

THE INTER-AMERICAN SYSTEM: OPPORTUNITIES FOR WOMEN'S RIGHTS

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Until recently, women's rights, let alone reproductive rights, played a very limited role in the Inter-American system of human rights protection. The two basic instruments of the system, the American Convention on Human Rights,¹ and the American Declaration on the Rights and Duties of Man,² were applied by the system's supervisory organs, the Commission and the Court. They were used primarily to deal with mass and gross violations of human rights resulting from the political, ideological, and military conflicts that took place in the hemisphere until the 1980s. This social polarization on economic and ideological grounds left only a limited space for gender issues. "Poor" women preferred to struggle together with "poor" men rather than with "rich" women and vice versa.

Women were, however, specially targeted in periods of high tension, as a report by the Inter-American Commission on Human Rights involving Haiti³ recently documented. Nevertheless, it is only in the last years that the plight of women has been considered by the Inter-American system. I stress the "plight," because gender issues continue to be seen mostly as issues involving victims.

The political situation today is different. Every government in the hemisphere, except the current government of Cuba, has been

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1. American Convention, *infra doc. biblio.*

2. The American Declaration of the Rights and Duties of Man, in INTER-AM. C.H.R. BASIC DOCUMENTS PERTAINING TO HUMAN RIGHT IN THE INTER-AMERICAN SYSTEM, OAS/ser.L/V/II.82, doc. 6 rev. 1 (1992) [hereinafter BASIC DOCUMENTS].

3. *Report on the Situation of Human Rights in Haiti*, INTER-AM. C.H.R., OAS/ser.L/V/II.85, doc. 9 rev. (1994).

elected. There is no need to discuss the reasons for this phenomena here. They are related to the end of the Cold War, and to the failure of communism, the national security doctrine, and other antidemocratic ideologies. The world is witnessing a growing consensus on the legitimacy of representative democracy and the role of private enterprise as a development agent.

This has led to numerous changes in the hemisphere. For example, the nonintervention principle, which in the past was called the cornerstone of the Organization of American States (OAS), has been weakened. In 1991 the OAS adopted the *Santiago Commitment to Democracy and the Renewal of the International System*,⁴ prescribing consultation by the Ministers of Foreign Affairs of the American republics when a military coup takes place or when the democratic stability of a country is threatened in some other way. This consultation could result in the member States adopting sanctions. In a later development, the OAS Charter was reformed to allow for the suspension of membership of nondemocratic governments.⁵

The OAS continued its commitment to democracy by creating a United for Democracy Promotion in 1990 that encouraged democratic values and supervised elections.⁶ These democratic developments led the OAS to consider interruptions of democracy as hemispheric issues. For instance, it adopted various measures in Guatemala, Peru, and Haiti, albeit with different degrees of success. Even though these developments focus on democracy in a general way—the existence of free elections, for example—their value in promoting women's rights should not be ignored. More open and pluralistic societies create spaces for public debate and organization unthinkable in authoritarian governments.

The recognition of democracy and human rights on the international plane legitimizes the resort to human rights discourse in the domestic political and legal arenas. Unsuccessful domestic claims could be brought before international supervisory organs. Moreover, international human rights law has developed valuable normative concepts that could be useful in the promotion of women's rights. In classic international law, the conduct of private individuals rarely generated the State's international responsibility. Human rights law,

4. *The Santiago Commitment to Democracy and the Renewal of the International System*, OAS Doc. OEA/ser.P/A.6/doc. 2734/91 (1991).

5. Charter of the Organization of American States, Apr. 30, 1948, 1 U.N.T.S. 3, as amended by Protocol of Buenos Aires, signed on Feb. 27, 1963, Protocol of Cartagena de Indias, approved on Dec. 5, 1985, OAS Doc. OEA/ser. A/2, rev. 3.

6. David Padilla & Elizabeth Houppert, *International Election Observing: Enhancing the Principle of Free and Fair Elections*, 7 EMORY INT'L L. REV. 73 (1993).

however, has established new norms. For example, the American Convention, in Article 1, paragraph 1, lays down an obligation for the state to respect and to ensure human rights.⁷ The state's duty "to ensure," as stated by the Inter-American Court on Human Rights in the *Manfredo Velásquez* case,⁸ (its first contested case involving disappearances in Honduras), includes its responsibility to prevent violations committed by private actors and to investigate and to punish those who are found guilty of human rights violations.

International human rights law has also made it possible to prove human rights violations. In a domestic setting, such violations are often difficult to prove. The Inter-American Court has articulated standards that allow for circumstantial evidence and that shift the burden of proof to favor victims.⁹ In cases of mass and gross violations, these developments are essential for victims facing uncooperative domestic enforcement agencies or judiciaries.

The flexibility of international human rights norms, including Inter-American norms, is further enhanced by facilitating the presentation of individual complaints at the regional level. In the European system, only victims can file a petition; but in the Inter-American system, the victim or anyone acting on her behalf, even without her knowledge, has the right to file a petition. That creates a tremendous opportunity for a nongovernmental organization (NGO) or an individual to file petitions on behalf of victims, even if the victim does not know that a case was started. The procedures at the regional level are also flexible. The Inter-American Commission, acting as a semi-judicial body, creates opportunities that are not present in a rigid, formalistic legal framework.

From a substantive point of view, international human rights law also could be extremely valuable. For example, Article 1, paragraph 1 of the American Convention provides for nondiscrimination in the rights recognized by the Convention, which are the classical civil and political rights.¹⁰ Article 24, on the other hand, establishes an autonomous right to nondiscrimination in general, unconnected to the rights laid down in the Convention.¹¹ The breadth of this provision is as wide as one's creativity can take it. The right to health, for example, is not explicitly included in the American Convention.

7. American Convention, *infra doc. biblio.*, art. 1(1).

8. *Velasquez-Rodriguez v. Honduras*, INTER-AM. C.H.R., OAS/ser.L/V/III.19, doc. 13 (1988).

9. *Id.*

10. American Convention, *infra doc. biblio.*, art. 1(1).

11. American Convention, *infra doc. biblio.*, art. 24.

Nevertheless, it is so important to women and gender issues that it might still warrant protection by the system's supervisory organs based on a claim of discrimination in violation of Article 24. Similarly, Article 24 could be used in connection with Article 23¹² of the Convention. This norm establishes the right of every citizen to take part in the conduct of the public affairs of her country, to vote, to be elected, and to have access under general conditions of equality to public service.¹³ Women started to change the world when they demanded the right to vote. But the right to vote is not the same as being elected and participating under conditions of equality in the public service of a country. New legal concepts on the basis of Article 23, alone or in connection with the prohibition of discrimination of Article 24, could provide a legal rationale to bring the suffrage revolution to its logical conclusion.

The international system—and in this case the regional system—could also be utilized through its supervisory organs to strengthen and enforce women's rights. Under the American Convention, the Inter-American Commission could bring cases to the Inter-American Court against countries that have declared their acceptance of the Court's compulsory jurisdiction. NGOs and individual petitioners have an important role to play in this regard by presenting cases involving the rights of women and requesting that the Commission bring them to the Court.

No comment on the new opportunities opened for women's rights in the Inter-American system would be complete without mentioning two recently adopted treaties: the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women¹⁴ and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.¹⁵ Both treaties establish important rights for women, and at the same time prescribe state action to promote and protect these rights. This protection is essential, particularly for the many women in the hemisphere who live in conditions of poverty. The ratification and enforcement of these treaties should be an important goal of those who are concerned about women's rights.

12. American Convention, *infra doc. biblio.*, art. 23.

13. American Convention, *infra doc. biblio.*, art. 23.

14. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, *opened for signature* June 4, 1994, OAS/ser.L/II.2.27, CIM/doc.33/94.

15. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), Nov. 17, 1988, in *BASIC DOCUMENTS*, *supra* note 2, at 67.

The next meeting of the General Assembly of the OAS will take place in Haiti in June 1995. I had the opportunity to visit Haiti as a member of the Inter-American Commission on Human Rights in May 1994. The Commission received some of the most compelling testimony from twenty victims of rape. The victims testified regarding the way they had been tortured. NGOs played a crucial role in the presentation of these claims. The meeting in Haiti in June could provide an excellent opportunity for NGOs—who generally have been absent from the OAS political bodies—to forcefully present women's rights to the General Assembly of the OAS. The debate in Haiti would not only facilitate the identification of the plight of women but it would also be an important step in the achievement of women's rights as an imperative of today's civilization. Finally, the debate would be an expression of solidarity with those—like the women in Haiti—who need to feel that they are not alone; neither as victims nor as petitioners.

