' compliance with their obligations under the American Convention, while retaining its jurisdiction over OAS member states under the American Declaration and the OAS Charter. The Convention also created the Inter-American Court of Human Rights, to interpret the Convention's provisions and hear individual cases where the Commission has determined that a rights violation has occurred.⁷ The Commission and the Court are each made up of individual experts, nominated and elected by member states in accordance with the American Convention.⁸

Special rapporteurs on particular human rights issues and other inter-governmental organs established by the OAS round out the inter-American system for the promotion and protection of human rights.

A. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The Commission acts in accordance with the powers granted to it by the OAS Charter,

Admissibility Requirements for Petitions

Article 46 of the American Convention and Articles 27 and 28 of the Commission's Rules of Procedure establishes the admissibility requirements for petitions:

Petitions presented to the Commission must pertain to a violation of a human right protected under the American Convention on Human Rights or other regional instruments applicable to OAS member states.

Petitions shall contain the following information:

- a. the name, nationality and signature of the person or persons making the allegation;
- b. whether the petitioner wishes that his or her identity be withheld from the accused State;
- c. the address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and email address;
- d. a detailed description of the facts, specifying the place and date of the alleged violations;
- e. the name of the victim and of any public authority who knows about the alleged situation, if possible;
- f. the country that the petitioner considers responsible by action or omission, even if no specific reference is made to the article(s) alleged to have been violated;
- g. compliance with the six months time limit from the date of notification of the exhaustion of domestic remedies;
- h. any steps taken to exhaust domestic remedies, or an explanation of the impossibility of doing so;
- i. an indication of whether the complaint has been submitted to another international proceeding.

Exceptions to the Exhaustion of the Domestic Remedies Requirement:

Article 46 of the American Convention establishes the following exceptions to the requirement that domestic remedies be exhausted:

- the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- the party alleging violation of his or her rights has been denied access to the remedies under domestic law; or
- there has been unwarranted delay in rendering a final judgment.

When the petitioner alleges that it is impossible to prove compliance with the exhaustion of remedies requirement, the state in question has the burden of proof to show that domestic remedies have not been exhausted, unless the contrary is clearly obvious from the record.

the American Convention, and its statutes and regulations.

The duties of the Commission are to:⁹

- oversee member states general adherence to human rights;
- analyze and investigate individual petitions alleging human rights violations;
- refer cases to the Inter-American Court and appear before the Court during litigation;
- publish special reports on the state of human rights in specific countries, when necessary;
- solicit “advisory opinions” interpreting the American Convention from the Court; and present an annual report to the General Assembly of the OAS.

By 1997, the Commission had received tens of thousands of petitions, which resulted in 12,000 admissible cases. At present more than 800 individual cases are pending.¹⁰

The Commission has jurisdiction over the rights established by regional human rights instruments, such as the American Convention. The Commission applies these instruments to determine the international responsibility of member states charged with a violation. For those states that have not ratified the American Convention, the American Declaration on Human Rights is applied.

The Commission is the first authoritative body to process individual petitions. Its function is to “filter” the cases that go to the Court by determining if a state has international responsibility for a violation of one or more of the rights protected under the Convention or the Declaration.

A petition can be presented¹¹ by any individual, group or non-governmental organization (NGO), on its own behalf or on behalf of another person. Petitions must be presented within six months of exhausting domestic remedies.¹²

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Once the Commission has received a petition it informs the state in question that a complaint has been filed against it and that it has the opportunity to respond. The Commission issues a report of admissibility once it is satisfied that the admissibility requirements have been met by examining information provided in both the petition and the state's response.¹³

After accepting a case, the Commission facilitates dialogue between the petitioners and the accused state in an attempt to negotiate a friendly settlement.¹⁴

Friendly settlement negotiations between the parties have become an important part of the proceedings, strengthening the Commission's role as mediator.

When an amicable settlement fails and the Commission believes it has sufficient information, the Commission can decide if the action of the state constitutes a human rights violation.¹⁵ Based on this evaluation, the Commission can refer the case to the Court,¹⁶ or issue a final report presenting its conclusions and recommendations to the state. Recommendations may include making reparations for the violation, investigating events, compensating the victims, and generally refraining from future human rights violations. To assure compliance with its recommendations, the Commission follows up and requests information on the situation in the periodic reports required of individual states under the American Convention.¹⁷

B. INTER-AMERICAN COURT OF HUMAN RIGHTS

The Inter-American Court of Human Rights, created by the American Convention as a judicial body, complements the function of the Commission in overseeing compliance with the Convention.¹⁸ Its basic duties are to: resolve individual cases that are referred to it,¹⁹ and issue advisory opinions on interpretations of the American Convention and

How to Present a Petition

Petitions should be sent to the Executive Secretary of the Inter-American Commission on Human Rights. They can be mailed to: 1889 F Street, N.W., Washington D.C., 20006, U.S.A.; faxed to (202) 458-3992; emailed to cidhoea@oas.org; or completed online on the Commission's website, at: <http://www.iachr.org/denuncia.eng.htm>.

other regional human rights treaties.²⁰

Before the Court will hear a case, the proceedings before the Commission must be exhausted, the Commission or the state must refer the case to the Court, and the state must have recognized the jurisdiction of the Court.²¹ If the Court decides that there has been a violation of a right guaranteed under the American Convention, it will rule on the measures that must be taken to protect the violated right(s), and when appropriate, on reparations and compensation for damages.

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The Court has generated only a limited volume of jurisprudence: since its creation, the Court has heard just over 40 cases and has issued 95 rulings.²²

II. Women’s Human Rights in the Inter-American System

A. BACKGROUND

In the Americas increasing importance is being placed on guaranteeing respect for women’s rights, eliminating discrimination, and addressing the barriers to women’s enjoyment of their human rights and fundamental freedoms so that they may fully and equally participate in society. This section outlines several important mechanisms and instruments for ensuring the protection of women’s rights in the Americas through the inter-American system for the protection and promotion of human rights.

International Organizations

The establishment of the Inter-American Commission of Women (CIM) in 1928 was the first effort in the region to create an official, inter-governmental institution specifically to monitor the protection of women’s civil and political rights. However, it was not until the 1990s that CIM adopted concrete initiatives to protect and more effectively guarantee women’s rights.

At the heart of CIM is the Rapporteur on the Situation of Women in the Americas. This office was created in 1994 in response to growing awareness of the variety of ways in which national laws and practices prevent women from the full and free exercise of their rights. The Rapporteur is tasked with monitoring compliance of OAS member states with the international obligations established by regional human rights instruments as they relate to women’s rights.

Instruments

Several regional human rights instruments are of particular relevance to the protection of women’s rights in the Americas.

Since 1990, CIM, regional women’s organizations, and states, have worked together to

The Power of Petitions in the Inter-American System

- International courts provide an important “second chance” for justice for victims of human rights violations whose appeals are often denied in their own countries.
- Individual cases of human rights violations help illustrate systematic violations of the rights of specific groups. In these cases, individual victims can not only get redress, but states may be required to take general measures to prevent future violations.
- Petitions to international bodies make human rights violations visible and public. They help sensitize the public to these types of violations and facilitate greater protection in the future.
- Decisions from international courts delineate the often vague or broad rights contained in international treaties.
- International human rights case law creates global norms for protecting and guaranteeing the rights of individuals. This helps advance normative and political changes in the domestic context.
- Cases that link women’s sexual and reproductive rights to general principles of human rights contribute to the recognition of sexual and reproductive rights as human rights—a notion which has long been ignored in the dominant discourse on human rights because it challenges societal conceptions of women.

address violence against women, culminating in 1994 with the adoption of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)—the only international treaty that specifically addresses violence against women—by the OAS General Assembly.

The Convention’s adoption is a clear indication of the important potential that the international human rights system has for the effective protection of women’s rights.

The Convention of Belém do Pará consolidates international standards on states’ obligations to prevent violence against women.²³ Despite being the most recent human rights instrument in the region, the Convention of Belém do Pará has been ratified by the greatest number of states.²⁴

The Additional Protocol to the American Convention on Human Rights In the Area of Economic, Social and Cultural Rights (Protocol of San Salvador),²⁵ signed November 17, 1998, demonstrates that broadening the catalogue of protected rights is essential for the better protection of women’s reproductive rights. According to Article 10 of the Protocol of San Salvador, all persons have the right to enjoy the highest attainable level of physical and mental health. It also:

- requires that member states recognize health as a “public good;”
- describes a number of measures for compliance with this right on the part of the state; and
- establishes states’ obligation to satisfy the health needs of high-risk groups and of those whose economic situation makes them particularly vulnerable.

Despite such positive regional initiatives, the Rapporteur’s first report on the situation of women in the Americas revealed that serious problems concerning women’s legal, social, political, and economic situation persist.²⁶ The Rapporteur urged member states to take the necessary measures to eliminate gender discrimination and strengthen legislation and procedures available for women to achieve complete equality in society. A second report is expected in 2002.

In March 2002, the rapporteurs on women’s rights of the Inter-American Commission, the UN Commission on Human Rights, and the African Commission on Human and People’s Rights, issued a joint declaration²⁷ affirming that women’s rights are human rights and pledging to harmonize international standards on the protection of these rights.²⁸

In 2001, the Special Rapporteur on the Situation of Women’s Rights in the Americas contributed a special chapter to the Inter-American Commission’s annual report describing

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the Rapporteur's efforts to promote and protect women's rights in the region. The report also summarized the Rapporteur's investigation of the 268 murders of women and girls that have been committed in Ciudad Juarez, Mexico since 1993.²⁹

B. CASES ON WOMEN'S RIGHTS IN THE INTER-AMERICAN COMMISSION

Over the past two decades, several cases relating to gender have been presented to the Inter-American Commission. This section will examine the cases that relate to sexual and reproductive rights, divided into two broad categories: 1) the rights to equality and non-discrimination; and 2) the rights to physical and psychological integrity and to be free from sexual violence.

1.) The Rights to Equality and Non-Discrimination

BRAZIL

On August 20, 1998 the Commission heard the case of *Maria da Penha Maia Fernandes*.³⁰ For more than 15 years, Penha's husband physically abused and attempted to murder her until he finally left her paralyzed. Brazilian authorities failed to respond to continuous reports filed by the victim over the course of 15 years of abuse. Based on this inaction, the Commission held the Brazilian government responsible for the violation of Penha's rights, and for a general pattern of government tolerance of, and, law enforcement's ineffectiveness in responding to, cases of domestic violence. This was the first time that the Commission used the Convention of Belém do Pará to decide a case.

CHILE

On March 12, 2002, the Commission approved a friendly settlement in the case of *MCG v. Chile*,³¹ which involved discrimination against a pregnant student by a state-subsidized educational institution. The Chilean government did not consider the expulsion of the pregnant minor an act of discrimination or a violation of the right to privacy. The petition alleged violations of the rights to protection of honor and dignity, and equality before the law. The friendly settlement included a state scholarship for the petitioner to continue her studies.

COLOMBIA

Filed in 1999, the case of *Marta Lucía Álvarez Giraldo*³² claims that the state penitentiary system discriminated against Álvarez on the basis of sexual orientation by preventing her from having conjugal visits with her partner. The state took the position that allowing conjugal visits for homosexuals would affect the internal disciplinary regimen of prisons. While the case has never been resolved by the Commission, the Colombian Supreme Court of Justice decided in favor of Álvarez at the end of 2001.³³

GUATEMALA

Presented to the Commission in 1998, the case of *María Eugenia Morales de Sierra*³⁴ alleged that the Guatemalan Civil Code—which covers domestic relations—discriminates on the basis of gender. Invoking the right to equality before the law, the petitioners

argued that the code undermines women's legal ability to represent their children and to manage family property. The case was resolved by friendly settlement and resulted in the reform of the Civil Code to recognize a women's right to work without the explicit permission of her spouse. However, the Commission found that this reform was insufficient. In 2001, the Commission published a final decision stating that discrimination persists despite the legislative changes to date and that further legal reforms are necessary.

2.) *The Rights to Physical and Psychological Integrity and to be Free from Sexual Violence*

ARGENTINA

Presented to the Commission in 1996, the case of *X and Y v. Argentina*³⁵ sought to stop the practice of vaginal inspections of girls and women visiting inmates in Argentine prisons. The Commission concluded that the inspections constituted an invasion of women's bodies, and violated the rights to privacy, physical and psychological integrity, the protection of the family, and the rights of the child. The decision established the close connection between the right to privacy and the right to physical and psychological integrity.³⁶

COLOMBIA

In 2001, the case of *Alba Lucía Rodríguez* was filed with the Commission.³⁷ Rodríguez, a 20-year old woman from rural Colombia who became pregnant as a result of a rape and gave birth to a son who died as a result of complications during the delivery, was then sentenced to 42 years in prison for the alleged homicide of that child. The Supreme Court of Colombia ordered the release of Rodríguez in March 2002, after she spent six years in prison.³⁸ Though Colombia has responded to the petition, the Commission has not formally admitted the case.

EL SALVADOR

In 1991, the Commission found the Salvadoran government responsible for the kidnapping and rape of *Rosa Marta Cerna Alfaró*³⁹ by members of the Atlacatl Battalion. The Commission held the government responsible for a violation of Cerna's rights to physical and psychological integrity and personal liberty.

In 1994 the Commission similarly found the government of El Salvador responsible for the rape of minors *María Hernández Rivas*⁴⁰ and *María Dolores Rivas Quintanilla*,⁴¹ by members of the army. In both cases, the Commission found the state responsible for violation of the rights to physical and psychological integrity and dignity, the rights of the child, and the right to judicial protection.

MEXICO

In April 2001, the Commission found the government of Mexico responsible for the detention of sisters *Ana, Beatriz and Celia González*.⁴² A military group in Chiapas imprisoned the sisters, who were indigenous tzeltales, for two hours. The sisters were separated from their mother, beaten, and repeatedly raped. The Commission ruled that this case demonstrated the use of rape as a form of torture and a violation of women's right to privacy. The Commission

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also considered the offense to be more serious because the victims were from a targeted indigenous community.

PERU

In 1996, the Commission heard the case of *Raquel Martín de Mejía*,⁴³ who was raped while her husband was detained by the Peruvian army. The Commission found the government of Peru responsible for the violation of the victim's rights to physical and psychological integrity, honor and dignity. Furthermore, the Commission established that in accordance with the Inter-American Convention to Prevent and Punish Torture, rape committed by a public official constitutes a form of torture.

In 1997, the Commission heard the case of *Leonor La Rosa Bustamante*,⁴⁴ who was tortured and raped. The Commission found that these violations constituted cruel, inhuman and degrading treatment and ruled that the state had ignored the victim's right to judicial guarantees and due process. In this case, the Commission addressed and upheld the rights to liberty and personal integrity.

C. SPECIAL REPORTS

In recent years, the Commission has recognized reproductive rights as human rights by including a discussion of reproductive health in the chapter on women's rights in their special reports on the situation of human rights in OAS member states. In their Peru 2000,⁴⁵ Paraguay 2001⁴⁶ and Guatemala 2001⁴⁷ reports, the Commission analyzed reproductive health-related issues in each country and made specific recommendations to the governments to improve protection of women's reproductive rights.

However, these discussions of reproductive health are not the Commission's first. In a 1995 special report on Haiti, the Commission wrote that rape constitutes inhuman treatment and a crime against the physical and psychological integrity of a person, in accordance with Article 5 of the American Convention. It further held that rape is a form of torture under Article 5(2) of the Convention.

In 2001 the Center for Reproductive Rights discussed the impact of U.S. President George W. Bush's "global gag rule"⁴⁸ on reproductive rights in the region with the Special Rapporteur on Freedom of Speech. It is the Center for Reproductive Rights' view that the global gag rule violates the right to free speech, not only of overseas groups receiving funding from the United States, but also of individual Center for Reproductive Rights attorneys prevented from promoting legislative reform to curtail unsafe abortion. The Special Rapporteur has not discussed the global gag rule to date.

D. ADVISORY OPINIONS FROM THE INTER-AMERICAN COURT OF HUMAN RIGHTS

In 1996, the Court issued its only advisory opinion on equality between men and women, which stated that Costa Rica's proposed constitutional reform on naturalization rules would

violate the right to equality by creating preferential treatment for only one spouse.⁴⁹

III. Cases Presented by the Center for Reproductive Rights and Partner NGOs

In 1997, the Center for Reproductive Rights, in collaboration with local and regional organizations, began to document and analyze violations of human rights pertaining to sexual and reproductive health in Latin America. The Center for Reproductive Rights' fact-finding methodology is part of a broader strategy to incorporate regional and international human rights standards into national laws and policies.

The three cases presented to the Commission by the Center for Reproductive Rights demonstrate that sexual and reproductive rights are repeatedly violated in the region and that existing national laws and policies often adversely affect the reproductive and sexual health of women. By exposing the conduct of government officials, as well as private citizens, these cases have resulted in recommendations on strategies to eliminate violations of women's reproductive rights in the region.

A. *MM V. PERU*

Facts

On January 25, 1996, MM, a 19-year-old rural Peruvian woman, went alone to the Carlos Monge Medrano Hospital in Juliaca to seek treatment for head and body pains she had been suffering since a traffic accident three months prior. Doctor Gerardo Salmón Horna led her into his private office where he administered anesthesia to make her unconscious and then raped her. When MM regained consciousness and realized what had happened, she ran out of the examination room crying and bleeding profusely. The following day she returned to the hospital still hemorrhaging. The physician who saw her covered for Dr. Horna by telling MM that the bleeding was from menstruation. On January 30, 1996 MM orally filed a criminal report of rape. During the subsequent criminal proceedings, she was subject to mistreatment and discrimination, and the defendant was acquitted despite substantial evidence of his guilt.⁵⁰

The Center for Reproductive Rights, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), and the Center for Justice and International Law (CEJIL) presented a petition to the Commission accusing the Peruvian state of violating MM's rights.

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Rights

The petition presented to the Commission against Peru alleged violations of rights protected by the American Convention and other international human rights instruments.

The petition argued that rape by a doctor working for the Peruvian public health services violated MM's rights to life⁵¹ and to physical and psychological integrity⁵² protected by regional conventions. The petition further alleged that Dr. Horna discriminated against MM based on her economic situation, which forced her to depend on public health services. Dr. Horna, as a public health official, failed to follow the standard procedure for a pelvic exam, jeopardizing MM's health⁵³ and violating her rights to health, liberty, and to provide free and informed consent to a medical procedure.⁵⁴ Finally, sexual abuse, in addition to violating the victim's privacy, also constituted a deliberate abuse of her honor and dignity.⁵⁵

The petition to the Commission also maintained that the Peruvian government denied MM the right to a full investigation of her complaint and to a trial by an impartial court⁵⁶ within a reasonable time period. Members of the judiciary further violated MM's right to judicial protection⁵⁷ by presiding over a process plagued by bias and gender prejudice. The prosecutor's office and the judge conducted a negligent and inefficient investigation of MM's case and arbitrarily evaluated the evidence by assigning lesser weight to critical evidence presented by MM, and greater weight to irrelevant documents submitted by the defendant.

Consequently, the Peruvian state failed to uphold its obligations under the American Convention "without any discrimination"⁵⁸ and violated MM's right to "a life free from violence."⁵⁹

Resolution

On March 6, 2000, following several months of negotiations between representatives of the government and of CLADEM, CEJIL and the Center for Reproductive Rights on behalf of the petitioner, the parties signed a friendly settlement that continues to be monitored by the Commission.

The Peruvian government agreed to compensate MM for her pain and suffering and material damage, and to report Dr. Horna to the Medical College of Peru for professional sanctions. In addition, the government agreed to create a commission to monitor their compliance with the terms of the agreement. These follow-up procedures will be crucial to ensuring full compliance with the friendly settlement.⁶⁰

The successful resolution of this case not only benefited MM, but compelled the Peruvian state to recognize international responsibility for the violation of MM's rights and adopt legislative and administrative measures designed to improve the situation of rape survivors and the quality of care in public health services.

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B. MARÍA MAMÉRITA MESTANZA CHAVEZ V. PERU

Facts

María Mamérita Mestanza Chavez was a young rural woman about 33 years old from Cajamarca, Peru who lived with her long-term domestic partner and seven children. In 1996, officials from the Encañada District Health Center continually threatened to report Mestanza and her partner to the police if she did not agree to undergo surgical sterilization, claiming that having more than five children was a crime. Finally, as a result of their coercion, Mestanza submitted to a tubal ligation. The surgery was performed without a prior medical examination and Mestanza was not provided with a medical consent form until a day after the operation, at which time officials neglected to read the form to her even though they knew she was illiterate. Following the surgery, Mestanza was discharged despite serious complications including vomiting and an intense headache. Over the next few days, her partner informed medical personnel at the center that Mestanza's health was deteriorating. The physicians refused to attend to her and insisted that she was only suffering from the post-operative effects of anesthesia. Mestanza died in her house nine days after undergoing the operation.

Mestanza's case is only one of many cases that illustrate the adverse consequences of Peru's family planning policy, which had been more concerned with achieving quantitative goals than with guaranteeing the reproductive rights of women.⁶²

The case of Mestanza was initially presented to the Commission on June 15, 1999 by three human rights NGOs: CLADEM, the Office for the Defense of the Rights of Women (DEMUS), and the Association for Human Rights (APRODEH). The Center for Reproductive Rights and CEJIL joined as petitioners on April 12, 2000.

Rights

The petition alleged violations of Mestanza's rights to life⁶³ and personal integrity⁶⁴ because she was not medically examined prior to the surgery to determine whether she could withstand the operation.

The petitioners maintain that Mestanza's rights to health⁶⁵ and to provide free and informed consent⁶⁶ were violated when agents of the state put her physical health at risk, by performing unnecessary surgery without her informed consent and without first performing a medical exam. Mestanza was also treated in a negligent, cruel, inhuman, and degrading manner by Peruvian health services employees when she was refused necessary post-operative care. As a result, Mestanza died in her home nine days after the operation, despite the fact that her partner continually requested medical assistance from the Encañada Health Center.

Staff from the Encañada Health Center, as agents of the state, took advantage of their position as health care providers by repeatedly pressuring and harassing Mestanza so that

“she would have no more children.” As a result, the Peruvian government also violated Mestanza’s right to privacy.⁶⁷

In the case of Mestanza, the family planning policy was clearly applied in a discriminatory manner. For example, health officials violated Mestanza’s rights to equality⁶⁸ and non-discrimination⁶⁹—recognized in international human rights instruments—when they bypassed Mestanza and gave her partner, Jacinto, the sole power to decide whether Mestanza should undergo sterilization, an invasive medical procedure.

Mestanza’s case also exemplifies Peru’s failure to guarantee equality before the law and of its doubly discriminatory actions in directing its family planning policies disproportionately at women and specifically at low-income, rural women with low levels of education.

Judicial protection⁷⁰ and access to justice constitute indispensable human rights and the basis for the realization of all other rights, because they provide the legal security of an independent and impartial court that will rule, remedy, and order compensation for any type of illegal act. In Mestanza’s case, her family members did not have access to an effective judicial remedy. They were denied the right to an impartial investigation of her wrongful death.

Resolution

In March 2001, the Peruvian government agreed in principle to settle the case and to recognize its international legal responsibility for violations of Mestanza’s rights. A final settlement agreement was reached on October 14, 2002, recognizing violations of the right to life, to physical integrity and humane treatment, to equal protection of the law, and to be free from gender-based violence.

As part of the settlement, the Peruvian government has agreed to indemnify the victim’s surviving husband and seven children and to conduct an in-depth investigation and to punish those responsible for the violations of Peruvian and international legal standards.

The government also agreed to modify discriminatory legislation and policies and to promptly implement the recommendations made by Peru’s Human Rights Ombudsman, which include: improving pre-operative evaluations of women being sterilized, requiring better training of health personnel, creating a procedure to ensure timely handling of

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patient complaints within the health care system, and implementing measures to ensure that women give genuine informed consent, including enforcing a 72-hour waiting period for sterilization.

C. PAULINA RAMÍREZ V. MEXICO

Facts

Ramírez was 13 years old when she was raped by an intruder in her home on July 31, 1999. She immediately reported the offense to the Agency of the Public Ministry Specializing in Sexual Crimes and Domestic Violence. Although this investigative agency was familiar with emergency contraception (EC), they neither offered Ramírez information on nor access to EC in order to prevent a possible pregnancy.

Several weeks later, Ramírez and her mother, María Elena, visited a private gynecologist and discovered that she was pregnant. According to state legislation, rape is one of the permissible exceptions to the criminal law on abortion and Ramírez was therefore entitled to a legal abortion. A Public Ministry official granted Ramírez authorization to have an abortion in a public hospital.

Ramírez checked into the hospital on two occasions; during each stay she was subjected to a long and unjustified fast and was given various excuses as to why the abortion could not be performed. Over a time period of two months, the authorities employed every possible pressure tactic to dissuade Ramírez and her mother from proceeding with the abortion. The State Attorney from the Department of Justice personally drove Ramírez and her mother to see a Catholic priest who reminded them that the Church prohibited abortions and would excommunicate them if they proceeded. During her hospital stay, two women, with no medical credentials, visited Ramírez in an attempt to pressure her by showing her explicit and disturbing

pictures of abortion procedures.

Finally, only hours before the operation was to be performed, the director of the hospital met with Ramírez's mother in a private room where he explained the risks of the procedure in a biased manner. He exaggerated and falsified the risks associated with abortion, yet neglected to mention the risks of carrying a pregnancy to term for an adolescent. The director of the hospital also told her that if Ramírez died, it would be her fault.⁷¹

Rights

In this case, the petition alleges that the state violated its obligation to respect and guarantee the rights⁷² established in the American Convention, particularly by its lack of judicial guarantees⁷³ and protection.⁷⁴ The fact that the rape exception to Mexico's abortion ban is not regulated has enabled public officials to act arbitrarily in cases of rape and neglect their obligation to respect and guarantee the rights to physical and psychological integrity,⁷⁵ liberty, informed consent,⁷⁶ honor, dignity, and privacy.⁷⁷ The lack of a clear procedure in these cases and of a sufficient, expedient, and effective remedy that permits the timely guarantee of the right to a legal abortion gave rise to a series of subsequent violations involving various public officials.

As a result, Ramírez has been caused irreparable damages, culminating in the imposition of a pregnancy that resulted from a violation of her sexual integrity.

The Mexican state violated Ramírez's right to physical and psychological integrity because the authorities allowed an unjustified period of time to pass while

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she was detained in the public hospital and resorted to delay her access to the procedure, despite an order from the Public Ministry. Additionally, providing Ramírez with inaccurate information on the risks of abortion without giving her information on the risks of adolescent pregnancy endangered the minor's right to physical integrity.

The psychological integrity and emotional health of a minor were jeopardized by the interference of unauthorized third parties who, in Ramírez's case, were allowed visitation rights by the director of the hospital. In doing so, the director violated the confidentiality of Ramírez's medical records, and allowed her to be exposed to intimidating and scientifically inaccurate visual materials about abortion.

Further, Ramírez's right to give her informed consent was violated. Informed consent is based on the ethical and legal concept of respect for the right to personal autonomy and liberty. Informed consent requires special protection in the case of socially vulnerable persons.

Ramírez's right to honor, dignity, and privacy were violated when medical personnel arbitrarily revealed her identity and the reason for her hospital visit, without her consent, to others who then attempted to prevent Ramírez from exercising her right to a legal abortion.

The Mexican government clearly violated its obligation to respect and guarantee Ramírez's right to health by refusing her right to an abortion and, furthermore, by forcing her to carry to term an unwanted pregnancy that disrupted her well-being

and forced her to face the risks of an adolescent pregnancy, a circumstance which in itself threatens the life and health of a minor.

Finally, the Mexican authorities violated Ramírez's fundamental right to freedom of belief and religion by imposing their personal religious convictions on Ramírez and thereby abandoning their role as public servants of a secular state that is bound to respect her right to make decisions about her own body in accordance with the law.

Resolution

The Center for Reproductive Rights and the Mexican organizations, Alaíde Foppa and Epikeia, presented the case to the Commission on March 8, 2002 during its 114th regular session. At the time of this publication, the Commission had not formally admitted the case. The petitioners' representatives are hopeful that Ramírez will be compensated for the harm caused to her and her family, and that future rape victims will be allowed to exercise their legal right to terminate their pregnancies.

IV. Conclusion

The inter-American system for the promotion and protection of human rights has tremendous potential to become a key player in ensuring the full recognition of women's rights, especially in respect to sexual and reproductive health. The strength of the inter-American system and its future role in the area of women's rights

depends on the use of its various mechanisms. Advancing international standards on the human rights of women through individual petitions and advisory opinions will raise the profile of such cases before the Commission and eventually present a more representative picture of these all too frequent rights' violations in the Americas. Additionally, the Commission's rulings in favor of women's rights will develop and promote the interpretation of related provisions in regional human rights instruments and emphasize states' often neglected responsibility to protect and guarantee women's human rights. The Court and the Commission can articulate consistent and convincing legal reasoning to help establish international parameters of adequate protection for the specific needs of different groups of women in the region. In this way, the two principle bodies of the inter-American system can also harmonize their jurisprudence with that of the committees charged with monitoring compliance with United Nations human rights treaties.

The challenge for the inter-American system is to transform itself into a protagonist in the development of international standards on women's human rights, which would strengthen the system overall. The permanent incorporation of a gender perspective by the Commission, the documentation and effective monitoring of serious and/or systematic violations of women's human rights through the deployment of special rapporteurs, and the consistent inclusion of a chapter on women's rights in the Commission's annual report, would greatly contribute to Latin American and Caribbean states' recognition and effective

protection of women's human rights.

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ENDNOTES

- 1 The OAS Charter was approved April 30, 1948 in Bogotá, Colombia. See OAS Charter. At that time the following 21 nations from the region confirmed their support for their common goals and their respect for the sovereignty of each country: Argentina, Bolivia, Brasil, Chile, Colombia, Costa Rica, Cuba (although a resolution of the Eighth Advisory Meeting of the Ministries of Foreign Affairs in 1962, excluded the actual government of Cuba from participation), Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, United States, Uruguay, and Venezuela. Since then the following countries have joined the OAS: Barbados, Trinidad and Tobago, Jamaica, Grenada, Suriname, Dominica, Saint Lucia, Antigua and Barbuda, Saint Vincent and the Grenadines, the Bahamas, Saint Kitts and Nevis, Canada, Belize and Guyana.
- 2 See *Declaration of Santiago, Final Act of the Fifth Meeting of Consultation of Foreign Ministers*, Res. VI, at 10-11, OAS Off. Rec. OEA/Ser.c/11.5 (1959). Complying with this resolution, the Council of the OAS approved the Statute of the Inter-American Commission on Human Rights on May 25, 1960. Statute of the Inter-American Commission on Human Rights, May 25, 1960, OAS Off. Rec. OEA/Ser.L.V/I.1 (1960). On June 29 of that year the first Commissioners were chosen and the Commission became active on October 3.
- 3 See HÉCTOR FAÚNDEZ LEDESMA, *EL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS* [THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS] 50 (1999).
- 4 See INTER-AMERICAN INSTITUTE ON HUMAN RIGHTS (IHHR) & LATIN AMERICAN AND CARIBBEAN COMMITTEE FOR THE DEFENSE OF WOMEN'S RIGHTS (CLADEM), *PROTECCIÓN INTERNACIONAL DE LOS DERECHOS HUMANOS DE LAS MUJERES* [INTERNATIONAL PROTECTION FOR WOMEN'S HUMAN RIGHTS] 150 (1997).