

# Women's Reproductive Rights in the Inter-American System of Human Rights

## **Conclusions from the Field, June - September 2014**

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### **Executive Summary**

The Inter-American System of Human Rights has proven to be a forum for the advancement of women's reproductive rights in the Inter-American region. However, the Inter-American System faces significant challenges in promoting structural transformative change that enables women's enjoyment of their reproductive health rights. This report examines three reproductive rights cases from the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights: *María Mamerita Mestanza Chávez v. Peru*; *Paulina Ramirez Jacinto v. Mexico*; and *Artavia Murillo et al. v. Costa Rica*. In the summer of 2014, interviews were conducted with representatives in each of the case study countries, with the objective of the research being two-fold: (1) to understand how each of the cases developed, and the subsequent challenges and advancements; and (2) to learn from these cases in order to suggest recommendations for how actors can make better use of the Inter-American System as one of several avenues for protecting, promoting and fulfilling women's reproductive rights. The report first discusses challenges in implementing women's reproductive health rights, and then explores how the Inter-American System can strengthen its work on women's reproductive health rights.

Of the numerous challenges to the implementation and enjoyment of women's reproductive rights discussed in interviews, the following emerged as particularly significant: (1) limited understanding and institutionalization of 'gender'; (2) ineffective or nonexistent collaboration between actors; and (3) inadequate development, implementation, and compliance-monitoring of reparation measures. Interview respondents noted that the Inter-American Commission and Court face great difficulty in regards to institutionalizing gender throughout all of the System's work, where the concept of gender is often misunderstood, and the funding allocated to work in this area is minimal. At the state levels, national legislation on gender equality and non-discrimination has increased, yet there remains a significant gap in how these standards are implemented. Additionally, the concept of gender as it relates to reproductive health rights has not been successfully developed in litigation efforts before the Inter-American Commission and Court, which may indeed be strategic in certain situations, but can also be perceived as a missed opportunity. Collaboration between actors is discussed in the report by briefly reviewing four different relationships: (1) NGO collaboration with fellow NGOs; (2) NGO collaboration with state departments; (3) collaboration amongst state departments; and (4) collaboration between NGOs and the Inter-American System. Interviews revealed common themes such as competition amongst groups, limited funding and trust, and duplication of work as central impediments to successful collaboration. However, there are several examples of successful collaboration efforts, such as the work being done by the CLADEM network, which brings together women's rights NGOs from across the region in order to use the law as a tool for change. Finally, reparations remain a largely underutilized tool in litigation efforts before the Inter-American System. Interview respondents showed minimal concern for the design of reparations, and very few NGOs had effective reparation-monitoring functions. Civil society has a significant role to play in the design of effective, transformative and measurable reparations, yet there is a certain reluctance, based on funding and expertise, to engage in the work of formulating and monitoring reparations.

As more women's reproductive health rights cases come before the Inter-American Commission and Court, it is of the utmost importance to learn from the experiences of the case studies selected for this research, and to ask, *what's next?* In this report, suggestions for how to strengthen women's reproductive health rights are divided into two sections: national level, and Inter-American System of Human Rights. Several interview respondents agreed that the way forward in terms of advancing women's access to reproductive health rights at the national level is to reform how children and university students are educated in gender, sexuality, and reproductive health. One interview respondent noted that the goal of education should be to create an "equality culture," where concepts such as gender and autonomy are indivisible from reproductive health. Education also comes in the form of training, where medical doctors and members of the judiciary must be trained in gender and

substantive equality. The fairly recent Mexican protocol that requires gender training for federal judges is a promising advancement in this area. Implementing training and education programs in the medical and legal communities is not enough to tackle long-term sociocultural change; these efforts must also be coupled with youth education that emphasizes equality and autonomy.

In order to achieve a more effective Inter-American System of Human Rights in terms of dealing with women’s reproductive rights, the following suggestions emerged: (1) creating a tradition of gender-based reparations; (2) using the Convention of Belém do Pará consistently and constantly in litigation efforts; and (3) institutionalizing gender training in the Inter-American System. Although the concept of gender has increasingly become relevant to the work of the Commission and the Court, there remains a resistance to expand upon this work when developing reparations. For example, this was the situation in *Artavia Murillo et al. (‘In vitro fertilization’) v. Costa Rica*, where the case was groundbreaking in its development of gender reasoning, but a failure to reflect upon this reasoning in the reparations stage of the judgment became a significant missed opportunity for the promotion of women’s reproductive rights. The report suggests that future reproductive rights cases should be developed with gender-based reparations in mind from the initial stages of the case in order to effectively connect reparations to the causes of rights violations. The Convention of Belém do Pará has seen minimal use before the Commission and Court, and only one of its provisions is justiciable. However, the Convention has great potential in helping to illustrate the structural picture required to design effective reparations. Litigation efforts in forthcoming cases need to develop their arguments using the Convention of Belém do Pará, and should use all the tools afforded by the Inter-American Court’s interpretation of its jurisdiction over the Convention, such as using non-justiciable provisions to interpret the sole justiciable provision (Article 7(b)). Lastly, the Inter-American System continues to operate a small women’s rights department, where all of the work being done on gender in the Commission is relegated to a desk with one employee and two fellows. The work being done by this group is exceptional, but the task of incorporating a gendered analysis in women’s rights cases is too great. Interview respondents agreed that the Commission and Court should institutionalize gender more effectively in their work, starting with a training initiative so that all employees are trained in gender and understand the gendered causes of human rights violations.

The above-mentioned challenges and recommendations highlight the thoughts and experiences of individuals working in and around the field of women’s reproductive health rights in the Inter-American region. Because the Inter-American System of Human Rights will undoubtedly encounter reproductive rights cases in the future, it is essential for actors to engage in every opportunity to reflect on advancements and missed opportunities in order to develop new ways to protect, promote and fulfill women’s reproductive rights in the future. The intention of this report is to play a small role in that process of reflection, where hopefully actors ranging from women’s rights NGOs to academics to medical doctors, can take a moment to see how far women’s reproductive rights have come, and how we can all better work to advance these rights in the future.

This report is a representation of the initial findings and conclusions from fieldwork research. The researcher welcomes and appreciates any comments, additional information, advice, and questions.

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## I. Introduction

As universal human rights standards have become increasingly accepted across the Latin American region, the focus on how to implement, and subsequently monitor state compliance is the foremost challenge in human rights activism and scholarship. Women's reproductive rights in the Inter-American region, as well as in many other places around the world, have faced relentless attack, as conservative movements coupled with longstanding sociocultural norms challenge women's rights to autonomy, equality and non-discrimination. Cases emerging from human rights monitoring bodies, such as the Inter-American System of Human Rights, have noted the relationship that exists between gender, discrimination and women's inadequate enjoyment of their reproductive rights. However, at the national level, state practice is in many ways disconnected from the rhetoric and reasoning being developed within the international and regional human rights communities.

This research report, which is part of a larger doctoral thesis, is an initial examination of the advancements and challenges that exist in protecting, promoting and fulfilling women's reproductive rights in the Inter-American region. In the summer of 2014, over 40 interviews were conducted with representatives from NGOs, the medical and legal communities, and state departments in Peru, Mexico, and Costa Rica, as well as with representatives from the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The goal of the interviews was to determine the causes and consequences of the gap that exists between international/regional human rights law and its implementation at the national level, specifically focusing on women's reproductive rights. The research conclusions elucidate the difficulties that arise in developing reproductive rights cases, and also in coordinating efforts between different actors, such as governments and women's rights organizations. Additionally, the report suggests initial recommendations for strengthening the Inter-American System's approach to effectively implementing and monitoring women's reproductive rights in the region.

The foundation for this research is built upon three cases from the Inter-American System of Human Rights: *María Mamerita Mestanza Chávez v. Peru*; *Paulina Ramirez Jacinto v. Mexico*; and *Artavia Murillo et al. v. Costa Rica*. Each of these cases is a reproductive rights case, and was chosen for this project because of its individual topic, as well as its background, challenges/advancements, and lessons for the future. The objective of initiating the research through the lens of these cases is to determine the success each one has had in terms of its development, reasoning, and implementation. A brief summary of each of the cases introduces the context in which reproductive rights litigation plays out in the Inter-American System.

### *María Mamerita Mestanza Chávez v. Peru* (2003)<sup>1</sup>

This case was the first reproductive rights case to be admitted to the Inter-American Commission on Human Rights. The case involved the forced sterilization and subsequent death, of a rural indigenous Peruvian woman. María's forced sterilization was representative of the situation for thousands of rural, indigenous women living in poverty who were the target of a massive state-implemented population control policy. The case resulted in a Friendly Settlement Agreement between the petitioner (victim) and the State of Peru, and included several reparations, such as: justice measures to hold those individuals accountable for the forced sterilizations; amendment of laws and public policies on reproductive health and family planning, elimination of discriminatory approaches in healthcare, and respect for women's autonomy; implementation of training for healthcare personnel; and distribution of payments to the victim for medical, personal and education expenses. Perhaps the most noteworthy element of these reparations is the connection made between women's reproductive health and discrimination against women, and in this case, poor rural indigenous women. This Agreement has not been fully complied with by the State, and there remains a strong sense of impunity in the country as a result of the State's failure to investigate and prosecute the perpetrators of these crimes. Manuela Ramos, an historical feminist NGO in Peru, noted that this feeling of impunity is probably one of the main issues in the country. Although the Agreement highlights the indivisible relationship between reproductive rights and discrimination, the public sense of impunity in Peru is linked to justice issues surrounding the internal conflict that occurred around the same time as the population control effort, and not necessarily women's reproductive rights. And, despite the fact that the sterilizations occurred during the time of conflict, the Truth and Reconciliation Commission

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<sup>1</sup> *María Mamerita Mestanza Chávez v. Peru*, Case 12.191, Inter-Am. Comm. H.R., Report No. 71/03, OEA/Ser.L/V/II.118, doc. 70 rev. 2 (2003).

created to address the human rights violations during this time failed to mention the sterilizations, which has also been a point of contention for organizations working in this area.<sup>2</sup>

Diana Portal, an attorney with the Ombudsman's Office Women's Department, noted that in Peruvian society, there is no recognition of this case as being related to discrimination based on gender, race or class. She said the following:

"There is not a social gender perspective, there are sectors, organizations, but as a society we do not have a gender perspective. We do not have that perspective. I think that it is because of discrimination. Who were the victims? For example, in the forced sterilization cases, who were the victims? The major victims of forced sterilization were Andean women, or women who live far from areas in Piura, Cusco, or even in Lima. ... So the same situation happens as during the internal armed conflict. Who the victim is determines the response from the state, and the consciousness of the other. People are not conscious that the situation could have been for them. They cannot see themselves in that farmer, or the Andean and Quechua-speaking woman."<sup>3</sup>

This argument about linking discrimination to the issue of impunity in Peru is especially important because it tackles one of the core issues for protecting, promoting and fulfilling women's reproductive rights in Latin America - the *type* of woman is directly related to the type of violation, type of discrimination, and type of recourse.

This case remains open before the Inter-American Commission, however a number of participants view this case as closed in terms of how much potential the case has in continuing to demand justice for women. Several participants agreed that a new forced sterilization case that utilizes the more recent developments made in reproductive rights in the region, with a different approach towards reparations, and more advanced level of reasoning and argumentation would significantly help to not only refresh the call for justice in the country, but to also draw stronger links between reproductive health rights violations, discrimination, and justice.<sup>4</sup>

#### *Paulina Ramirez Jacinto v. Mexico* (2007)<sup>5</sup>

Paulina was a young girl who was raped by a burglar in the State of Baja, Mexico. She subsequently became pregnant and sought an abortion, which was legal under the criteria for abortion in her state. Paulina and her mother were manipulated by health personnel who gave them biased information, with the result being that Paulina's mother elected for her not to have the abortion. Paulina's representatives claimed that Paulina's story is indicative of the situation for many other girls and women who are forced into motherhood after being raped. Unlike the María Mamerita Mestanza Chávez case, this case never reached the admissibility stage at the Inter-American Commission of Human Rights. Instead, Paulina and the State of Mexico reached a Friendly Settlement Agreement before the Commission reviewed the case, which included the following reparations: monetary compensation for education and school supplies; psychological treatment and health services for the victim; a public acknowledgment of responsibility by the government in the local newspapers; changes to legislature; an assessment of the enforcement of the National Program for the Prevention and Attention of Domestic, Sexual and Violence Against Women; the dissemination of a circular from the Health Secretariat to the state health services and other sectors that would serve to 'strengthen the commitment toward ending violations of the right of women to the legal termination of a pregnancy'; and a review of literature materials to detect shortcomings in information.

This case is closed according to the Inter-American Commission, yet nearly every NGO and individual interviewed did not agree with the Commission's decision to close the case. Vanessa Coria noted that the monetary payments were not made in full to Paulina's son, and for that reason alone the case

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<sup>2</sup> Final Report from the Peruvian Truth and Reconciliation Commission, available at <http://www.cverdad.org.pe/ingles/pagina01.php>. This issue was also brought up in an interview with Milena Justo, Human Rights Attorney, Manuela Ramos, Lima, Peru, 30 June 2014.

<sup>3</sup> Interview with Diana Portal Farfán, Attorney, Office of the Ombudsman, Rights of Women Department, Lima, Peru, 2 July 2014.

<sup>4</sup> Interviews with Jeannette Llaja, Former Director, Study for the Defense of Women's Rights (DEMUS), Lima, Peru, July 3, 2014, and Beatriz Ramirez Huaroto, Advisor, Ministry of Women and Vulnerable Populations, Lima, Peru, 22 June 2014.

<sup>5</sup> *Paulina del Carmen Ramirez Jacinto v. Mexico*, Case 161-02, Inter-Am. Comm. H.R., Report No. 21/07, OEA/Ser.L/V/II.130, doc. 22, rev.1 (2007).

cannot be closed.<sup>6</sup> Rebeca Ramos mentioned that although Paulina today is conscious of her rights, for her and her son, the primary concern “is the issue of monetary compensation, and those specific reparations.”<sup>7</sup> A formal assessment of the National Program for the Prevention and Attention of Domestic, Sexual and Violence Against Women was not conducted, despite the State’s decision to include the National Program within the Agreement.<sup>8</sup> Additionally, Alejandra Cardenas called attention to the fact that the reparation that required the Health Secretariat to distribute a circular to state health services was never completed.<sup>9</sup> Cardenas asserted that this reparation was particularly important because it had potential to directly impact how members of the medical community understand women’s abortion rights. Despite these considerable shortcomings in implementation of reparations, this case does illustrate an evolution in reproductive rights cases before the Inter-American System – even the fact that the State entered into an agreement before the case reached admissibility is an achievement.

*Artavia Murillo et al. v. Costa Rica* (2012)<sup>10</sup>

Perhaps the most significant of the cases examined in this study is *Artavia Murillo et al. v. Costa Rica*, which is a case that challenged Costa Rica’s constitutional ban on invitro fertilization (IVF). In its judgment, the Inter-American Court of Human Rights determined that the ban on IVF is discriminatory, and called for its repeal. The Court then went further by examining the scientific and moral arguments around defining the moment of conception, and also by developing a thorough definition of the right to reproductive health. While this case was groundbreaking in its reasoning, it failed to draw clear parallels between reproductive rights, women’s rights, and gender in its reparations. This disconnect can in part be attributed to litigation efforts made on behalf of the petitioners, where the focus was not necessarily on linking IVF to women’s rights, but was rather on connecting IVF to reproductive disability and the right to form a family. This argument is apparent in the reparations, which are particularly general and do not adequately place the ban on IVF in its broader context as a women’s reproductive rights violation. The reparations include the following: psychological treatment for those victims in the case that request it; publication of the judgment; annulment of the prohibition on IVF treatments and access to the service at healthcare facilities with infertility treatment centers; education and training programs in human and reproductive rights for all members of the judiciary (making mention of the judgment); and monetary compensation for the victims.

The implementation of this judgment’s reparations has seen considerable success, however the ban on IVF remains. Jorge Oviedo, one of the State representatives in the case, noted that the monetary payments were made to the victims within three months of the judgment.<sup>11</sup> Dr. Ribas, an IVF doctor who originally participated in the case before the Costa Rican government, asserted that all of the reparations, except the lifting of the IVF ban, had been completed.<sup>12</sup> Finally, Huberth May, one of the attorneys who represented the victims, hopes that despite strong resistance from conservative, religious groups and the Constitutional Court, legislation to repeal the IVF ban will be passed before the end of the year (2014).<sup>13</sup> Despite this relative success, Ivania Solano, an attorney at the Office of the Ombudsman in Costa Rica, said the IVF case has highlighted the Costa Rican State’s shortcomings when dealing with the regional system. She indicated that although the Foreign Affairs

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<sup>6</sup> Interview with Vanessa Coria, Advocacy and Program Manager, WGNRR, Mexico DF, Mexico, 18 July 2014.

<sup>7</sup> Interview with Rebeca Ramos, Legal Researcher, Information Group on Reproductive Choice (GIRE), 17 July 2014.

<sup>8</sup> Interviews with Patricia Uribe, Former General Director of the National Center for Gender and Reproductive Health, 31 July 2014 and José Guevara, Executive Director, Mexican Commission of Defense and Promotion of Human Rights, Mexico DF, Mexico, 25 July 2014. Both participants described how the Ministry of Foreign Affairs and the National Center for Gender Equity and Reproductive Health, Secretariat of Health, collaborated to have the National Program for the Prevention and Attention of Domestic, Sexual and Violence Against Women included in the Friendly Settlement Agreement.

<sup>9</sup> Interview with Alejandra Cardenas, Inter-American Commission on Human Rights, Washington DC, USA, 27 August 2014.

<sup>10</sup> *Artavia Murillo et al. v. Costa Rica*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H. R. (ser. C) No. 257 (28 November 2012).

<sup>11</sup> Interview with Jorge Oviedo, Deputy Attorney, San Jose, Costa Rica, 20 August 2014.

<sup>12</sup> Interview with Dr. Delia Maria Ribas Valdés, IVF Doctor, San Jose, Costa Rica, 13 August 2014.

<sup>13</sup> Interview with Huberth May Cantillano, Attorney, Victim Representative, San Jose, Costa Rica, 18 August 2014. As of January 2015, a law has not been passed to legalize IVF in Costa Rica.

Ministry recently began work on fulfilling obligations of treaty organs, there are “no rules related to the implementation of the resolutions - none at all.”<sup>14</sup>

It is important to note that in the reasoning developed by the Court in this case, the right to private life was directly linked to reproductive autonomy, reproductive freedom, and “the decision of whether or not to become a parent is part of the right to private life and includes, in this case, the decision of whether or not to become a mother or father in the genetic or biological sense.”<sup>15</sup> This reasoning has great potential for future cases that seek to challenge violations of reproductive health rights, where the right to private life enshrined in Article 11 of the American Convention, can potentially be used to protect women’s “rights to decide freely and responsibly on the number and spacing of their children...,” as protected internationally by the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).<sup>16</sup>

As a whole, these cases highlight the Inter-American Systems advancements and shortcomings in the case of women’s reproductive rights in the Inter-American region. Clearly, over time, reproductive rights have progressed within the system, with the IVF case representing a huge accomplishment in terms of its reasoning and potential for use in following cases. However, initial reflections from the information received during the interview stage of this research reveal the following concerns with the Inter-American System’s current approach to addressing women’s reproductive rights violations: inadequate institutionalizing of gender, limited collaboration between actors, and failure to develop and monitor effective reparations.

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## II. Challenges

One of the intentions of this report is to develop an understanding of the challenges various actors face in developing, implementing, and monitoring women’s reproductive rights. The research adopts a bottom-up approach, where the insight and perspectives of individuals and groups working on women’s reproductive rights at the local and national levels are seen as a great source of information and knowledge for state and regional/international actors. This section reviews the challenges the Inter-American System of Human Rights encounters in its work with reproductive rights, and does so by combining perspectives from representatives from national and international NGOs, representatives from state departments, and representatives from the Inter-American System. While the obstacles to achieving full enjoyment of women’s reproductive rights in the Inter-American region are innumerable, this report focuses on three specific challenges: (1) institutionalizing gender in all levels of work done by NGOs, States and the Inter-American System; (2) insufficient collaboration between actors, both horizontally and vertically; and (3) development, implementation of, and compliance with, reparation measures in the Inter-American System. These themes overlap and are inherently indivisible, but their individual analysis allows for deeper examination.

### A. Institutionalizing Gender

“ We need to eliminate the idea that we look at women as if they are an object of power... the idea that women have a natural role, the idea that women are not equal in relation with men, institutionally.” – *Roger Rodriguez, Executive Secretary of the National Council of Human Rights, Ministry of Justice and Human Rights, Peru*<sup>17</sup>

Framing women’s reproductive rights as rights that are violated, in part, as a result of gender discrimination, is a significant challenge. In the Inter-American System’s work on women’s reproductive rights there has been notable progression in defining and understanding this connection,

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<sup>14</sup> Interview with Ivania Solano, Attorney, Ombudsman, Women’s Department, San Jose, Costa Rica, 20 August 2014.

<sup>15</sup> *Artavia Murillo et al. v. Costa Rica* (2012), para. 143.

<sup>16</sup> Convention on the Elimination of all Forms of Discrimination Against Women, CEDAW, Article 16 (1)(e).

<sup>17</sup> Interview with Roger Rafael Rodriguez Santander, Director, Executive Secretary of the National Council of Human Rights, Lima, Peru, 10 July 2014.

especially in reporting mechanisms, thematic hearings and in the IVF case reasoning.<sup>18</sup> For example, the Inter-American Commission report entitled, “Access to Maternal Health Services from a Human Rights Perspective,” noted that “It is very important to bear in mind, in this regard, that women have historically been subject to various forms of discrimination and that the obligation to remedy that discrimination demands the integration of a gender perspective in the design and implementation of laws and public policies affecting women.”<sup>19</sup> The Commission has held thematic hearings on topics such as sexual and reproductive rights of women in Latin America and the Caribbean, reproductive health and emergency contraception, access to information about women’s sexual and reproductive health, and reproductive health for women living with HIV and AIDS.<sup>20</sup> Expert testimony included in the IVF case highlights the role gender discrimination plays in women’s enjoyment of their reproductive rights: “Women are raised and socialized to be wives and mothers, to take care of and attend to the intimate world of affections. The ideal for women, even nowadays, is embodied in sacrifice and dedication, and the culmination of these values is represented by motherhood and the ability to give birth.”<sup>21</sup>

Additionally, the Follow up Mechanism to the Belém do Pará Convention (MESECVI), which was established in 2004, has taken significant steps to protect reproductive rights within the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention), and also within the American Convention on Human Rights. Recently, MESECVI issued a Declaration on Violence Against Women, Children and Adolescents and their Sexual and Reproductive Rights, where the declaration included the following:

“... sexual and reproductive rights are part of the catalog of human rights that protect and defend the Universal and Inter-American human rights system; and sexual and reproductive rights are based on other fundamental rights including the right to health, the right to freedom from discrimination, the right to privacy, the right to personal integrity and freedom from torture, cruel inhuman and degrading treatment, the right of all couples and individuals to decide freely and responsibly the number, spacing and timing of having children and to have the information and means to do it, and the right to make decisions about reproduction free of discrimination, coercion and violence and thus to be free from sexual violence.”<sup>22</sup>

Luz Patricia Mejía, former Commissioner and Rapporteur on Women’s Rights, and current Technical Expert and Coordinator of MESECVI, explained that MESECVI’s role is to place pressure on states to answer questions about progress made in gender and women’s rights, which can be especially powerful because of the public nature of MESECVI’s questionnaire and reporting mechanisms.<sup>23</sup> This mechanism is also effective as a tool to monitor how states incorporate a gender perspective in their legislation and public policies.

The correlation between reproductive health and gender discrimination is also increasingly being championed in campaigns by national women’s rights groups, where movements such as “Déjala Decidir” promote activism around women’s rights to decision-making and autonomy - “Because I want to be the one who decides my life plan.”<sup>24</sup> Hilda Picado, Director of Asociación Demográfica Costarricense (ADC) [Costa Rican Demographic Association], explained that in her organization’s prior work there was no connection between reproductive health and gender. However, she said, “since society has been changing, we have changed with society. So we have new handbooks, where we include topics like gender identity, sexual identity, gender violence, and sexual and reproductive

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<sup>18</sup> Gender discrimination has also been explored in several women’s rights cases in the Inter-American System, for example: *Maria da Penha v. Brazil*, Inter-Am. Comm. H.R., Report No. 54/01, OEA/Ser.L/V/II.111, 16 April 2001; *Gonzalez et al. (“Cotton Field”) v. Mexico*, Inter-Am. Ct. H.R., (Preliminary Objection, Merits, Reparations, and Costs) 16 November 2009; and *Atala Riffo and Daughters v. Chile*, Inter-Am. Ct. H.R., (Merits, Reparations and Costs) 24 February 2012.

<sup>19</sup> Access to Maternal Health Services from a Human Rights Perspective, OEA/Ser.L/V/II. Doc. 69, 7 June 2010, para. 29.

<sup>20</sup> List of women’s rights thematic hearings, [www.oas.org/es/cidh/audiencias/topicslist.aspx?lang=es&topic=15](http://www.oas.org/es/cidh/audiencias/topicslist.aspx?lang=es&topic=15)

<sup>21</sup> *Artavia Murillo et al. v. Costa Rica* (2012), Expert witness testimony from Neuburger, para 298.

<sup>22</sup> Declaration on Violence Against Women, Children and Adolescents and their Sexual and Reproductive Rights, Follow up Mechanism to the Belém do Pará Convention (MESECVI), MESECVI/CEVI/DEC.4/14, Eleventh Meeting of the Committee of Experts, 19 September 2014. (<http://www.oas.org/es/mesecvi/docs/CEVI11-Declaration-ES.pdf>)

<sup>23</sup> Interview with Luz Patricia Mejía, Technical Expert and Coordinator, MESECVI, Skype, 26 September 2014.

<sup>24</sup> Interview with Gladys Vía Huerta, Program Coordinator, Catholics for the Right to Decide, Lima, Peru, 31 July 2014. See <https://www.facebook.com/dejaladecidir/info>.

rights.”<sup>25</sup> Movements and efforts such as these, that frame reproductive rights as a gender issue, have great potential to not only affect change in the present, but to also generate social and cultural change in the long term.

However, a number of interview participants claim that framing reproductive rights within a gender discrimination context, while necessary, is not always effective in practice. For example, in many Latin American countries abortion is decriminalized under specific criteria, of which all are related to the health of women or the fetus, whether the health violation is physical or psychological.<sup>26</sup> In this situation, litigation efforts can rely on the women’s health argument in order to build a case. Adriana Maroto explained, “the discourse of gender in the legal arena is very fragile... so, when we try to construct the concept of health, or of *vida digna* [dignified life], we’re doing it from the point of view of gender. We have to do it from the other side... there is a gender discourse that supports these arguments, but they have their foundation in the health aspects.”<sup>27</sup>

While framing reproductive rights as health rights is undeniably advantageous, especially because the right to health is inherently linked to the rights to life, privacy, personal integrity, and information, which are all rights protected by the American Convention of Human Rights, it is also necessary to include gender reasoning in order to provide a structural picture of the context in which the violation occurred, and can/will occur again. Developing an understanding of reproductive health as a gender, and/or gender discrimination issue, has numerous benefits, of which some are: (1) it forces policy-makers, state officials, and the Inter-American Commission and Court to examine and address sociocultural conditions that are both causes and symptoms of women’s reproductive rights violations; (2) it creates a discussion about varying forms of discrimination, and their intersections; and (3) it removes the burden on women to prove that their health is being affected, and places the emphasis instead on women’s autonomy, and their life project.

Rosa Celorio, the Women’s Rights Attorney at the Inter-American Commission, claimed that one of the most significant challenges to incorporating gender into the Commission’s work is an insufficient understanding of the concept of gender within the Commission.<sup>28</sup> One example of the inconsistency within the Commission as it relates to women’s rights and gender-related issues is illustrated by Dr. Ribas’ experience with the IVF case in Costa Rica. She said, “I got a lot of resistance from the lawyer who was in charge of Costa Rica (at the Commission)... so I talked to local friends, and got advice from other people, from the Center for Reproductive Rights and from CEJIL, they said, ‘try to get the case moved over to the women’s desk.’”<sup>29</sup> Dr. Ribas continued, “They were marvelous, and we got the case moved over to the women’s desk, which took about five years. But then things started to move... and then the whole process from that point took five years from the time they (the women’s desk) got the case. They were very expeditious.”

Both Celorio and Cardenas share the opinion that the institutionalization of gender within the Commission requires training, at all levels. However, training alone will not entirely shift the Commission’s approach to utilizing a gender perspective, there must also be efforts on behalf of petitioners to bring cases before the Commission that effectively incorporate gender in their reasoning, and that utilize an intersectional approach. For example, while the IVF case is undoubtedly an advancement in the fight for women’s reproductive rights in the Inter-American region, the shortcomings in the litigation arguments, as well as in the reparations, elucidate a disconnect between women’s reproductive rights and gender. Cardenas mentioned that this disconnect can in part be attributed to the fact that, “people who litigate cases are not necessarily the people who actually have this as a cause, and understand it.”<sup>30</sup> In the IVF case, the victim’s representatives had no background in women’s reproductive rights, and were also initially reluctant to collaborate with NGOs or

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<sup>25</sup> Interview with Hilda Picado, Executive Director, Asociación Demografica Costarricense (ADC), San Jose, Costa, Rica, 14 August 2014.

<sup>26</sup> Worldwide abortion laws: <http://reproductiverights.org/en/document/the-worlds-abortion-laws-map>

<sup>27</sup> Interview with Adriana Maroto, The Collective for the Right to Decide (La Colectiva), San Jose, Costa Rica, 14 August 2014.

<sup>28</sup> Interview with Rosa Celorio, Attorney - Women’s Rights Desk, Inter-American Commission on Human Rights, Washington DC, USA, 29 August 2014.

<sup>29</sup> Interview with Dr. Delia Maria Ribas Valdés, IVF Doctor, San Jose, Costa Rica, 13 August 2014.

<sup>30</sup> Interview with Alejandra Cardenas, Attorney, Inter-American Commission on Human Rights, Washington DC, USA, 27 August 2014.



individuals who did have this type of experience. In the final stages of the case they coordinated with the Women's Office of the Ombudsman in Costa Rica and the Center for Reproductive Rights, but both La Colectiva and the Center for Reproductive Rights were not included in the development of the initial case, and were not invited to participate in the development of reparation measures. Huberth May, one of the victim's attorneys, recognized that the case could have benefitted from further collaboration with specialists in women's reproductive rights, and said, "I think that if we had to begin again we would include the reproductive rights and use the trial as an opportunity to help Costa Rican society progress... I believe the trial was not planned to go in that direction... issues like abortion, contraception, and topics related to women's autonomy and right to decide about procreation, sex, etc.... I believe we could have taken more advantage of this case."<sup>31</sup> Perhaps the foremost missed opportunity in this case was the petitioner's decision to frame the argument on violations of reproductive disability discrimination and the right to form a family, and to not also draw connections between IVF and women's rights to decide. The end result of this case, in terms of the direct impact it has in Costa Rica, fulfills certain types of women's and couple's rights to form a family, yet the poor woman, the rural woman, and the woman who is not able to enjoy her right to decide, received no further reproductive rights protections.<sup>32</sup>

In regards to the case study countries explored in this report, there have been significant developments in national legislation, policy and structure in incorporating a gender perspective within the state's work; this work is not specifically focused on the relations between gender and reproductive health. However, a brief exploration of recent developments sheds light on state reactions to the need to incorporate gender into equality and discrimination-based work. It is important to keep in mind though, that while a piece of legislation or policy may seem promising on the surface, implementation is an ongoing challenge.

In Peru, a restructuring of the State Ministries in 2012 allowed for the creation of the Ministry for Women and Vulnerable Populations, which released the National Plan for Gender Equality 2012-2017. This plan promises to be more effective than past efforts because the Ministry has established a special directorate office to deal with gender mainstreaming horizontally among the different sectors, and vertically within the different levels of government. Marcela Huaita Alegre, the Vice Minister in the Women's Ministry explained, "we try to make all ministries add the gender approach, to then make a reflection about their work, and to add a specific commission, so that this really is part of the work of the sector... the gender approach is not only from the Ministry of Women, we have to incorporate it in all other ministries."<sup>33</sup> Additionally, Peru is currently in the process of approving a National Plan on Education and Human Rights, where an element of that Plan is the National Program for Legal Education for Social Inclusion. According to Roger Rodriguez, if passed, this Plan has the "objective of training university students in the law faculties in human rights... oriented to the following: understanding that the basis of human rights is not necessarily human life, it's not life, it's not integrity, it's *autonomy*. It has a dignity approach that comes together with a gender approach, and an education and intercultural approach."<sup>34</sup>

In Mexico, the 2013 implementation of a protocol entitled, "Judicial-Decision Making with a Gender Perspective," was partly the result of pressure from the Inter-American Court, where it found Mexico responsible in several cases involving violence against women.<sup>35</sup> The protocol focuses on gender training for federal judges, where judges are trained to identify and evaluate the following: (1)

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<sup>31</sup> Interview with Huberth May Cantillano, Attorney, Victim Representative, San Jose, Costa Rica, 18 August 2014.

<sup>32</sup> It is important to note that the case did not address homosexual couples' rights to form a family, and that this issue is contentious in the current drafting of IVF legislation in Costa Rica.

<sup>33</sup> Interview with Marcela Huaita Alegre, Vice Minister of Women, Ministry of Women and Vulnerable Populations, Lima, Peru, 10 July 2014.

<sup>34</sup> Interview with Roger Rafael Rodriguez Santander, Director, Executive Secretary of the National Council of Human Rights, Lima, Peru, 10 July 2014.

<sup>35</sup> Judicial-Decision Making with a Gender Perspective: A Protocol - Making equal rights real, Gender Equality Unit of the National Supreme Court of Mexico (2013-2014), Available at: <http://www.sitios.scjn.gob.mx/codhap/ProtocolGenderPerspective>. Inter-American Court cases with a gender perspective referenced within the Protocol: Gonzalez et al. v Mexico ("Cotton Field" case), see paras. 502, 541, 521 (16 November 2009); Fernandez Ortega et al. v. Mexico, see paras. 236 and 260 (30 August 2010); and Rosendo Cantú et al. v. Mexico, see paras. 219, 246 (31 August 2010).

disparate impact of laws and norms; (2) when gender stereotypes inform the interpretation or application of laws or norms; (3) how binary constructions of sex and gender lead to the legal exclusion or disenfranchisement of certain persons; (4) how inequitable distributions of resources lead to unequal distributions of power; and (5) the legitimacy of using differentiated treatment in laws and judicial decisions.<sup>36</sup> The assessment element of this Protocol “tries to find how (judges) introduce gender reasoning and analysis into their argumentation... It is not only that they mention ‘discrimination’ or ‘inequality;’ we are really looking for an understanding of substantive equality.”<sup>37</sup> As of July 2014, an estimated 400 federal judges had completed long-term gender-based training. The focus on substantive equality in the Protocol’s training program has great transformative potential, especially because the final stage of the protocol is to monitor and assess the Judge’s work in cases following training. While this final monitoring stage seems obvious, in many gender education/training programs the challenge has been to evaluate the efficacy of the program – where funding and technical expertise to carry out such an activity is limited.

In Costa Rica, the inclusion of gender and women’s rights in national programs is especially challenging. For example, over the past four years on International Women’s Day the National Institute for Women (INAMU) has concerned itself with makeup tutorials, massages, and shopping discounts instead of focusing on issues such as violence against women and access to reproductive healthcare. Recently a shift in leadership in INAMU has been cause for optimism, as a well-known feminist, and former Director of the Women’s Department in the Ombudsman office, is now leading INAMU. Adriana Maroto is hopeful that this new leadership within INAMU will revitalize a sexual and reproductive rights agenda. However, the situation in Costa Rica in regards to women’s reproductive rights is highly unpredictable. Ivania Solano mentions that although she was able to speak about these issues in an interview in August 2014, the situation could change drastically when the new Ombudsman is appointed.<sup>38</sup> For Solano, regardless of the unstable climate in Costa Rica, one thing is certain, “*They own our bodies, and they don’t let us have any choices.*”

Institutionalizing, or mainstreaming gender, is a challenge at all levels of human rights application. Unfortunately the term ‘gender’ is often misunderstood to be synonymous with the word ‘woman,’ which limits the transformative potential of incorporating a gender approach in policies, legislation, and case law. The federal judge training program in Mexico is especially promising because of its expansive understanding of the role of gender. However, it is important to note that gender training at such a high level of the judiciary does not have much of an impact for women and men who cannot find legal recourse at the local level. In order to undertake the challenge of institutionalizing gender it is necessary to first understand what gender means, and then to develop programs and policies that work from the bottom-up, where the teacher, police officer, and clinic worker are all educated in gender training. To begin this work it is necessary for different actors to collaborate and share expertise. The following section explores some of the challenges and advancements in collaboration efforts between the following actor groups: (1) NGO collaboration with other NGOs; (2) Civil society collaboration with State organs; (3) State department collaboration; and (4) Inter-American System collaboration with civil society.

## **B. Collaboration**

One of the most frequent topics discussed in interviews was the challenge of establishing cooperation efforts between and amongst actors. While there are several examples of successful collaboration efforts, there remains tension, distrust and a sense of competition that in many ways hinders the work being done on women’s reproductive rights. This section briefly introduces some of the collaboration opportunities explored in the interviews between civil society, states, and the Inter-American System of Human Rights.

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<sup>36</sup> Judicial-Decision Making with a Gender Perspective: A Protocol - Making equal rights real, Gender Equality Unit of the National Supreme Court of Mexico, p. 8.

<http://www.sitios.scjn.gob.mx/codhap/ProtocolGenderPerspective>.

<sup>37</sup> Interview with Expert in Gender and Women’s Rights, Anonymous, Mexico City, Mexico, 30 July 2014.

<sup>38</sup> Interview with Ivania Solano, Attorney, Ombudsman, Women’s Department, San Jose, Costa Rica, 20 August 2014.

### *NGO collaboration with other NGOs*

In Peru, Mexico, and Costa Rica, every national NGO representative interviewed brought up the issue of limited funding as an obstacle to their work. Several participants explained that while in the past international aid programs were interested in reproductive rights in Latin America, the situation now is that funding is scarce, and difficult to secure. With less funding, comes more competition between NGOs to secure money for their activities. Also, this lack of resources has created situations where some NGOs have had to cease their work as an organization. An example of this is the deterioration of La Colectiva in Costa Rica, where individual members continue the work, but there is not enough funding to continue daily operations, or to afford an office.

In this time of limited funding it is important for national NGOs to pool their resources, especially in regards to activism, local training/education efforts, and compliance monitoring of national legislation and international recommendations/judgments. While it is understandable that a fight for funding has forced NGOs to differentiate their work from fellow NGOs working in this field, the result has been a fragmentation and duplication in work, where NGOs working in the area are not well enough informed about other NGO projects and campaigns. However, despite the challenge of funding, there have been successful collaboration efforts in the countries represented in this research.

CLADEM (Latin American and Caribbean Committee for the Defense of Women's Rights), is a great example of national NGOs networking across the region to use the law as a tool for change.<sup>39</sup> This network collaborates with international NGOs, and very importantly, creates a forum for national NGOs that do not necessarily work on the legal aspects of women's rights to be involved in the advocacy and monitoring processes of legal decisions. Also, perhaps because of their involvement with CLADEM, some women's rights NGOs that have historically worked on training and education for women, have started to shift their strategy to include a legal focus. For example, Manuela Ramos in Peru is undergoing an institutional change where they still understand their niche as an organization that works on promoting citizenship through education, but that now also sees space to work in the future on international and national public policies, and to work on "creating emblematic cases that can be used to propose improvements in health and education systems."<sup>40</sup>

Collaboration between international and national NGOs has seen significant success in bringing reproductive rights cases before international and regional human rights organs. For example, the Center for Reproductive Rights has collaborated with CLADEM, DEMUS, La Colectiva, GIRE, etc., to lend technical assistance to NGOs that otherwise may not have significant experience before international human rights bodies. However, these relationships require trust between the NGOs because there are risks associated with joining an international organization. Mónica Arango explained, "one thing to understand, and I'm saying this because I've been in positions where I go in to negotiate implementation of a case with the government and they just tell me bluntly, you're a threat... you're violating our sovereignty. And it's a reality because we are a US-based organization and why is a US-based organization telling a country how to implement public policy? So there's a question of legitimacy."<sup>41</sup> This point is important because it highlights the context within which international reproductive rights NGOs work, one where they have the expertise to assist with development of cases, but where their agenda is questioned, and often times, not considered valid.

### *Civil society collaboration with State departments*

Opinions on NGO and State collaboration efforts differ based on the relationship each NGO has with a particular state department. For example, PROMSEX has a good relationship with the human rights department of the Ministry of Justice and Human Rights in Peru, where the office was instrumental in helping to pass the recent therapeutic abortion protocol. However, as Ysabel Marín explained, the relationship shared with the Ministry of Health is more complicated, "when we were talking about the pill, we were friends, but then about the (therapeutic abortion) protocol, we were fighting!"<sup>42</sup> One

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<sup>39</sup> CLADEM (Latin American and Caribbean Committee for the Defense of Women's Rights, Available at: <http://www.cladem.org/en/about-cladem>.

<sup>40</sup> Interview with Rocio Pilar Puente Tolentino, Coordinator of the Sexual and Reproductive Rights Program, Manuela Ramos, Lima, Peru, 30 June 2014.

<sup>41</sup> Interview with Mónica Arango Olaya, Regional Director for Latin America and the Caribbean, Center for Reproductive Rights, Skype, 11 July 2014.

<sup>42</sup> Interview with Ysabel Marin Sandoval, Human Rights Attorney, PROMSEX, Lima, Peru, 9 July 2014.

point raised by several NGO participants was that collaboration with the state depends entirely on the department, the topic, timing, and often the individual representatives in the office.

The role of the Women's Department of the Ombudsman's Office also varies in each of the countries, where in Peru and Costa Rica, the National Ombudsman is seen as having potential for collaboration, but in Mexico, NGOs are more wary of forming relationships with the National Commission on Human Rights. In Costa Rica, the Ombudsman's office played a role in convincing NGOs to join the discussion surrounding the IVF case, and in Peru, the Women's department of the Ombudsman's office has worked with NGOs such as Manuela Ramos on training sessions, and with DEMUS on their campaign, "Un Hombre No Viola" (A man does not rape).<sup>43</sup> However, although the Ombudsman office will in certain situations collaborate with NGOs, the role of the Ombudsman is to monitor the state in its human rights activities, where its relationship with NGOs is mainly to receive information that can then be used in reports.

Lastly, in Peru, both Luis Távara and Daniel Aspicuelta expressed concern with the lack of collaboration between state departments and the medical community. Távara noted that there is not an institutional practice on behalf of the state to ask for assistance from medical experts who work in the area of reproductive rights. He explained that if this does happen, it's an isolated case and not a common practice.<sup>44</sup> This is unfortunate because individuals such as Luis Távara, who have participated in international discussions about women's health and reproductive rights and have worked with women in hospitals and clinics, are not seen as valuable sources of information at the national level. Daniel Aspicuelta, the director of INPPARES, echoed this opinion by mentioning that the public and private sectors do not often collaborate because they don't share the same thinking about women's reproductive health.<sup>45</sup> With education being one of the most important elements in strengthening the medical community's understanding of gender, women's rights, and reproductive health, it is a significant missed opportunity that there is little to no collaboration between experts in this field and state-implemented training programs.

#### *State department collaboration*

Collaboration across different government departments is fundamental to the success of any national legislation or public policy. This is especially the case for policies that call for shifts in culture and society, such as policies that focus on gender equality or non-discrimination. Also, collaboration amongst state departments is necessary for the implementation of recommendations and judgments from supranational human rights bodies. Information from interviews with representatives of different state departments in Peru, Mexico and Costa Rica, as well as with civil society actors, underscored various instances where collaboration across departments was effective, and more often, where it was not.

In terms of implementation of supranational recommendations and judgments, each state has a different process for delegating tasks to the different departments or ministries. In Peru, the Ministry of Justice and Human Rights receives communications from the Inter-American System and then collaborates with the relevant ministries. In Mexico, the process is similar, however the Ministry of Foreign Affairs is the department charged with implementation of supranational treaties and judgments. Finally, in Costa Rica, there is no formal procedure for implementing decisions and judgments, as noted above by Ivania Solano.<sup>46</sup> During interviews most participants were unable to clearly discuss the path taken by international recommendations and judgments once the state received the order or signed the Agreement. The overall process lacks transparency, and as a result, is very difficult to track – which may be intentional.

One example of effective cross-department state collaboration can be seen in the Paulina Ramirez Friendly Settlement Agreement, where the Mexican Ministry of Foreign Affairs and the National

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<sup>43</sup> Interview with Carolina Garcés Peralta, Ombudsman, Women's Division, Ombudsman Office, Lima, Peru, 2 July 2014.

<sup>44</sup> Interview with Luis Távara MD, Sexual and Reproductive Health Consultant, Lima, Peru, 8 July 2014.

<sup>45</sup> Interview with Daniel Aspicuelta, Executive Director, Peruvian Institute of Responsible Parenthood (INPPARES), Lima, Peru, 9 July 2014.

<sup>46</sup> Ivania Solano does mention that about a year ago (2013), the Foreign Affairs Ministry established an organ to deal with treaty obligations.

Center for Gender Equity and Reproductive Health within the Secretariat of Health worked together to include a program on violence against women in the Agreement. Patricia Uribe, former Director of the Center, suggested the inclusion of a plan she had been working on, called the National Program for the Prevention and Attention of Domestic, Sexual, and Violence Against Women. Uribe explained that there was a “moment where both things came together and they helped each other,” meaning that the Program and the Agreement helped each other to achieve momentum at the national level. Uribe explained the challenges she faced in implementing the Program, as well as incorporating the Program within the Agreement: “At some point, the authorities even tried to discredit the agreement. Because I was the one who participated, and I supposedly didn’t have the faculty to take part in those agreements. But I had a signed document by the secretary where he authorized me to do it. Initially the conservatives didn’t know this and so they tried discrediting the Friendly Settlement Agreement to pull back the agreement, but they couldn’t.”<sup>47</sup> Despite efforts made to assist implementation of the National Program by including it in the Agreement, the actual impact of this Program has been minimal. In fact, Rebeca Ramos, a legal researcher with GIRE, said that a more powerful tool for protecting women’s rights in Mexico is the General Law of Victims (2013), which is a popular piece of legislation with origins based out of the Movement for Peace, and not necessarily the women’s rights movement.<sup>48</sup> While this collaboration effort was initially promising, and is notable still, the overall impact was not as impressive.

Dr. Luis Távara, a medical doctor working on sexual and reproductive health in Peru, provided an anecdote to illustrate inefficiency in collaboration between state departments in Peru. He said,

“I believe those sectors (health, women, justice, etc.) have all been part of isolated efforts to improve health, but there is no integration of those bodies. An example on violence - the Ministry of Health established a guideline for serving women who have suffered from sexual violence. They have identified, at least in Lima, which health services are prepared to provide a service. The Ministry of Women tried to do the same, to regulate the same thing. They have their own facilities, where apparently they are providing services in sexual violation cases. But when the issue is about a victim of sexual violence, their health is an emergency, a medical emergency, so if it is a medical emergency, it needs to be looked at in the appropriate place, the Health Ministry. That’s not a doubt about the good will of the Ministry of Women, but it doesn’t make sense that they have a competition against each other.”<sup>49</sup>

The example provided by Dr. Távara highlights significant concerns in how state departments collaborate: failures to pool resources, limited intersectional approach, and ineffective competition between departments. While it is true that a victim of sexual assault needs medical care (both mental and physical), it is also true that the sociocultural context in which the violation occurred is necessary to understand in order to address it and hopefully take action to amend it. One could argue that the Ministry of Health is not the appropriate venue to establish a guideline for serving women who are victims of sexual violence as much as the Ministry of Women is not entirely appropriate; however, an appropriate solution would be a combination of the two, *with* input from civil society and the medical community.

The relationship between the national Ombudsman office and state departments is one worth exploring. The role of the Ombudsman is to monitor state activities, and to issue reports on human rights situations in specific contexts, for example women’s rights. In both Peru and Mexico, representatives from the Women’s Department of the National Ombudsman offices discussed their monitoring roles and also showed an interest in the activities of the state at the supranational level, such as before the Inter-American Commission. When asked about the potential to collaborate with state departments such as the Ministry of Foreign Affairs in the development of a Friendly Settlement Agreement, both offices stated they would be interested in such an activity if they were invited in that capacity. However, as Carolina Garcés Peralta explained, there is very limited precedent for the Ombudsman’s office to play a role at the international level. She said, “if there was a report or

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<sup>47</sup> Interview with Patricia Uribe, Former General Director of the National Center for Gender and Reproductive Health, 31 July 2014. See [http://www.inm.gob.mx/static/Autorizacion\\_Protocolos/SSA/Violencia\\_familiar\\_sexual\\_y\\_contra\\_las\\_mujeres\\_critérios\\_par.pdf](http://www.inm.gob.mx/static/Autorizacion_Protocolos/SSA/Violencia_familiar_sexual_y_contra_las_mujeres_critérios_par.pdf).

<sup>48</sup> Interview with Rebeca Ramos, Legal Researcher, Information Group on Reproductive Choice (GIRE), 17 July 2014. Law of Victims January 2013 (Ley General de Víctimas, Nueva Ley publicada en el Diario Oficial de la Federación el 9 de enero de 2013), Final Reform DOF 03-05-2013.

<sup>49</sup> Interview with Luis Távara MD, Sexual and Reproductive Health Consultant, Lima, Peru, 8 July 2014.

statement from the System (asking for Ombudsman participation), that would be excellent... We have our hands tied because we cannot do anything beyond the law.”<sup>50</sup> Garcés Peralta explained that in the past the Ombudsman office attempted to take Peru to the Inter-American Commission on Human Rights, but that significant backlash questioned how the Ombudsman could take on that role in the Inter-American System and also be part of the State.

While there are numerous other examples of state collaboration efforts, the ones highlighted here are illustrative of some of the current debates and challenges state organs face in designing effective practices and programs to implement women’s human rights. In summary, the following challenges emerged from interviews: processes for complying with international recommendations and judgments varies by country, but with overall challenges stemming from ineffective guidelines and unregulated transparency procedures; collaboration across state departments does not necessarily ensure success of a policy or program, although the effort may be noteworthy; duplication of work done by different departments is not only inefficient, but also allows for gaps in an intersectional approach to implementing rights; and the limited role of the Ombudsman, where there is possible potential to expand its role as a critical collaborator before the Inter-American System.

#### *Inter-American System collaboration with civil society*

The relationship between civil society and the Inter-American System has expanded over the last decade. NGOs participate in numerous capacities before the Inter-American Commission and Court, with three activities being most influential: NGOs serving as victim’s representatives in emblematic cases, NGOs participating in thematic public hearings before the Commission, and NGOs submitting amicus curiae reports as interested parties in cases. National and international NGOs have successfully formed partnerships in order to bring women’s reproductive rights cases to the Inter-American Commission and Court. In the aftermath of a case, it is also NGOs that monitor compliance of state implementation of reparations, and then report back to the Commission and Court on the status of compliance. NGO participation in women’s reproductive rights cases has been essential to the progress made in this area. In fact, the IVF case is illustrative of the impact NGOs have in developing case argumentation and reasoning, where it is often the situation that NGOs understand the structural sociocultural problems that cause women’s right violations.

Through the Commission’s thematic hearings mechanism, members of civil society share information with the Commission, which can then be used in cases, reports, and precautionary measures. NGOs may request these hearings, and the state can also choose to request a hearing. As mentioned above, in regards to women’s reproductive rights the Commission has held thematic hearings on topics ranging from emergency contraception to reproductive health for women living with HIV and AIDS. NGOs also participate by submitting amicus curiae reports to the Commission and Court, where they attempt to highlight structural problems that are both cause and symptom of the rights violation. While the Inter-American Commission and Court do not directly refer to amicus curiae in case decisions and judgments, the reports undeniably assist with setting the stage for understanding the context within which a rights violation occurred. However, despite these activities, the relationship between the Inter-American System and civil society faces significant challenges.

The Commission and Court rely on civil society to report on human rights situations, bring emblematic cases, and to also monitor state compliance with recommendations and judgments. However, there is very little support coming from the System in terms of strengthening civil society. For example, in the aftermath of friendly settlement agreements and decisions, some interview participants expressed dissatisfaction with limited support from the Commission in the monitoring stages of a case. Vanessa Coria described a situation in one of the final follow-up hearings in the Paulina Ramirez case, where she was enquiring about the status of a payment for the victim’s child. She noted that the overall feeling from the Commission was that she should have been satisfied with the State’s compliance with the other reparations, and not push too hard for more. She said, “Sometimes we lose the battle because we don’t have the support of the Commission to do the follow-up.”<sup>51</sup> Additionally, because

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<sup>50</sup> Interview with Carolina Garcés Peralta, Ombudsman, Women’s Division, Ombudsman Office, Lima, Peru, 2 July 2014. In this interview Garcés Peralta also indicates that the Peruvian Constitutional Court no longer allows the Ombudsman office to submit amicus curiae, so they have reformatted that mechanism. Limiting the Ombudsman powers is indicative of the State’s attitude toward further participation on behalf of the Ombudsman.

<sup>51</sup> Interview with Vanessa Coria, Advocacy and Program Manager, WGNRR, Mexico DF, Mexico, 18 July 2014.

the Commission does not operate a formal compliance-monitoring mechanism, there is a significant burden on civil society to monitor state compliance efforts. With limited funding this is a gargantuan task, that in order to be remotely successful requires not only the support of the Commission, but also reparations that are designed to be monitored.

### **C. Reparations: Development, Implementation, and Compliance-monitoring**

At the conclusion of an agreement, decision or judgment, the Inter-American Commission and Court review reparation measures that are suggested by the petitioners (and the Commission) for the state to fulfill. In the case of a friendly settlement agreement, the petitioner and the state reach a compromise with the goals of developing a remedy for the victim and preventing the violation from occurring again. When the Commission issues a merits decision, or the Court orders a judgment, the reparations are selected based on the requests from the petitioner/Commission. The reparations stage of a case has the objective of compensating the victim for the state's violation of their rights, and also to put measures in place to prevent the violation from recurring; guarantees of non-repetition. This second element, non-repetition, is especially important because of the potential impact it has for society, and ultimately for the advancement of rights protections in the region. However, as Alejandra Cardenas stated, the Inter-American System does not 'have a strong tradition to be thinking about remedies... they (the Commission) ask for three or four things that are very general, but there is never a lot of thought put into what a reparation would look like... and there's not a public policy point of view when they think about reparations.'<sup>52</sup> This observation is evident in each of the cases studied for this research, where the reparation elements that have the strongest potential to affect long-term change are weak in design, and as a result, are not implemented at the national level.

Oscar Parra, a senior attorney at the Inter-American Court, indicated that part of the problem with developing effective reparations can be attributed to a failure to develop a structural approach in emblematic cases. While the victim is the central focus of the petitioner efforts, cases before the Inter-American System of Human Rights deal with structural human rights violations, where the focus of reparations should also be on a structural approach to guarantees of non-repetition. Parra explained, "every case, no matter what the topic is associated with, every case is a universal case, it's novel in itself. It could be the same country, the same topic, it could be Guatemala, it could be forced disappearances... it could be a totally different approach depending on the litigation. And I think that for the Inter-American Court, considering that the Court is dealing with specific cases, it could be an important reason to develop specific narratives for specific cases. This is one obstacle for a structural approach, because sometimes if you don't have a structural picture about a specific problem, it's difficult to issue orders that are very open."<sup>53</sup> Parra refers to Mexico's "Cotton Field" case as exemplary in this regard, where the concept of femicide was supported through a structural approach to argumentation, and where the reparations reflected the petitioner and the Court's concerns with discrimination of and violence against women.<sup>54</sup> With the specific topic of reproductive rights, designing a case with a structural approach is essential to setting the stage for effective non-repetition reparation measures.

Looking more specifically at the reparations in the IVF case, interviews conducted with representatives from the Court and the Commission, as well as with individuals involved in the case, highlighted a couple of factors that played a role in the development and effects of weak reparations in this case. First, the petitioners in this case could have asked for more specific and in-depth reparations that address IVF as it is a practice that enables women's decision-making and freedom of choice, but that was not the focus of the petitioners' argument, as was discussed previously by Huberth May.<sup>55</sup> Second, although the judgment itself includes reasoning around the stereotyping of women as mothers, and takes into consideration the role gender plays in this stereotype, there is no reparation that reflects this as an impediment to women's enjoyment of their rights. In other cases,

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<sup>52</sup> Interview with Alejandra Cardenas, Attorney, Inter-American Commission on Human Rights, Washington DC, USA, 27 August 2014.

<sup>53</sup> Interview with Oscar Parra Vera, Senior Attorney, Inter-American Court of Human Rights, 7 August 2014.

<sup>54</sup> Gonzalez et al. ("Cotton Field") v. Mexico. Inter-Am. Ct. H.R., (Preliminary Objection, Merits, Reparations, and Costs) 16 November 2009, is an example of reparations which reflect gender discrimination that contribute to violence against women: conduct an investigation into the violations using a gender perspective; create or update a national database of disappeared women and girls; and implement permanent education and training programs and courses for public officials on human rights and gender.

<sup>55</sup> See note 31, Huberth May Cantillano.

and also in Commission reports, the Inter-American System has recommended that states implement plans or programs to tackle the stereotyping and discrimination of women, but in this case the reparations do not effectively look at the causes of the rights violation. Lastly, because the judgment issued fairly general reparations, the State of Costa Rica faces significant difficulties when it comes to implementation. Jorge Oviedo explained that the Court does not have enough information about the context of the health system in Costa Rica to issue sweeping reparation measures such as, “the Costa Rica Social Security Institute must make IVF available within its health care infertility treatments and programs.”<sup>56</sup> He raised concerns about implementation of the IVF legislation, and noted that while there may be legislation implemented to repeal the ban, there are no guidelines on how to pay for the treatment, and how to decide who gets the treatment. Oviedo argued that the Inter-American System’s failure to adopt the margin of appreciation doctrine is detrimental to implementation of the judgment because the Court is not in a position to understand the inner-workings and practices of each State.

While most of the NGO representatives interviewed mentioned compliance-monitoring of case reparations as part of their activities, there was very little conversation around reparation design. This observation supports Cardenas’ claim that there is no tradition to be thinking about remedies, not only at the Commission level, but also at the level of civil society. Because it is the role of civil society to monitor state compliance with implementation of reparations, there must also be a push on the part of civil society to demand strong, detailed, educated and *measurable* reparations. In order to counter arguments such as those made by Jorge Oviedo about the Court’s lack of information about the inner-workings of the state, civil society must become better prepared to think about the context within which a human rights violation exists, and about how to affect long-term social change within that context. While it is indeed smart to consider state sovereignty arguments, and to refer to state discretion to design and implement policies that effectively prevent repetition of violations, there is also a responsibility for petitioners and civil society to provide the Commission and Court with an opportunity to issue effective structural reparations.

In the last year, the Inter-American Court added a formal compliance-monitoring unit to its mechanisms, which has led to a restructuring of how case reparations are monitored. As Alexandra Sandoval explained, in the previous model, the legal teams that developed and presented the cases were responsible for the case in its aftermath. This process allowed for lapses in monitoring, where the team wouldn’t have enough time or resources to adequately monitor state implementation of reparations. It also created duplication in work, where cases for a particular country may share reparation measures, but did not necessarily have the same legal team working on each of the cases. In the new model, compliance of reparation measures is monitored by grouping reparations from different cases together, which then allows for an analysis that is comprehensive, within the country’s context.<sup>57</sup> Although this development in the Court’s work is fairly recent, it is indeed promising in how it reflects the Court’s agenda for the future.

These challenges - gender institutionalization, collaboration efforts, and reparations - each carry with them significant hurdles in terms of their design and application. However, the intention of this report is not only to highlight these challenges (as well as advancements made in these areas), but to also share perspectives from various actors in regards to efforts to address these challenges. The final section of this report attempts to summarize ideas and opinions emerging from interviews which aim to develop new approaches for responding to the challenges discussed above.

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### III. What Next?

Over the course of the research interviews, participants were asked for their opinions on how to strengthen the Inter-American System in its approach to protecting, promoting and fulfilling women’s

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<sup>56</sup> Interview with Jorge Oviedo, Deputy Attorney, San Jose, Costa Rica, 20 August 2014. *Artavia Murillo et al. v. Costa Rica* (2012), para. 338.

<sup>57</sup> Interview with Alexandra Sandoval, Senior Attorney, Inter-American Court of Human Rights, San Jose, Costa Rica, 12 August 2014.



reproductive rights. This section is divided into two parts, suggestions for change at the national level, and suggestions for change in the Inter-American System of Human Rights. The intention of this section is to share ideas, whether they be specific or general, between individuals, organizations, and state departments working in different countries, in varying contexts, and with diverse agendas.

### **A. At the National Level**

Linked directly to the challenges of institutionalizing gender and collaboration, is the need for education and training. For many respondents, education was noted as one of the key elements to achieving structural change. And, when asked about the types of reparation measures that would be most effective in promoting long-term social and cultural change, education and training were noted as having the greatest potential.

Diana Portal said, “one of the most important elements is education... how we are educating girls in our country, in the secondary level, and at the university. That is a pending issue in our country - to have a consciousness to integrate a gender perspective, an equality culture of non-discrimination, an education that promotes freedom from violence, which is then reflected in life, and in culture.”<sup>58</sup> When thinking about how to better promote an “equality culture,” Jeannette Llaja agreed that education is instrumental in promoting a shift in how society views women. She thinks it is important to start this process at an early age, so that “if a child is three years old and sees the dad talk down to the mom, s/he learns that what is happening privately at home is not always right.” Llaja added, “it is very easy to say (to the state), ‘implement programs for children in young age groups to start talking about equality, and then to measure those programs, and start showing what kinds of programs are being made, gather the statistics...’ but with the words gender and equality, it is important to add those terms.”<sup>59</sup>

Ana Cristina González Vélez, a medical doctor and expert consultant in sexual and reproductive health and rights, concurs that education and training are fundamental components in fulfilling women’s reproductive health rights in the region. She noted that her organization, Global Doctors for Choice, is aware of the need to work at the university level, with medical students, in order to introduce notions of rights into medical training. She said, “(doctors) haven’t had the opportunity to see the relations between what they do, and the human rights framework. So, you have to put the actions or the activities that a doctor does, or the kinds of things that they deal with, in terms of human rights. So, how is the right to information different than giving complete and timely information? Do this all in a way that women can understand... these kinds of things doctors don’t understand as part of a right. They see rights issues as a general, an abstract thing, and their work is the real life...”<sup>60</sup>

These perspectives illustrate the interconnection between youth education and training of medical personnel, where the goal is to create an all-encompassing rights culture. However, there are challenges with implementing education and training at the national and local levels. Hilda Picado, Director of ADC, highlights some of the challenges she faces with implementing sexual and reproductive rights education at public schools in Costa Rica. ADC instructs approximately 5,000 high school students a year with their program, but they face funding challenges which in turn impact the number of educators that can be trained and the quantity of materials to be developed. Also, measuring the success of the program requires funding that ADC does not have, which makes it difficult to prove the value of this type of education.<sup>61</sup>

Challenges also arise in training of medical personnel, where courses on sexual and reproductive rights are often electives, or they are taken by practicing doctors who have a particular interest in the material. Luis Távara emphasized the need for medical students and practicing doctors to understand they need to respect their patient’s beliefs, and to recognize that “in healthcare that are differences

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<sup>58</sup> Interview with Diana Portal Farfán, Attorney, Office of the Ombudsman, Rights of Women Department, Lima, Peru, 2 July 2014.

<sup>59</sup> Interview with Jeannette Llaja, Former Director, Study for the Defense of Women’s Rights (DEMUS), Lima, Peru, 3 July 2014.

<sup>60</sup> Interview with Ana Cristina González Vélez, MD, Sexual and Reproductive Health Expert, Global Doctors for Choice, Skype, 5 August 2014.

<sup>61</sup> Interview with Hilda Picado, Executive Director, Asociación Demografica Costarricense (ADC), San Jose, Costa, Rica, 14 August 2014.

based on gender, and on cultural ways.”<sup>62</sup> But, without an institutional shift to include rights education in sexual and reproductive health training, the potential for rights violations in the medical sector is huge – as was the situation for Paulina Ramirez in Mexico.

Another component of training is at the judicial level, where members of the judiciary learn to adopt a gender perspective in their understanding and interpretation of the law. Mexico’s protocol to train federal judges to use a gender perspective is a promising development, but this program targets the highest level of judges, and has not evolved to include training for lower level judges, or those judges that women first encounter when denouncing the state.<sup>63</sup> Additionally, this program has not incorporated social awareness in its approach, so women in Mexico are not aware of the potential changes happening in the judiciary. Much like the situation with medical training, the protocol in Mexico does not require members of the judiciary to enroll in gender training. However, in anticipating possible reluctance to participate on behalf of the judges, the program has partnered with a national university to develop a masters program in the area, which has proven to be a great incentive.<sup>64</sup>

The Inter-American System has the capacity to work in the fields identified above, and in some situations it has issued recommendations and reparations requiring the state to invest in training programs for medical personnel and members of the judiciary. However, of each of the reproductive rights cases examined in this research, not one includes a reparation that focuses on youth education as an important tool to eradicate gender discrimination. It is the role of petitioners and the Commission to design and request reparation measures, so collaboration efforts made with individuals and groups working on education has great potential for not only including these types of reparations in the System’s work, but also for ensuring their implementation.

Alongside the necessity for education and training, is the need for both civil society and the state to create structures to implement and monitor supranational recommendations and judgments. In the aftermath of any case emerging from the Inter-American System, compliance monitoring becomes the responsibility of civil society. However, with limited resources, and often general reparations that are not easily measured, this is a huge task. Because of these challenges, civil society organizations focus on measuring implementation of reparations that are easy to see: such as monetary compensation, or legislative reform.<sup>65</sup> Reparations which are more focused on structural change, such as implementation and assessment of the National Program for the Prevention and Attention of Domestic, Sexual and Violence Against Women in the Paulina Ramirez case, are not adequately monitored because the reparation itself is too broad. Cardenas explained, “I think this has been a learning curve for practitioners and NGOs, is that they realized that this is a contract (a Friendly Settlement Agreement)... so you really have to think about very concrete terms for these agreements. That you can actually monitor and follow up.”<sup>66</sup> While there are significant challenges civil society faces in regards to monitoring state implementation, the priority for reproductive rights cases must be two-fold: get the case to the Inter-American System, and then monitor *all* the reparations. But of course, in order to do this, petitioners need to work with the Commission and Court to develop effective reparations.

Lastly, one of the most surprising challenges revealed at the national level is the extent to which the state is unprepared to implement reparation measures. Luis Jardón, Director of Human Rights Litigation at the Ministry of Foreign Affairs in Mexico, explained that part of the challenge in fulfilling the monetary compensation reparation in the Paulina Ramirez case was that at the time there were no funds allocated in the budget for payments related to remedies ordered by international organs.<sup>67</sup>

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<sup>62</sup> Interview with Luis Távora MD, Sexual and Reproductive Health Consultant, Lima, Peru, 8 July 2014.

<sup>63</sup> See note 36. Interview with Expert in Gender and Women’s Rights, Anonymous, Mexico City, 30 July 2014. Judicial-Decision Making with a Gender Perspective: A Protocol - Making Equal Rights Real, Gender Equality Unit of the National Supreme Court of Mexico, [www.sitios.scjn.gob.mx/codhap/ProtocolGenderPerspective](http://www.sitios.scjn.gob.mx/codhap/ProtocolGenderPerspective).

<sup>64</sup> Interview with Expert in Gender and Women’s Rights, Anonymous, Mexico City, 30 July 2014.

<sup>65</sup> For a further discussion of this argument, see “Litigating Reproductive Health Rights in the Inter-American System: What Does a Winning Case Look Like?” *Health and Human Rights: An International Journal*, FXB Center for Health & Human Rights, Harvard University Press, Volume 16 (2) December 2014, available at <http://www.hhrjournal.org/volume-16-issue-2/>.

<sup>66</sup> Interview with Alejandra Cardenas, Attorney, Inter-American Commission on Human Rights, Washington DC, USA, 27 August 2014.

<sup>67</sup> Interview with Luis Jardón, Director of Human Rights Litigation, Ministry of Foreign Affairs, Mexico DF, Mexico, 29 July 2014.

And, as Ivania Solano mentioned above, the state of Costa Rica does not have a system in place to formally implement and track compliance with reparations. One of the institutional priorities that the Inter-American System should look for in regards to state intentions of complying with reparations is a national mechanism dedicated to implementation.

## B. In the Inter-American System

The following suggestions were discussed as possible strategies for strengthening the Inter-American System's approach to protecting, promoting, and fulfilling women's reproductive rights: (1) stronger reparations that focus on gender and discrimination; (2) an expansion of the Commission and Court's use of the Belém do Pará convention; and (3) institutional training using an intersectional approach within all levels of the Commission and Court.

### *Gender-Based Reparations*

As mentioned above, there is a compelling need to incorporate gender and discrimination into argumentation and reparations before the Inter-American Commission and Court. As Oscar Parra explained, it is imperative that litigation efforts aim to frame cases using a structural approach to address a specific problem. In doing so, the Commission and Court are better equipped to understand how and why rights violations occurred, and are then able to place the violation in its larger context. Of the three cases highlighted in this report, the forced sterilization case, *María Mamerita Mestanza Chávez v. Peru*, goes the furthest in developing the structural picture in terms of women's rights. The agreed upon facts of the case state that María's experience is one "among a large number of cases of women affected by a massive, compulsory, and systematic government policy to stress sterilization as a means for rapidly altering the reproductive behavior of the population, especially poor, Indian, and rural women."<sup>68</sup> Then, this structural picture is linked to a reparation that seeks to connect this specific case to the larger context: "The Peruvian state pledges to change laws and public policies on reproductive health and family planning, eliminating any discriminatory approach and respecting women's autonomy."<sup>69</sup> This reparation makes an effort to address forced sterilization as it was a discriminatory practice inflicted upon a certain type of woman in Peru. Although the Peruvian state rarely recognizes supranational cases and treaties as influential on its legislation and policy,<sup>70</sup> it is plausible to infer a connection between this reparation and the Ministry of Women's progress towards developing its National Plan for Equal Opportunities of Women and Men 2006-2010, and the National Plan for Gender Equality 2012-2017. In terms of measuring state compliance, it is necessary and beneficial to develop reparations that draw clear connections between the case and state action. Lastly, measuring the efficacy of a reparation designed to address inequality and gender discrimination is a challenge, because although the state may reform and pass legislation to that effect, putting paper into practice, and then assessing that practice, remains a significant hurdle.

In order to start developing more effective reparations that include a gender perspective, it will be necessary for petitioners, and the Commission and Court, to understand, and act upon, the interrelated nature of women's rights violations. For example, the underlying issues of *all* women's rights violations can be directly linked to discrimination against, and stereotyping of, women. While the "Cotton Field" v. Mexico case recognized gender discrimination as an obstacle to women's rights to life,<sup>71</sup> the same argument is more difficult to assert in a reproductive rights case, largely because of its contentious subject matter. Even within the issue of reproductive health, there are certain 'safe' subjects, and others that are off-limits. For example, in the IVF case the Court clearly defined the right to reproductive health and linked it to the right to integrity, but a year later in its provisional measure for "B,"<sup>72</sup> the Court did not even mention the word 'abortion,' let alone incorporate its own reasoning

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<sup>68</sup> *María Mamerita Mestanza Chávez v. Peru*, Case 12.191, Inter-Am. Comm. H.R., Report No. 71/03, OEA/Ser.L/V/II.118, (2003), para. 9.

<sup>69</sup> *María Mamerita Mestanza Chávez v. Peru*, Case 12.191, Inter-Am. Comm. H.R., Report No. 71/03, OEA/Ser.L/V/II.118, (2003), 11th reparation.

<sup>70</sup> Interview with Mónica Arango Olaya, Regional Director for Latin America and the Caribbean, Center for Reproductive Rights, Skype, 11 July 2014.

<sup>71</sup> Gonzalez et al. ("Cotton Field") v. Mexico. Inter-Am. Ct. H.R., (Preliminary Objection, Merits, Reparations, and Costs) 16 November 2009.

<sup>72</sup> "B" Provisional Measure in Respect of El Salvador (29 May 2013), available at [www.corteidh.or.cr/docs/medidas/B\\_se\\_01.pdf](http://www.corteidh.or.cr/docs/medidas/B_se_01.pdf).

from the IVF case.<sup>73</sup> In order to begin developing gender-based reparations, those actors participating in the Inter-American System must start to approach women's violations with a gender-based perspective, where, for example, reproductive health violations and femicide originate from the same root cause; discrimination and violence against women.

### *Using Belém do Pará*

The Convention of Belém do Pará is the only international convention specifically designed to address violence against women. Overall use of the Convention of Belém do Pará has been limited, with only a small selection of Commission Court cases referring to the Convention of Belém do Pará. However, the Commission's use of the Convention has shown significant progress over time, which is partly attributable to work being done by litigators and civil society that use the Convention to develop a structural picture of a specific problem in emblematic cases. While the Commission and Court's reluctance to incorporate Belém do Pará in decisions and judgments has lessened over time, there remains much work to be done in future cases in order to tap into the Convention's potential.

While the Convention in its entirety is a powerful instrument, the Inter-American Court has determined that only Article 7 falls within the jurisdiction of the Court.<sup>74</sup> The Commission has the capacity to find violations of the other provisions enshrined within the Convention, but the current practice enforces the Court's interpretation of the Convention. In brief, Article 7 provisions protect women's rights to due diligence, where states have a duty to prevent and punish any act or practice of violence against women. Liz Melendez explained that the utility of this Article is potentially quite expansive, where the duty to prevent violence covers the structural problems which ultimately cause women's rights violations.<sup>75</sup> While the scope of Article 7 is undeniable, the emphasis thus far has been on due diligence and domestic justice measures, where perpetrators of crimes are required to face accountability. When asked to expand upon its jurisdiction of the Convention of Belém do Pará to include Articles 8 and 9, the Court determined that these provisions could indeed be referred to in interpreting Article 7 violations, but that they did not have stand-alone enforceability powers. Article 8 includes provisions such as the progressive realization of measures designed "to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women."<sup>76</sup> Article 9 encapsulates the overall objective of the Convention of Belém do Pará: "States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom."<sup>77</sup> This distinction in enforceability is important to acknowledge because Article 7 is in many ways a duplication of rights already protected within the American Convention, and taken alone this provision has very little impact in developing a structural picture of women's rights violations. This concern relates back to Oscar Parra's ideas surrounding the need for petitioners to frame violations within their structural background in order to then ask for reparations that have transformative potential.<sup>78</sup> By limiting application of the Convention of Belém do Pará the Court signals to petitioners the need to develop arguments that use Articles 8 and 9 effectively in order to interpret Article 7; a challenge that petitioners must keep in mind when bringing future women's reproductive rights cases.

However, it is important to note that feminists working in this area are increasingly aware of the limitations and potential advancements that come with using the concept of due diligence in litigation

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<sup>73</sup> The IVF (*Artavia Murillo et al. v. Costa Rica*) case includes an expansive definition of reproductive health, and links reproductive autonomy to integrity and privacy, but in the "B" provisional measure the focus is on the right to life and humane treatment, with no reference made to the interrelated nature of these rights with integrity.

<sup>74</sup> *Gonzalez et al. ("Cotton Field") v. Mexico*. Inter-Am. Ct. H.R., (Preliminary Objection, Merits, Reparations, and Costs) 16 November 2009, paras. 35-80.

<sup>75</sup> Interview with Liz Melendez, Executive Director, Flora Tristán, Lima, Peru, 9 July 2014.

<sup>76</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, "Convention of Belem do Para", Article 8(b).

<sup>77</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, "Convention of Belem do Para", Article 9.

<sup>78</sup> See O. Parra, note 53.

efforts.<sup>79</sup> In fact, the ‘appropriation’ of due diligence by feminists has allowed for a challenge of the historic public/private divide. This means that where at one time women’s rights violations were relegated to self-regulation within the private sphere, the concept of diligence can be used to bring those violations into the public arena, where violations are seen publically, and demand a different, more accountable, form of regulation. In the Inter-American System there remains much to be seen in terms of how litigators and the Commission and Court expand upon Article 7 of the Convention of Belém do Pará, because it is partly the duty of the petitioner to develop arguments that allow for further interpretation of the Convention.

### *Gender Training in the IAS*

Ultimately, the development of gender-based reparations and further use of the Convention of Belém do Pará are merely wishful thinking without implementation of gender-based training at all levels of the Inter-American System of Human Rights. This is because both the Convention and gender-based reparations remain an afterthought in case development as a result of the lack of knowledge about the role of gender within the Inter-American System. Indicative of this lapse in gender understanding is the current structure of the rapporteurships in the Commission. The women’s rights desk is operated on a part-time basis, with one permanent member of staff and two temporary fellows.<sup>80</sup> And, interestingly, including gender-based issues in the Commission’s work is more contentious than one might expect. Rosa Celorio explained the political side of women’s rights work within the Commission, where the President of the Commission is currently also the rapporteur on women’s rights; she must take care not to favor certain themes over others in her capacity as President.<sup>81</sup>

It is undeniable that there is a significant problem in the Commission in regards to incorporating a gendered analysis of human rights violations. Several interview respondents commented that training for all employees is essential if an effort is to be made to shift the current practice from reluctant to willing in terms of including gender-based perspectives in the Commission’s work. Of course, the immediate reply to such a suggestion is the need for more funding to implement such a program. It can be argued however, that the current funding is put to little good use if the work done by the Commission is inherently flawed in its approach. It is also important to note that gender-based training is not the only training that would benefit women victims of human rights violations. Too often right violations are dissected and compartmentalized into separate (and not always equal) themes, when in fact the themes overlap and intersect. For example, in the first case mentioned in this report, *María Mamerita Mestanza Chávez v. Peru*, the victim experienced her rights violations as an indigenous, poor and rural woman, where each of these conditions combined to contribute to her discrimination. In establishing mandatory training programs at all levels of the Commission and Court which incorporate the interrelated nature of human rights violations, there is great reason to believe that cases will be better equipped with structural pictures of systemic problems that cause human rights violations.

However, it is essential to recognize that training programs within the Inter-American System are a limited solution to a far-reaching problem. The Inter-American Commission and Court are human rights bodies that serve as the last resort for recourse, where a gender approach to analyzing cases is indeed welcomed, but in reality comes much too late for the individual victim. Gender based training must also be implemented at the national and local levels, so that doctors, police officers, members of local, state and national judiciaries, educators at the primary, secondary and university levels, and members of families are given an opportunity to explore the gendered dynamics of life, and hopefully, subsequently challenge them.

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<sup>79</sup> See article, Paulina García-Del Moral & Megan Alexandra Dersnah, “A feminist challenge to the gendered politics of the public/private divide: on due diligence, domestic violence, and citizenship,” *Citizenship Studies*, Vol. 18(6-7) 661-675 (2014).

<sup>80</sup> Interview with Rosa Celorio, Attorney - Women’s Rights Desk, Inter-American Commission on Human Rights, Washington DC, USA, 29 August 2014.

<sup>81</sup> Interview with Rosa Celorio, Attorney - Women’s Rights Desk, Inter-American Commission on Human Rights, Washington DC, USA, 29 August 2014.

## IV. Conclusion

The protection, promotion and fulfillment of women's reproductive health rights in the Inter-American region is a task best undertaken using a multifaceted "bottom-up" approach. While international human rights law certainly has a symbolic and regulatory function and carries with it a sense of legitimacy, on its own it lacks the power to effect structural and transformative change. As feminists and/or human rights advocates at the local and national levels become increasingly familiar with the human rights tools available to them at the regional and international levels, there is a significant opportunity to further include civil society in activities in these arenas. However, as this report has shown, the challenges that limit the advancement of women's reproductive rights through the Inter-American System are numerous. Certainly further collaboration between actors, more significant efforts to understand and institutionalize gender, and effective gender-based reparations are key to achieving progress in this area, but these recommendations are useless if not accompanied by local and national level activism that calls for social, cultural and political reform.

Perhaps the clearest concern emerging from interviews conducted during this research has been the social and cultural climate of gender discrimination in the Inter-American region, which is the root cause for women's reproductive rights violations. Interestingly though, this concern is not at the forefront of the work being done on reproductive rights in the Inter-American System. Although gender-based discrimination is discussed in reporting mechanisms and in cases if only minimally, gender-based discrimination is an afterthought for which argumentation and reparation design are extremely weak. While litigation efforts have proven to be relatively successful over time, there remains a significant gap in how petitioners use the Inter-American Commission and Court as tools in the struggle to achieve transformative social and cultural change. Furthermore, the Commission and Court have the Convention of Belém do Pará at their disposal, but have been reluctant to apply the Convention in reproductive rights cases.

Over the next decade the Inter-American System of Human Rights will certainly be confronted with women's reproductive rights cases.<sup>82</sup> With each opportunity it will be important for civil society, victim's representatives and the Inter-American Commission and Court to learn from the lessons of the three cases highlighted in this report. Litigators must focus on developing a structural picture of women's rights violations (reproductive rights as well as violence against women), placing heavy emphasis on gender-discrimination. In part, this can be achieved by calling on the Commission and Court to review cases with Articles 8 and 9 of the Convention of Belém do Pará in mind. Based on the development of a structural argument, it will then be necessary for litigators and the Commission to use particular care in designing reparations that address gender-discrimination, and that can be defined and measured qualitatively and quantitatively. Ultimately, it will be the responsibility of civil society and victim's representatives to challenge the status quo and subsequently shift the Inter-American System's approach to women's rights violations. Hopefully this report will play a small role in the advancement of women's reproductive health rights within the Inter-American System of Human Rights.

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<sup>82</sup> Potential upcoming reproductive rights cases: *I.V. v. Bolivia*, Admissibility, Inter-Am. Comm. H.R., Report No. 40/08 (July 23, 2008), *FS v Chile*, Admissibility, Inter-Am. Comm. H.R., Report No. 52/14 (July 21, 2014); *AN v. Costa Rica* (2008), *Beatriz v. El Salvador* (2013), and *Aurora v. Costa Rica* (2013).

## Participants

\* *Individual names in bold represent individual perspectives, not necessarily those of the participant's organizations or affiliations.*

The findings outlined in this report reflect opinions, perspectives and information obtained through interviews conducted June through September of 2014, with representatives from women's rights NGOs, human rights NGOs, state departments, the medical community, the Inter-American Commission and the Inter-American Court, as well as human rights lawyers, and experts in gender and sexuality. A sincere thank you is most definitely in order to everyone who participated in this research - without the generous donation of your time and knowledge this project would not have been possible.

## Peru

**PROMSEX (Center of the Promotion and Defense of Sexual and Reproductive Rights)** - Ysabel Marín Sandoval (Human Rights Attorney)

**INPARRES (Peruvian Institute of Responsible Parenthood)** - Daniel Aspicuelta (Director)

**Flora Tristán** - Cecilia Olea Mauleón (Women's Rights Researcher) and Liz Meléndez (Executive Director)

**Manuela Ramos** - Rocío Pilar Puente Tolentino (Coordinator of the Sexual and Reproductive Rights Program) and Milena Justo Nieto (Human Rights Attorney)

**Catholics for the Right to Decide** - Gladys Vía Huerta (Program Coordinator)

**Ombudsman, Rights of Women Department** - Carolina Garcés Peralta (Women's Rights Ombudsman), with Diana Portal Farfán, Sheilah Jacay, and Carla Villareal López

**Ministry of Women and Vulnerable Populations** - Marcela Huaita Alegre (Vice Minister of Women)

**Ministry of Health** - Gloria Marisela Mallqui Osorio (Executive Deputy, Vice Minister's office)

**Ministry of Justice and Human Rights** - Roger Rafael Rodríguez Santander (Director, Executive Secretary of the National Council of Human Rights)

**Jeannette Llaja** - Former Director of DEMUS (Study for the Defense of Women's Rights)

**Beatriz Ramirez Huaroto** - Ministry of Women and Vulnerable Populations (Advisor to the Ministry of Women)

**Luis Távara, MD** - Sexual and Reproductive Health Consultant

## Mexico

**GIRE (Information Group on Reproductive Choice)** - Rebecca Ramos (Legal Investigator)

**MEXFAM (Mexican Foundation for Family Planning, A.C.)** - Doroteo Mendoza (Manager of Evaluation, Investigation and Information Systems)

**Equidad de Género (Gender Equality): Citizenship, Work and Family, A.C.** - María Eugenia Romero Contreras (Director)

**CIMAC (Communication and Information for Women, A.C.)** - Lucía Lagunes Huerta (General Director)

**National Center for Gender Equality and Reproductive Health Centro (Directorate General for Reproductive Health)** - Rufino Luna Gordillo (General Director)

**Ministry of Foreign Affairs, Department of Cases** - Luis Jardón (Director, Human Rights Litigation)

**José Guevara** - Executive Director of the Mexican Commission of Defense and Promotion of Human Rights

**Marisol Aguilar** - Impact Coordinator, EQUIS - Justice for Women

**Patricia Uribe Zúñiga** - Former Director of the National Center for Gender Equity and Reproductive Health, Under-Secretariat of Health Promotion and Prevention, Secretariat of Health

**Vanessa Coria** - Advocacy and Program Manager, WGNRR (Women's Global Network for Reproductive Rights), formerly with CEJIL (Center for Justice and International Law)

**Gender Expert** - *Anonymous*

## Costa Rica

**ADC (Asociación Demográfica Costarricense)** - Hilda Picado Granados (Executive Director)

**Ombudsman, Women's Department** - Ivania Solano Jiménez (Attorney for the Protection of Women from the Office of the Ombudsman)

**Adriana Maroto Vargas** - Academic, Member of The Collective for the Right to Decide (La Colectiva)

**Dr. Delia Maria Ribas Valdés** - Medical Doctor Specializing in In Vitro Fertilization

**Jorge Oviedo (Deputy Attorney) with Amanda Grosser** - General Prosecutor of the Republic, Representative of the State, *Artavia Murillo et al. v. Costa Rica*

**Huberth May Cantillano** - Attorney, Victim Representative, *Artavia Murillo et al. v. Costa Rica*

## International

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**Maria Daniela Rivero** - Human Rights Attorney

## Inter-American System of Human Rights

**Oscar Parra Vera** - Senior Attorney, Inter-American Court of Human Rights

**Alexandra Sandoval** - Senior Attorney, Inter-American Court of Human Rights

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\* *Information about the researcher can be found at: <http://www.sussex.ac.uk/profiles/303008>.*



