

# LEGAL SERVICES: PUTTING RIGHTS INTO ACTION—PROFAMILIA-COLOMBIA

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## INTRODUCTION

PROFAMILIA, the Colombian family planning association responsible for approximately sixty-eight percent of all family planning activities in Colombia, attempts to incorporate features of family planning, reproductive health, and women's empowerment activities in order to develop new strategies.

PROFAMILIA, therefore, has also developed innovative programs in the search for a new model of achieving social justice for women. It does so by trying to promote equality between the sexes, rather than merely delivering services within the social structure. For example, the development of legal services for women and gender training workshops as part of family planning service delivery has allowed PROFAMILIA to tackle issues of reproductive self-determination as a factor contributing to empowerment, rather than as an end in itself.

The Legal Services for Women project began in November 1986, with centers that provided women with legal aid, information, education, and counseling about their rights and how to enforce them through litigation. The services concentrated primarily on reproductive health and family matters, including domestic violence. The goal was to expand awareness of women's rights as protected under the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention), and later in the 1991 Colombian Constitution. A concurrent goal was to encourage women to make their own decisions about fertility and sexuality.

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## I. DIFFERENT WAYS TO IMPLEMENT THE CONCEPT OF RIGHTS

Looking closely at Principle 4 of the Cairo Programme of Action, we find that:

The human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights.<sup>1</sup>

Here we find THE RIGHTS of women. But are these active and influential rights? How can one expect other women to put these rights into action?

It is in this context, then, that we face two main challenges: First, we must try to make our work in women's human rights respond to grassroots needs and women's everyday realities; second, we must try to get women in society to recognize their rights, as well as violations of their rights.

We can begin with an overview of the major ways that women's rights may have been included in the laws. Initially, one can think of four possibilities: (1) these rights most probably were handed over to women thanks to previous struggles that succeeded and were led by other women (this is illustrated, in general, by the cases of North America and Europe); (2) these rights were recognized due to international pressure and efforts of women in other areas of the world (for example, the recognition of the Women's Convention as the law of a nation); (3) these rights may have been the result of important local social movements that somehow managed to include women's rights, though in essence the social movement was led by men; and (4) these rights resulted from a combination of all three methods. This last method of incorporation of women's rights into the laws of nations is probably the most common method in the world today.

Regardless of how women's rights became incorporated into the laws, the main problem faced by women's legal services everywhere is perhaps the same: How do these "new" women's human rights become active rights? In order to achieve the appropriation of women's human rights by society in general, it is therefore also necessary to understand the evolution of the daily work done by the women's nongovernmental organizations (NGOs). Initially, the work was directed to delegitimize the patriarchal discourse and constituted a method of political opposition. Later, it was seen that human rights

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1. ICPD Programme of Action, *infra doc. biblio.*, princ. 4, at 15.

were not only a theory. Everyday and everywhere, women were being discriminated against and were facing different violations of a series of rights that were not recognized by mainstream human rights activists. Finally, and this may be the current stage, mainstream human rights activists and the women's movement have reached a point where both groups recognize that the violation of human rights occurs not only with political prisoners, but also with the ordinary citizen or the common woman.

Unfortunately, it is not enough to have an active right. A successful right must also be an influential right. This is where women lawyers have to break new ground, using active and influential abilities. Maybe, as Arvonne Fraser has correctly identified, one must start looking primarily at women participating in active NGOs:

Legal guarantees are meaningless, however, unless citizen's rights and duties are understood and the administration of justice is gender fair. The movement to end violence against women has emphasized the need not only for claiming and exercising women's human rights but also for educating men and women about those rights and providing the services necessary for them to be exercised. Although there are numerous excellent legal literacy and services projects in many countries of the world, these do not and probably cannot meet the demand. Poor women, especially, need legal services and support, as well as legal literacy programs. Knowing one's rights does not automatically mean one can claim them, especially if access to the judicial system is expensive.<sup>2</sup>

Two important innovations are court monitoring groups and studies of gender issues in the courts which are being organized in some countries by women's nongovernmental groups. Monitoring groups attend hearings, observe proceedings and may make recommendations to governments and the public based on their observations. Their aim is to assure that women are not victims of the system that is supposed to protect and enforce people's rights. Similar innovations include studies being undertaken by governmental or non-governmental groups of gender bias in judicial systems. As a result of these studies, lawyers and judges in some countries are being sensitized as to how pervasive tradition and custom are.<sup>3</sup>

Our experience in PROFAMILIA's Legal Service for Women has taught us that developing each other's self-realization (i.e, the lawyer's as well as the client's) has allowed us as women to *use* our rights

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2. Arvonne Fraser, *The Importance of Non-Governmental Organizations in Creating Civil Societies*, INT'L WOMEN'S RTS. WATCH (IWRW) 8 (1993).

3. *Id.*

actively. In other words, the lack of self-esteem means that one also lacks active rights. Thus, when one talks of education it must be the type of education that achieves the development of self-esteem, whether formal or informal. Education must also be a process, not only of individualization, but also of integration, which is the reconciliation of individual uniqueness with social unity. This would multiply the number of women with active rights who have learned not only what involvement in public life means, but have the freedom and ability to project their voices so that their views can be heard.

If women have been given their liberty, they must yet achieve their freedom—freedom to create and freedom to become what one is. Women now have to achieve their freedom in order to fight discrimination, which is not only a result of treating equally what is different, but also treating differently what is equal.

Freedom is a personal attribute; liberty is a civil right. . . . Freedom is not something which one has by natural endowment, or by social contract: it is something which one wins by conquest, by a discipline of the spirit. Freedom is the will to be responsible for one's self. . . .

Liberty is one of the conscious values of a civilization. It is conceived and cultivated, defined and protected: it can also be abrogated, denied, perverted.

But freedom is the unconscious creation of a culture. It cannot be abstracted or defined, it cannot be cultivated and protected. It is a pulse, a living breath of which we are scarcely aware until it ceases. It sinks low when the body is sick or kept in restraint.<sup>4</sup>

## II. THE NEED FOR NEW AND ORIGINAL ADVOCACY EFFORTS IN THE FIELD OF WOMEN'S HUMAN RIGHTS—AN EXAMPLE

### *Implementation of the Concept of Family Planning as a Women's Human Rights Issue Versus a Family Issue*

The following illustration is a telling example of how culture and its norms are stronger than the rules of law. The new Colombian Constitution of 1991 incorporated the principles of the Convention on the Elimination of All Forms of Discrimination Against Women, which was itself ratified by Colombia in 1981. Today Colombian women have a number of fundamental rights that protect their decisions about fertility and sexuality, including: the right to life,

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4. HERBERT READ, ANARCHY AND ORDER: ESSAYS IN POLITICS 162 (1974).

liberty, equality, and security of the person; the right to the unrestricted development of identity; the right to found a family; the right to decide freely and responsibly the number of children they will conceive; the right of access to education and information; the right to the enjoyment of a healthy environment; and the right to health care. Sex-related discrimination in any field, such as the political, economic, social, educational, cultural, or civil, constitutes an impediment to the recognition, enjoyment, and exercise by women of human rights and fundamental freedoms.<sup>5</sup>

Colombia has adopted a public health policy in which social discrimination against women was considered to be a factor contributing to their ill health. Moreover, a ministerial resolution has ordered all health institutions to guarantee women the right to decide on all issues that affect their health, their life, and their sexuality and to guarantee the rights "to information and orientation in order to allow the exercise of free, gratifying, and responsible sexuality which cannot be tied to maternity."<sup>6</sup>

A July 1993 decision by the Council of State (*Consejo de Estado*) in Colombia attempts to impose the spousal veto for family planning services. The argument for this provision is that the husband must give his consent because the family is entitled to a special protection from the State and is also the basic unit of society. The family was held to be constructed on the harmonious relationships of the couple and on important determining factors, such as having or not having children, where religious, economic, and social aspects must be considered. All of these demand, therefore, the mutual consent of both, and the sole decision of the mother cannot deprive the husband from strengthening his family and vice-versa.<sup>7</sup>

The members of the Council of State have given the family unit a set of rights as if it were a legal entity and not just a unit of society. The strategy of the Legal Service has been one of legal advocacy. Every time one of the lawyers participates in a conference on women's issues, the topic of the family as a legal entity is discussed. The Legal Service bases its position on the fact that the members of the family, the human beings who form it, are the ones entitled to rights and obligations; the couple is not in itself a legal entity, and therefore,

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5. See Maria Isabel Plata, *Reproductive Rights as Human Rights—Colombia*, in *WOMEN'S INTERNATIONAL HUMAN RIGHTS LAW* 511 (Rebecca Cook ed., 1994).

6. See Salud para las mujeres, *Mujeres para la salud* [Health for Women, Women for Health], Ministerio de Salud, Bogotá, Colombia, at 7 (May 1992).

7. See Consejo de Estado, Sala de lo Contencioso Administrativo [Council of State, Chamber in Charge of Administrative Proceedings], Exp. No. 7795 (July 1993).

cannot be entitled to rights. The family and the couple are social concepts but not legal bodies. Because not all the legal scholars in our administrative and judicial courts are paying high tribute to traditional and patriarchal cultural attitudes, we use, for example, the language of a recent Constitutional Court decision on the issue of abortion, where the minority of the court stated:

The State may not restrict or limit the fundamental rights of the person by creating new legal entities. . . . This in itself turns into a mechanism which restricts fundamental rights. . . . Pregnancy and maternity greatly affect the identity of the woman. There exists a powerful belief that to become a mother is both natural and desirable. Therefore when a woman renounces motherhood, it is implied that there is a selfish avoidance of an instinct. Nevertheless, cultural stereotypes have diametrically changed with the involvement of women in the labor market. This is a reason in itself which equally requires the acceptance of the right of a woman to decide about her reproductive life.<sup>8</sup>

The Legal Service is also constantly advocating that neither the State, the family, nor the couple can legally interfere in the reproductive decisions of a woman. Any involvement from these entities can easily and disproportionately limit the constitutional rights of a woman and unjustly force her to assume an obligation that cannot be legally enforced. Having an unwanted pregnancy, for example, may not be forced upon a woman. No such duty can be enforced over a series of fundamental human rights like the right to life, health, liberty, or dignity. Moreover, no one should be allowed to interfere with one's ability to control one's fertility.

#### CONCLUSION

Considering the foregoing, we may conclude that women have in general achieved their liberty but by no means their freedom. This is precisely why the Women's Convention is so valuable. It gives women some instruments which will help them achieve the active and influential rights and abilities that women require to be able to participate in public life. The Women's Convention started to look into new concepts of rights, i.e., *women's human rights* and how discrimination stops all women from exercising their rights. The Nairobi Forward Looking Strategies developed ways to achieve formal equality by following the traditional and patriarchal road to liberty. Thus, in 1985, governments did not achieve a gender analysis which

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8. Constitutional Court Decision T-133/94 (Colom. Mar. 17, 1994).

could lead them to guarantee real equal opportunities to women. Instead, they tried to develop, for women, what had worked for men in a political context: the concept of formal equality alone.

We must remember that equality and liberty are two formal and traditional concepts closely related to political and legal structures of society, both far removed from the dreams and opportunities of women. To achieve freedom, we must have equal opportunities both at the domestic and public levels; to achieve liberty, we need only formal equality in the legal, political, and public spheres. The Nairobi Forward Looking Strategies disregarded the private sphere, assuming that change in the public sphere would, by itself, make women equal.

Could it be then that what women need to do now is find new ways to redefine politics and leadership? Is this where we should all move after Beijing? If, today, leadership is seen as "an authoritative male figure proclaiming his views," why can't the women NGOs turn it into "working with others, testing out ideas, strategizing and developing plans"?<sup>9</sup>

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9. See Fraser, *supra* note 2, at 3.

