

REMARKS OF CECILIA MEDINA-QUIROGA*

There are two different themes that I would like to address. The first of them concerns the problem of human rights and women's rights. The second deals with the nature of the problems of women's rights, and in general of all human rights, and the various ways to address them. I begin with the first theme because I am a lawyer and, therefore, I can deal with that much more easily. Moreover, I have not been involved in the women's movement as such. I teach human rights law, so it is from the perspective of someone who teaches in that field that I will react to what has been said today.

My first comment would be that today a terrible effort has been made—perhaps without the speakers realizing it—to try to prove that women are human beings. If you notice what Rebecca Cook and Elizabeth Spahn have done, you realize that what we are trying to say actually is that women are human beings, and because they are human beings they have rights. This makes sense, because human rights have been legitimized. Nobody can contend now that human rights are not legitimate. Therefore, by introducing the idea that women are human beings and that consequently they have human rights, we advance a long way into making the struggle of women legitimate.

Another comment—prompted by what has been said concerning the inadequacy of general human rights law to solve women's problems and the need to set forth different rights for women—is that in principle, from a legal point of view, all women's problems can be solved by general human rights law. What is at the bottom of human rights is the principle of autonomy. Therefore, arguing from the point of view that any adult should be autonomous in its decisions, we could easily come to argue that reproductive freedom, for example, is a right that people have—that women have. This is

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true because reproductive freedom is only one aspect of the principle of autonomy which informs all human rights.

The indivisibility of human rights can be perceived quite clearly when we look at women's rights and women's problems. When we use international human rights law, we should keep this in mind and be aware that we have two possibilities: one is interpretation and the other is standard setting. If we can use the former, we should do that. As you know, whenever a lawyer reads a legal provision, the first thing she says when asked about its meaning is "It depends." Often, the reader makes the law more than the law makes the reader. Therefore, if we read the law with women's eyes, we probably will be able to go a long way into incorporating economic, social, and cultural rights into civil and political rights, which are much better protected at the international level. We could also incorporate the manners in which human rights of women are violated, and sensitize those who are charged with the application of human rights law.

The other thing would be that whenever we cannot interpret some things as a means to securing women's rights—when something is absolutely impossible to be read from a provision—then we have to go to standard setting and describe a right in such a way that the problems of women will be addressed. For example, we could look at rape as a form of torture, which it is. But we could also think that such an interpretation will be difficult with the way international supervisory bodies are composed today—mostly of men, and often with nonprogressive people—then perhaps it is better that we forget about trying to interpret rape as torture and try to develop a right to be free from rape.

The legitimacy of human rights also allows us to use them to change culture. In this sense we have to look at human rights as instruments that the legal profession has given us that can be used to pursue a change in culture. Consequently, our best way of combating culture that is oppressive for certain sectors of society is to say, "Well, these are my human rights and here no culture can annul them."

Further, there are various mechanisms to deal with human rights problems and we should be careful to identify the problem before deciding on a course of action; we should separate issues and use mechanisms accordingly. Civil and political rights problems are different than economic, social, and cultural rights problems; gross, systematic violations of human rights are not the same as isolated violations. If we are able to separate all these issues, then we would not debate whether human rights are useful or not useful to deal with

women's rights problems, but we would use the appropriate mechanisms for each different situation. For gross, systematic violations, for example, political action is indispensable. But legal action is also important to document evidence of an illegal situation so that political sanctions have sound support. For isolated violations, perhaps it is very important to have adjudication because a win in one case can generate immense legitimacy. General human rights law envisages all these possibilities.

As to the second theme, what I have said about law and legal mechanisms does not mean that we will not have to use other channels; we have to use all channels. This leads me to two things. One is that human rights—and certainly women's rights, because they are human rights—are not primarily a legal problem. Human rights are ultimately a legal problem in the sense that law reacts and offers solutions, as law always does where there are values that we wish to see implemented in a society. This being so, I have only to agree with the use of interdisciplinary approaches to the problem of women's rights.

Second, I must emphasize the importance of knowing facts when deciding how to go about struggling for women's rights. Facts are stubborn. We have a tendency as lawyers to try to fit facts in a very round, all-comprehensive institution that we have made. Sometimes the facts will not fit where we would like them to go. This is not only the realm of reproductive rights—it applies everywhere. For example, we must convince women that women are for women and not against them, so we have to listen to what they say. We have to really look at the facts and see very clearly what it is that women want and how we can best give that to them, without sacrificing the rights of others. And you don't do that without intense research, research that should begin, as it were, with a clean slate—not with prejudices, not with what we would like them to be, but really trying to see what the world is like and then designing the solutions for it. In doing the latter, we have to be imaginative enough to design new procedures, new methods, and new approaches.

You see, we have to look at what is the best from the point of view of strategy and tactics. And mostly we have to look at what women say, what women need. We should really listen to them and forget the particularities of our individual disciplines.

