

# CEJIL GAZETTE

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EDITORIAL

## CHALLENGES IN THE PROTECTION OF WOMEN'S RIGHTS BEFORE THE INTER-AMERICAN SYSTEM

Throughout the nineties, there were clear advances in the effective respect for, and protection of, women's human rights in the Inter-American System. These advances are due, in part, to the impact of such events as the World Conference on Human Rights (Vienna, 1993), which in its declaration recognized for the first time that "*the human rights of women and girls are an integral and indivisible part of universal human rights* . . ." and that gender-based violence is incompatible with human dignity. Similarly, the World Conference on Women (Beijing, 1995) and its preparatory meetings at the American level have influenced the advances in the System.

These happenings contributed to the Inter-American System paying more attention to the violations of women's human rights, that they suffer principally because of their gender, as well as established the framework in which the *Convention on the Prevention, Punishment and Eradication of Violence Against Women*, – known as the *Convention of Belen do Pará* was drafted. This Convention was approved by the General Assembly of the Organization of American States (OAS) on June 9, 1994, and entered into force on March 5, 1995. It currently has the highest number of ratifications of all the human rights instruments in effect in the region.

The System has also demonstrated its commitment to women's rights, by creating the Special Rapporteur on Women's Rights, in 1994, under the auspices of the Inter-American

Commission on Human Rights. The Special Rapporteur drafted and published the *Report on the Status of Women in the Americas* in 1998, and has developed, although not to its full potential, the practice of including specific information on the situation of women in the Commission's General Reports on individual countries. It is important to note that the greater participation of the women's movement in the System has been fundamental to the strengthening of the above-mentioned initiatives, given that their knowledge and experience has contributed to substantially improving the work being done.

The reality of the region demonstrates that a situation of structural inequality persists that especially affects women as a group. In light of this, the Inter-American System still has much work to do in order to define its capacity to intervene on behalf of women and girls by incorporating a gender perspective in its daily work. Incorporating a gender perspective will require that the System reflect on those rights that women need to be able to live as complete human beings, recognize the specific nature that binds the violation of these rights to the sole fact that they are women, and respond effectively to regionally strengthen a Rule of Law that will not tolerate unequal relations between women and men.

Currently, various cases are being litigated before the Inter-American Commission pertaining to the enjoyment, free exercise, and protection of rights and liberties consecrated in different regional instruments; rights and liberties that women cannot fully exercise

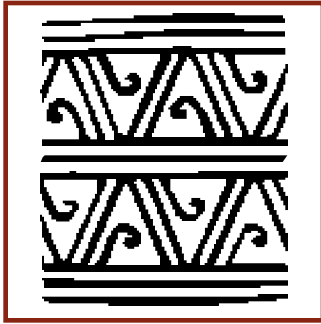
### COOPERATION BETWEEN THE INTERNATIONAL HUMAN RIGHTS PROTECTION SYSTEMS

On March 8, 2002, the *Special Rapporteur for Women's Rights* before the *Inter-American Commission on Human Rights*, Mrs. Marta Altolaguirre, the *Special Rapporteur on Violence Against Women, its Causes and Consequences* of the *Human Rights Commission of the United Nations*, Mrs. Radhika Coomaraswamy; and the *Special Rapporteur on the Rights of Women in Africa* of the *African Commission of Human and People's Rights*, Mrs. Angela Melo, came together in Quebec, Canada, as part of an initiative led by *Rights and Democracy*. At this meeting, they signed a joint declaration that not only reaffirmed many important issues regarding women's rights and the role of international human rights systems in their protection, but also agreed to coordinate efforts in order to more efficiently fulfill their mandates.

In this vein, they committed to:

- Exchange information about legislation and cases.
- Share ideas and strategies about different initiatives on these issues.
- Standardize the recommendations to the States.

Maintain fluid communication with NGOs and representatives of civil society that work on the subject.



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solely for their position as females. Decisions on cases of domestic and sexual violence, family planning, and discrimination in the administration of justice, among others, will allow for broader standards and serve to measure the ability of the System to respond to these new questions.

The Inter-American System's work towards justice, equality, and the struggle against oppression and discrimination, give it the potential to establish itself as an important space for the protection of women's human rights. In truly attending to the specificity of the issue of gender, the Inter-American System will have to confront challenges linked to questions of procedure. It will be crucial for the protection of women's rights that the System maintain rules of legitimation that are broad enough to allow for the litigation of cases in which the law itself creates a situation of rights violations. It is also necessary to recognize that an important part of the region's women's movement still has not had contact with the Inter-American protection instruments, and that a process is underway to translate the reality of the rights violations that women suffer into the discourse of international human rights law. It is for this reason that the organs of the System should analyze and process the information that they receive with the care and attention that any topic with much yet to be explored requires.



## THE INTER-AMERICAN COMMISSION'S APPLICATION OF THE CONVENTION OF BELEM DO PARÁ

In 2001, the Inter-American System took an important step forward in the protection of women's rights: for the first time, the Inter-American Commission on Human Rights decided an individual case by applying the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women*, known as, the "*Convention of Belem do Pará*" (CVM).

The case is paradigmatic of the rights violations that thousands of female victims of domestic violence suffer in the region: *María da Penha* was physically and mentally abused by her husband who, in 1983, tried to kill her on two occasions, leaving her paralyzed at the age of 38. In 1998 the judicial investigation of the facts was still not completed, causing *María da Penha*, along with CEJIL and CLADEM, to denounce Brazil for the violation of commitments taken on through the ratification of various inter-American conventions.

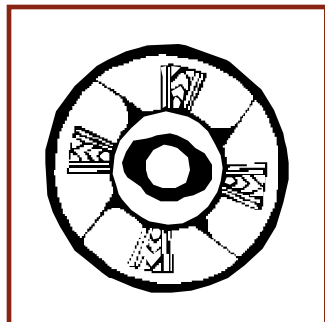
In its analysis of the case's merits, the Commission made progress in assorted points relevant to the defense of women's rights.

Upon evaluation of the right to justice (by application of article XVIII of the American Declaration, and the articles 8 and 25 in relation to 1.1 of the American Convention), the Commission considered that it was clearly violated in light of the Court's interpretation- particularly in the case of *Velasquez Rodríguez*- of the States' obligation to investigate all of the situations in which the rights protected by the American Convention have been violated, in addition to guaranteeing the complete and free exercise of these rights. It came to this conclusion with the understanding that "...the internal judicial decisions in this case present inefficacies, negligent acts, and omissions by the Brazilian judicial authorities, and an unjust delay in the judgment of the accused thereby impeding and definitively risking the possibility of punishing the accused and indemnifying the victim for the potential running of the statute of limitations regarding criminal liability. This demonstrates that the

*State has not been capable of organizing its structure to guarantee these rights...*" Later in the decision, the Commission relates this analysis with the violation of the right to equality before the law, citing the State's standard un-responsiveness to domestic violence, of which women are most often the victims.

Lastly, the Commission reiterated the petitioners' legal position that focused on the gender discrimination present in the case that is demonstrated in the State's responses, as well as in its violation of the assumed commitments described in article 7 of the CVM. This article establishes the State's obligation to adopt by all means necessary, and without delay, a series of measures for the prevention and eradication of violence against women. At this point in the decision, the Commission is referring to the impunity in which the case remains; which- in their judgment- demonstrates an act of tolerance by the State for the violence suffered by *María da Penha*, and an omission by the Brazilian judicial system that exacerbates the direct consequences of the aggression endured by the victim. Upon considering that this tolerance is not exclusive to the individual case, but rather is a standard behavior for the State when faced with this type of rights violation, the Commission concluded that not only was the obligation to investigate such acts violated, but also that to prevent them. The Commission asserted that, "*This general and discriminatory lack of judicial effectiveness, creates an environment propitious to domestic violence, since there is no socially perceived evidence of the willingness and effectiveness of the State, as a representative of society, to punish these acts.*"

The decision, in the case of *María de Penha*, is the first where the System applies the *Convention of Belem do Pará*, and also the first that deals with the violation of human rights that domestic abuse is. CEJIL sees this decision as an important departure point for the true respect for the human rights of women in the region.



## THE INTER-AMERICAN SYSTEM

### The Use of the Inter-American System to Protect the Human Rights of Women

Through the joint litigation of cases with organizations from the women's movement, CEJIL has made the Inter-American System aware of paradigmatic situations of human rights violations that women suffer because of their gender.

Below, we detail some of the standards for protection that have been developed through decisions in individual cases. We also make references to cases and petitions that are still being litigated before the System.

#### 1. Sexual Assault

*Ana, Beatriz and Celia* -3 young sisters from the Tzeltal community- and their mother *Delia*, were arbitrarily detained by the Mexican Federal Army. In detention, the sisters were beaten and raped on repeated occasions by the soldiers, with the intent of making them confess their involvement in the *Ejército Zapatista de Liberación Nacional* (EZLN) (Zapatan National Liberation Army). In March 2001, the Commission released a final report in the case, which established Mexico's responsibility for the violations of the victims' rights to freedom, personal integrity, dignity, and judicial guarantees. The Commission's decision adopts the

concept of rape as a method of torture, supporting this interpretation with earlier decisions of the very System itself (like that of the Commission in the case of *Raquel Martín de Mejía*, Report N° 5/96) and those of other international tribunals. (Co-petitioners: CEJIL and the *Grupo de Mujeres de San Cristóbal, AC*. IACHR. Report N° 53/01).

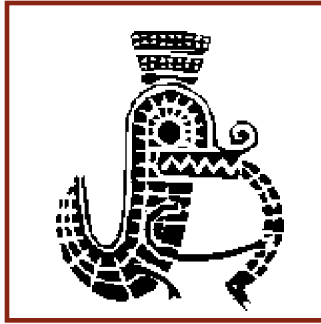
In January 1995, *Marina Machaca*, a 22 year-old rural Peruvian woman of humble means, went to the emergency room of a public hospital. The doctor that attended to her referred her to the hospital's general practitioner, who directed her to his private office where he claimed to have the necessary equipment to treat her. Once in his office, the doctor raped her. The case was presented before the Inter-American Commission on April 23, 1998, alleging violations of the rights to non-discrimination and equality, to physical, psychological and moral integrity, and to judicial protection and due process. In March 2000, with the mediation of the Inter-American Commission, the parties signed a friendly settlement agreement which established reparations for Marina (the deed to a piece of real estate, a commercial space in addition to the merchandise necessary to regenerate the commercial activity she practiced at the time that the events took place, and free medical attention), and for all women who have survived sexual violence (crisis centers for survivors have already been created). The petitioning organizations are currently monitoring the State's compliance with the agreement. Still pending is the termination of the doctor from the public

hospital, where he continues to work, even though the Colegio Médico de Perú made the decision, in December 2001, to revoke his license to practice medicine. (Co-petitioners: CEJIL, the *Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres* (CLADEM), and the *Center for Reproductive Law and Policy* (CRLP)).

#### 2. The Guarantee of Equality and Non-Discrimination

In the case of *María Eugenia Morales de Sierra*, the Commission had the opportunity to rule on the incompatibility of some of the clauses of Guatemala's Civil Code that defined the role of each spouse in a marriage, establishing differences between men and women that were denounced as discriminatory.

The conjugal rule established that: the husband was responsible for the financial support of the home and that the woman was responsible for the care of the house and children; the wife could work outside of the home as long as it did not affect her above stated responsibilities, in which case the husband could object; and the husband was the representative of the conjugal union, controlling his patrimony and representing his younger children. The Commission found that this conjugal rule was incompatible with the American Convention, since it prevented, in this case, the victim from exercising her rights and obligations on equal footing with her husband, and that the differences established by the law based on gender



were not justified due to the guarantee of equality. (Co-petitioners: CEJIL and *María Eugenia Morales de Sierra*. IACHR. Report N. 4/01).

Also before the Commission is a denouncement of a matrimonial law in use in Chile that discriminates against women and deprives them of their right to fully control their property. In this case, it was required that the victim, *Sonia Arce*, be authorized by her husband to sell property that she had inherited from her parents. (Co-petitioners: CEJIL and *La Morada*).

With respect to the implementation of positive measures it is important to highlight the case of *María Merciadri de Morini*, that challenged the validity of a list of candidates for the house of representatives that did not include the minimum number of women required by the Quota Law in Argentina. The case was resolved through a friendly settlement. (IACHR. Friendly Settlement Report. N° 103/01).

### 3. The Right to Privacy

The case *X and Y* denounced the practice of routine vaginal inspections of women who visited detainees in a prison in Argentina. The case was brought in recognition of the fact that this practice constituted degrading treatment, an invasion of the privacy and physical integrity of the victims, and an illegitimate restriction of the right to protection of the family. In the decision, the Commission concluded that these inspections were not

proportional, nor reasonable, in light of the State's objective to keep the prison secure, therefore, it was declared a violation of the right to privacy stated in article 11 of the American Convention. (IACHR. Report N° 38/96).

### 4. Imprisoned Women

*Marta Lucía Alvarez Giraldo* was serving a sentence in a detention center in Colombia, when she formally requested permission to receive conjugal visits from her female partner, since the current legislation allowed inmates this type of visit. Her request was denied because of her sexual orientation; a decision which was justified by authorities as necessary for security, discipline, and morality in penitentiary institutions. The case was taken before the Inter-American Commission in 1996, denouncing the violations of the victim's personal integrity, honor, and equality. The case was declared admissible in 1999. (Co-petitioners: CEJIL, the *International Human Rights Law Group*, the *International Gay and Lesbian Human Rights Commission*, and *Marta Lucía Tamayo*. IACHR. Admissibility Report N° 71/99).

### 5. Discriminatory Bias in the Administration of Justice

MZ was raped in her home in the city of Cochabamba, Bolivia by an acquaintance, who she then filed a criminal complaint against for the crime of sexual assault. The Bolivian courts absolved the accused in a sentence that violated the victim's right to non-discrimination and due process. The

Supreme Court's sentence contains reasoning based on a discriminatory and biased evaluation of the evidence. The case was brought before the Inter-American Commission in November 2000, and declared admissible in October of 2001. (Co-petitioners: CEJIL, CLADEM and the *Oficina Jurídica de la Mujer en Chochabamba*. IACHR. Admissibility Report N° 73/01).

Alba Lucía Rodríguez Cardona, a young rural Colombian woman, was condemned to 42 years and 5 months in prison for the death of her daughter, who died from strangulation by the umbilical cord, in a pre-mature birth that took place in the bathroom of the victim's humble home. During the course of the criminal case, her procedural rights were violated and discriminatory gender biases were evident. The case is currently being litigated before the Inter-American Commission. On March 7, 2002 the Chamber of Criminal Appeals of the Supreme Court of Justice of Colombia ordered the immediate and unconditional release of Alba Lucía Rodríguez Cardona, concluding, on the basis of expert evidence, that the infant's death was due to natural causes. (Co-petitioners: CEJIL and the *Red Colombiana de Mujeres por los Derechos Sexuales y Reproductivos*).

### 6. Forced Sterilization

*María Mamérita Mestanza Chávez* was a 33 year-old rural woman who lived with her husband and seven children. After

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approximately ten intimidating visits to her home, carried out as part of the National Program for Reproductive Health and Family Planning 1996-2000- put into place by the Fujimori regime-, Mamérita agreed to have her tubes tied, without having been informed of the risks and consequences of the operation. The operation took place on March 27, 1998 and on April 4 she died due to lack of medical attention, even though she had requested it more than five times.

The formal complaint against the State, for

the violation of the victim's rights to equality and non-discrimination, was presented before the Inter-American System on June 15, 1999. In March of 2001, with the mediation of the Inter-American Commission on Human Rights, the parties signed an agreement that contains the basic premises for a friendly resolution of the case (the investigation of, and punishment for, the violations, material and moral reparations for the husband and children of Mamérita Mestanza, and the prevention of similar events). Currently being negotiated are the terms of an eventual friendly settlement agreement that will adequately and integrally provide

reparations for the denounced violations. (Co-petitioners: CEJIL, CLADEM, CRLP. *Estudio para la Defensa de los Derechos de la Mujer* (DEMUS) and the *Asociación Pro Derechos Humanos* (APRODEH)).



### CAPACITY-BUILDING FOR NGOS FROM THE WOMEN'S RIGHTS MOVEMENT TO LITIGATE INTERNATIONALLY

Starting in 1999, the *Inter-American Institute of Human Rights* (IIHR) and CEJIL initiated an innovative 3-year educational experience dedicated to training one group of 30 female attorneys on the use of international human rights protection mechanisms. The training process included two courses during 1999 and 2000 in San José, Costa Rica, follow-up distance learning, and internships at CEJIL for 4 of the attorneys.

As a result of this intensive training, potential cases for presentation before the international protection systems were identified (some of these were subsequently presented before the regional System). The attorneys Julieta Montaña of the *Oficina Jurídica de la Mujer en Cochabamba*, Bolivia; Zobeida Cepeda of the *Núcleo de Apoyo a la Mujer* (NAM), Dominican Republic; Ysela Alaniz Chiari of the *Unión Nacional de Abogados* (UNA), and the *Centro para el Desarrollo de la Mujer* (CEDEM), Panama; and Ariela Peralta of *Servicio, Paz y Justicia* (SERPAJ) of Uruguay, were those chosen to carry out an internship at the CEJIL office in Washington, DC. During their time at CEJIL, the interns used the opportunity to further their practical experience and knowledge of the Inter-American System, as well as to prepare various activities related to their experiences in order to promote women's rights before the System. During the 113th period of sessions of the IACHR (in October 2001), the first General Hearing on the Situation of the Human Rights of Women in the Americas, requested by CEJIL, took place. In this hearing, representatives from the IIHR, the *Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres* (CLADEM), NAM, the *Liga Nacional de Mujeres por la Paz y la Libertad* (LIMPAL) of Colombia, *Equality Now*, and the *Center for Reproductive Law and Policy* (CRLP), participated by each covering a specific aspect of the general topic.

In the following period of sessions, CEJIL requested a new general hearing to expound on the topic of violence against women in the Americas in relation to the guarantees outlined in the *Convention of Belém do Pará*. The hearing took place on March 8, 2002, with the participation of representatives from the following organizations: CLADEM, the *Oficina Jurídica de la Mujer en Cochabamba*, Bolivia, the *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*, IIHR, UNA, CEDEM, SERPAJ, and CEJIL.



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The CEJIL Gazette is published periodically in Spanish, English, and Portuguese. All editions of our Gazette can be accessed through our webpage (<http://www.cejil.org>), or an original copy can be requested by sending an email to one of our offices.



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