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Berta Esperanza Hernandez-Truyol

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## VI. LAW, CULTURE, AND EQUALITY — HUMAN RIGHTS' INFLUENCE ON DOMESTIC NORMS: THE CASE OF WOMEN IN THE AMERICAS

*Berta Esperanza Hernández-Truyol\**

This essay originated with a panel on Alternatives to the Regular Courts that took place during the first Legal and Policy Issues in the Americas conference sponsored by the University of Florida Levin College of Law. Some of the possible alternatives to the courts, in the trade field, that have been discussed include mediation, arbitration, constitutional courts and binational dispute panels. This essay reflects upon another alternative to domestic courts that progressively and increasingly is also being invoked in the trade context: international and regional human rights regimes.<sup>1</sup>

I specifically will review the Inter-American Human Rights System to ascertain the influence of human rights norms on domestic law in Latin America. The essay interrogates the impact the Inter-American regional system has had on local laws, using the changed location of women as an example that reveals the richness of this alternative to the regular courts.

In undertaking such analysis, an invaluable source is the *Report on the Status of Women*, 1998 by the Inter-American Commission on Human Rights.<sup>2</sup> The report analyzes the compliance of member states of the Organization of American States (OAS) with the international obligations set forth in the human rights treaties and declarations as they apply to the status of women. Specifically, the relevant “Law” that the Report considered were the regional instruments that establish a set of basic rights

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\* Professor of Law, University of Florida Levin College of Law. Many thanks to my colleague, Professor Michael W. Gordon for inviting me to participate in this exciting conference on Legal and Policy Issues in The Americas and to Dean Jon Mills for his support of this and many other international endeavors. Generally, I am most grateful to the participants in and organizers of this conference for enriching the landscape in which we engage legal and policy issues. Also, I wish to thank Neera Anand (J.D. '00) and Andreina Rimer (LL.M. '00) for their invaluable research assistance.

1. Until WWII, individuals were not granted protection under international law, because they were regarded as objects, as opposed to subjects of, international law. The Nuremberg and Tokyo tribunals were created to address human rights atrocities committed during WWII, and to punish violators. The Nuremberg court pointed out that “[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.” See *The Nurnberg Trial*, 6 F.R.D. 69, 110 (1946); see also Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U. L. REV. 1W, 9-10 (1982). See generally L. SOHN, *CASES ON UNITED NATIONS LAW* 898-967 (1st ed. 1956).

2. See Dean Claudio Grossman: Special Rapporteur, *Report on the Status of Women in the Americas*, <<http://www.cidh.org/commission.htm>> (visited Aug. 16, 2000)(which was adopted by the Inter-American Commission on Human Rights on March 6, 1998) [hereinafter *Report*].

and obligatory standards of conduct to promote and protect those rights as well as the organs that monitor the rights. Thus, in the first part, the essay reviews the legal framework of the Inter-American regional system as well as some of its international parallels to set forth the range of protected rights, especially as they pertain to women. Next, focusing on culture, the piece studies the *cultura Latina* to show both its characteristics and the incongruity of some cultural tropes with the goal of women's equality, autonomy, and self-determination. The third part scrutinizes how the Inter-American regional system has created a framework within the landscape of the *cultura Latina* that promotes women's equality. The work concludes that the human rights model presents an invaluable alternative to domestic courts, especially in instances in which such courts might be prone to entrench dominant cultural paradigms that are inapposite to racial, ethnic, social, and gender rights mandates of the human rights framework.

### A. Law

The Inter-American human rights system, the first fully functioning human rights system in peripheral states, has established several innovative approaches to protect and ensure human rights,<sup>3</sup> including the rights of women.<sup>4</sup> There are two principal normative instruments of the Inter-American human rights system, both of which expressly prohibit sex discrimination and, indeed, mandate sex equality. One is the American Declaration on the Rights and Duties of Man [and Woman],<sup>5</sup> which is a source of both customary and conventional legal obligations. The instrument itself sets forth the human rights of member states to the OAS Charter. However, as it dovetails and tracks the Universal Declaration of Human Rights,<sup>6</sup> it also can be seen as a statement of customary

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3. See American Convention on Human Rights, O.A.S. Treaty Series No. 36, at 1, Nov. 22, 1969, OEA/Ser. L/V/II.23 doc. rev. 2 (entered into force July 18, 1978) [hereinafter Convention]. Interpretation and enforcement of the American Convention of Human Rights is carried out by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

4. See Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belem do Para") (Done at Belem do Para, June 9, 1994), 33 I.L.M. 1534 (1994) [hereinafter Belem do Para].

5. See American Declaration on Rights and Duties of Man, adopted by the Ninth International Conference of American States, reprinted in 1 THE INTER-AMERICAN SYSTEM, pt. II, at 5 (F. V. Garcia-Amador ed., 1983) (establishing a set of 38 articles that delineate American states' recognition of the need to protect the essential rights of (women) [hereinafter American Declaration].

6. See *Universal Declaration of Human Rights*, GA Res. 217A, Art. 4, UN Doc. A/810, at 71 (1948) [hereinafter *Universal Declaration*]. See generally Rodolfo Piza, *Coordination of the Mechanisms for the Protection of Human Rights in the American Convention With Those Established by the United Nations*, 30 Am. U. L. Rev 167 (1980) (delineating the parallels between the American Convention and United Nations human rights instruments).

international law. The second significant regional instrument is the American Convention on Human Rights (also known as the Pact of San José) which is binding on its signatories.<sup>7</sup> The American Convention parallels both the International Covenant on Civil and Political Rights<sup>8</sup> and the International Covenant on Social, Economic and Cultural Rights in the international sphere.<sup>9</sup>

To strengthen this normative framework, specifically in the protection and promotion of the rights of women, the General Assembly of the OAS adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, know popularly as the Convention of Belem do Para.<sup>10</sup> This recent convention, which entered into force only in March of 1995, already has twenty-seven state parties and, as such, is the most widely ratified law in the Inter-American system.

Belem do Para represents a re-envisioning of Inter-American human rights law to apply in a gender-specific way.<sup>11</sup> Its adoption reflects a

7. See American Convention on Human Rights: "Pact of San Jose, Costa Rica," Nov. 22, 1969, art. 4, 1144 U.N.T.S. 123, 145 (entered into force Jul. 18, 1978). ("The States . . . [will] ensure to all persons . . . the free and full exercise . . . without any discrimination for reasons of race, color, language, sex . . .") [hereinafter American Convention] See generally Christina M. Cerna, *Symposium: International Law in the Americas: Rethinking National Sovereignty in an Age of Regional Integration: Articles and Essays: International Law and the Protection of Human Rights in the Inter-American System*, 19 HOUS. J. INT'L L. 73 (1997) (discussing the compulsory jurisdiction of the Inter-American Court of Human Rights for violations committed by the 17 countries who are signatories to the convention). Compulsory jurisdiction of the court is binding on, Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad, Tobago, Uruguay and Venezuela. See *id.*

8. See *International Covenant on Civil and Political Rights*, Dec. 19, 1966, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, art. 2(1), U.N. Doc. A/6316 (1967), 999 U.N.T.S. 171, 173 (adopted by the United States, June 8, 1992) [hereinafter *ICCPR*] ("Each State Party . . . undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as . . . sex . . ."); see *id.* art. 26 ("The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . sex . . .").

9. See *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, G.A. Res. 2200, 21st Sess., Supp. No. 16, art. 2(2), U.N. Doc. A/6316 (1967), 993 U.N.T.S. 3, 5 (entered into force Jan. 3, 1976) [hereinafter *Economic Covenant*] ("State[ ] Parties to the present Covenant undertake to guarantee that the rights enunciated . . . will be exercised without discrimination of any kind as to . . . sex . . ."); see also *id.* at art. 3 (articulating the obligation of "State Parties . . . to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the . . . Covenant"); *id.* at Art. 7 (guaranteeing women "conditions of work not inferior to those enjoyed by men, with equal pay for equal work").

10. See Belem do Para, *supra* note 4.

11. See *id.* art. 5 (stating that Belem do Para, recognizes that violence against women constitutes a violation of human rights, and states that every woman has the "right to recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and

powerful consensus among both state and non-state actors concerning the need to eradicate gender violence. Significantly, the principles of nondiscrimination against and equal protection of women that Belem do Para embraces are foundational to the constitutive instruments of the human rights system — both the international system generally and the Inter-American system specifically.<sup>12</sup> It is important to note, however, that this innovative treaty defines discrimination against women broadly and includes differences in treatment on the basis of sex that disadvantage women.

Concerning sex-and gender-based discrimination, Belem do Para thus is unique.<sup>13</sup> It recognizes that violence against women is a manifestation of women's historically unequal power location — in both the public and the private sectors<sup>14</sup> and in *all* societies — vis-à-vis men. Violence against women is defined as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere.”<sup>15</sup> This articulation of violence is grounded on well-established and universally recognized rights to life,<sup>16</sup> physical and mental integrity,<sup>17</sup> personal liberty,<sup>18</sup> dignity, and equal protection of the laws<sup>19</sup> — rights the exercise and enjoyment of which are

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international human rights instruments . . . such as (a) the right to have her rights respected . . . (c) the right to equal protection before the law and of the law”).

12. See *Universal Declaration*, *supra* note 6; see also *American Convention*, *supra* note 7; *ICCPR*, *supra* note 8.

13. See *Belem do Para*, *supra* note 4, art. 2 (defining by treaty violence against women as, that which: “(a) . . . occurs within a family or domestic unit or within any interpersonal relationship, whether or not the perpetrator shares the same residence with the woman, including among others, rape, battery, and sexual abuse, (b) . . . occurs in the community and is perpetrated by any person, including among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place, (c) that is perpetrated or condoned by the State or its agents, regardless of where it occurs”).

14. See *Belem do Para*, *supra* note 4, art. 3 (“Every woman has the right to be free from violence in both public and private spheres.”).

15. See *Belem do Para*, *supra* note 4, art. 1.

16. See *Belem do Para*, *supra* note 4, art. 4; see also *American Declaration* *supra* note 5, art. 1; *American Convention*, *supra* note 7, art. 4; *Universal Declaration*, *supra* note 6 art. 3; *ICCPR*, *supra* note 8, art. 6.

17. See *Belem do Para*, *supra* note 4, art. 4(b); see also *American Declaration* *supra* note 5, art. 11, 17; *American Convention*, *supra* note 7, art. 5; *Universal Declaration*, *supra* note 6 art. 5; *ICCPR*, *supra* note 8, art. 7.

18. See *Belem do Para*, *supra* note 4, art. 4(c); see also *American Declaration* *supra* note 5, art. 1; *American Convention*, *supra* note 7, art. 7; *Universal Declaration*, *supra* note 6 art. 3; *ICCPR*, *supra* note 8, art. 9.

19. See *Belem do Para*, *supra* note 4, art. 4(f); see also *American Declaration* *supra* note 5, art. 2; *American Convention*, *supra* note 7, art. 3, 24; *Universal Declaration*, *supra* note 6, art. 6, 7; *ICCPR*, *supra* note 8, art. 3, 14, 16, 26, 27.

nullified by violence against women. Very significantly, the right of women to be free from violence includes the right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.<sup>20</sup>

It is noteworthy in analyzing human rights regimes as alternatives to the regular courts that international and regional human rights systems are designed to be subsidiary to national systems.<sup>21</sup> As such, both the procedural and the substantive elements of the human rights projects are important. Procedurally, although the Inter-American system indeed provides a right for individual petition<sup>22</sup> (although only state parties can ultimately appear before the inter-American court),<sup>23</sup> even the Commission procedures are only available once all state processes are exhausted.<sup>24</sup> Of course, there are exceptions for the cases where the individual state's processes lack due process, access to state processes has been denied, and so forth.<sup>25</sup> Before presenting the substantive matters which highlight the impact the Inter-American system has had on women's rights, however, it is appropriate to focus briefly on *la cultura Latina* to elucidate the context in which the human rights laws are applied which, in turn, underscores the significance of the changes effected by the human rights system on local laws and norms.

### B. Culture

It is not an easy task to talk about culture when the group being scrutinized is one as diverse as Latinas/os.<sup>26</sup> This is a group with internally

20. See *Belem do Para*, *supra* note 4, art. 6(b); see also American Declaration *supra* note 5, art. 12; Universal Declaration, *supra* note 6, art. 26.

21. See generally BIN CHENG, *GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS* 178-79 (1987) (discussing the "local remedies rule" which requires exhaustion of local remedies before relief can be sought in an international tribunal).

22. See American Convention, *supra* note 7, art. 44 (granting "[t]o any person or group of persons, or any governmental entity legally recognized in or more states . . . [the right to file] petitions . . . containing denunciations or complaints of violation").

23. See *id.*, art. 61 (allowing "[o]nly state parties and the Commission . . . the right to submit a case to the court," once the procedural requirements of Articles 58 and 60 of the American Convention are satisfied).

24. American Convention, *supra* note 8, art. 46(1)(a) which provides, "that the remedies under domestic law [must be] pursued and exhausted in accordance with generally recognized principles of international law."

25. See American Convention, *supra* note 7, art. 46 (providing for prayer for relief before the Inter American Court when: "(a) the domestic legislation of the State concerned does not afford due process of the law . . . , (b) the party alleging [a] violation . . . has been denied access to local remedies under local law or has been prevented from exhausting them.").

26. In another article, I explore what could be labeled, identity themes within the latina/o community, by expounding on the demographic diversity and multidimensionality of identity of Latinas/os contexts. I [emphasize that boundaries, limits, and understandings of a varied and

distinct and varied languages, migration, education, emancipation, and political histories.<sup>27</sup> Roots within the territory now known as the United States are varied, the language of home is not easily predictable, racial composition is best described as *mestizaje*<sup>28</sup> — although within the U.S. borderlands Latinas/os cannot be white *because they are Latina/o*.<sup>29</sup>

Yet, while recognizing the diversities that exist between and among the panethnic groups collectively catalogued under the umbrella of the Latina/o label, it is inescapable that the group indeed shares many cultural commonalities. Many of these converge around the importance of family and firm notions about appropriate sex and gender roles — two interconnected foundations of cultural oppression for Latinas.<sup>30</sup>

*La familia* is of sacrosanct importance in the *cultura Latina*.<sup>31</sup> It also is the site initially and continuously responsible for the creation, construction, and constitution of gendered identities.<sup>32</sup>

Our families operate on the extended family model in which *abuelas y abuelos* are respected and revered, *tías y tíos* are effectively second sets of parents, and *primas/os* are like additional *hermanas/os*.<sup>33</sup> This big tent is

diverse community, such as Latinas/os, is far from fixed or easily explained. See Berta Esperanza Hernandez-Truyol, *Building Bridges-Latinas and Latinos at the Crossroads: Realities, Rhetoric, and Replacement*, 25 COLUM. HUM. RTS. L. REV. 369 (1994) [hereinafter *Building Bridges I*]; see also Kevin R. Johnson, *Race, Ethnicity and Nationhood: "Melting Pot" or "Ring Fire"? Assimilation and the Mexican-American Experience*, 85 CAL. L. REV. 1259 (1997); Berta Esperanza Hernandez-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 HARV. LATINO L. REV. 199, 200-05 (1997) [hereinafter *La Familia Latina*].

27. See *Building Bridges I*, *supra* note 26.

28. See Berta Esperanza Hernandez-Truyol, *Inter-Group Solidarity: Mapping The Internal/External Dynamics Of Oppression: Latina Multidimensionality and LatCrit Possibilities: Culture, Gender, and Sex*, 53 U. MIAMI L. REV. 811, 815 (1999) [hereinafter *Latina Multidimensionality*]; see also Gloria Anzaldúa, *Haciendo Caras, una entrada*, in *MAKING SOUL/HACIENDO CARAS xv-xxvi* (Gloria Anzaldúa ed., 1990) (noting that "in [ ] mestizaje theories we create new categories for those of us left out or pushed out of the existing ones").

29. See Berta Esperanza Hernandez-Truyol, *Essay: Borders (En)Gendered: Normativities, Latinas, and a Latcrit Paradigm*, 72 N.Y.U.L. REV. 882, 898 (1997) [hereinafter *Borders (En)Gendered*].

30. See e.g., GLORIA BONILLA-SANTIAGO, *BREAKING GROUND AND BARRIERS: HISPANIC WOMEN DEVELOPING EFFECTIVE LEADERSHIP* 11 (1992) (discussing traditional cultural expectations that Latinas be "sentimental, gentle, impulsive, docile, submissive, dependent, and timid."); PIERETTE HONDAGNEU-SOTELO, *GENDERED TRANSITIONS: MEXICAN EXPERIENCES OF IMMIGRATION* 15 (1994) *Borders (En)gendered*, *supra* note 29; see also Berta Esperanza Hernandez-Truyol, *Las Olvidadas-Gendered in Justice/Gendered Injustice: Latinas, Fronteras and the Law*, 1 J. Gender Race & Just. 354, 383 (1998) [hereinafter *Las Olvidadas*]; *La Familia Latina*, *supra* note 26; Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differentials*, 14 B.C. THIRD WORLD L.J. 231, 233 (1994).

31. See *Latina Multidimensionality*, *supra* note 28, at 816.

32. See *Borders (En)gendered*, *supra* note 29, at 915.

33. See *Latina Multidimensionality*, *supra* note 28, at 816.

where we first learn about appropriate and proper conduct, including sex roles, from several generations. These generationally unchanging molds in turn become proof of the correctness of the point, about our correct and befitting places; what conduct is suitable and acceptable; and what comportments and performances constitute *cosas feas* (ugly things).<sup>34</sup>

Inevitably bridging the diversities among Latinas/os, these learnings and knowledges about “fitting within the culture” demeanor are universally and uniformly gendered and sexualized.<sup>35</sup> *La cultura Latina* rigorously and authoritatively defines, delineates, and enforces gender identities. These *fronteras* are then used as a tool of oppression and pressure to marginalize those *mujeres* (and *hombres*) who do not conform to culturally accepted (and acceptable) designations of gender and sex roles and norms.<sup>36</sup>

Having made those numerous observations about Latina/o cultural tropes, culture is an interesting focus for a discussion of equality and human rights because human rights norms expressly protect culture and cultural expressions<sup>37</sup> as well as equality and non-discrimination. These protections are extended to minority cultures living within a dominant culture as well as to cultural dissenters within their own cultural settings.<sup>38</sup> Cultural protections are especially significant in human rights analyses because they were crafted with the knowledge and understanding that implicitly recognizes that religious and ethnic minorities are particularly vulnerable to a tyrannical majority’s whims in denying rights — be this majority the so-called normative or the powerful voices within a minority setting.<sup>39</sup> To be sure, such concerns and consideration should extend to all women within any culture as well as to minority women within their minority culture.

As the next part will show, there have been significant progresses made within the Inter-American system with respect to the location of women. States appear to be interested in placing women’s rights on the social agenda and to institute reforms aimed at advancing the legal, social,

34. See *id.*

35. See *id.*; see also *Borders (En)gendered*, *supra* note 29; *La Familia Latina*, *supra* note 26, at 1324.

36. See *Latina Multidimensionality*, *supra* note 28, at 816.

37. See *Universal Declaration of Human Rights*, *supra* note 6, art. 27(1) (“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”); ICCPR *supra* note 8, at 179 (“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”); *Economic Covenant*, *supra* note 9, art. 1(1), 993 U.N.T.S. at 5 (“All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their . . . cultural development.”).

38. See Berta Esperanza Hernandez-Truyol, *Women’s Rights as Human Rights — Rules, Realities and the Role of Culture: A Formula For Reform*, 21 BROOKLYN J. INT’L L. 605 (1996).

39. See *id.*; see also *Borders (En)gendered*, *supra* note 29.



political, and economic status of women.<sup>40</sup> However, as the Inter-American Commission's report shows, and this essay addresses, *de jure* discrimination continues to exist, particularly with respect to family matters and administration of property.<sup>41</sup> This, of course, is significant in the context of the salient role of *familia* in the *cultura Latina*.

Thus it becomes an interesting exercise to contemplate what can women's equality mean within the *cultura Latina* — plainly a heteropatriarchal culture that has subordinated (and continues to subordinate) women, often in the name of tradition and culture — in the context of a human rights framework that both mandates equality and non discrimination, on the one hand, and the protection of culture on the other.

### C. Equality

In his work *El Laberinto de la Soledad*, Octavio Paz captured the Latinos' image of woman:

Como casi todos los pueblos, los mexicanos consideran a la mujer como un instrumento, ya que los deseos del hombre, ya de los fines que le asignan la ley, la sociedad o la moral. Fines, hay que decirlo, sobre los que nunca se le ha pedido su consentimiento y en cuya realización participa sólo pasivamente, en tanto que "depositaria" de ciertos valores. Prostituta, diosa, gran señora, amante, la mujer transmite o conserva, pero no crea los valores y energías que le confían la naturaleza o la sociedad. En un mundo hecho a la imagen de los hombres la mujer es sólo un reflejo de los hombres. Pasiva, se convierte en diosa, ser que encarna los elementos estables y antiguos del universo; la tierra, madre y virgen; activa es siempre función, medio, canal. La feminidad nunca es un fin en sí mismo como lo es la hombría.<sup>42</sup>

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40. See Report, *supra* note 2.

41. See Report, *supra* note 2 (concluding, that "certain countries possess, in greater or lesser measure, laws that restrict and/or discriminate against the civil rights of women in marriage with respect to the administration of assets of each spouse or other types of assets; in representation of the conjugal home or head of household; in the exercise of parental authority; in establishing the conjugal domicile, or the possibility of remarriage; in the need for express or tacit authorization of the husband to work and open a business; or in the right to ownership of property").

42. Octavio Paz, *EL LABERINTO DE LA SOLEDAD [THE LABYRINTH OF LONELINESS AND SOLITUDE]* (Penguin, 1997). Author's translation:

Like just about all peoples, Mexicans consider woman as an instrument; since men's desires, the roles assigned by law, society and morality. Roles, one must say, about which her consent has never been asked and in realization of which she participates only passively as the depository of certain values. Prostitute, goddess, lady, lover, woman transmits or preserves, but never creates, the values

Putting aside all the debates in which persons can engage with respect to the proper location of women in society as a whole, and in the *cultura Latina* specifically, certainly Octavio Paz's description of woman and womanhood is not one that can be deemed even remotely consonant with equality. Rather, it is imbued with sex role stereotyping — a practice explicitly prohibited by Belem do Para and a least impliedly proscribed by the regional and international instruments forbidding sex discrimination and mandating sex equality. In *américa Latina*, a geography that might well still feel as Octavio Paz so colorfully captured, can there be movement towards a different way of seeing a group — here women — that can reconcile traditional cultural views of sex/gender with equality? Surprisingly and inspiringly, the answer is yes, although the process is a work in progress. The Inter-American human rights system has already effected immense changes — I daresay progresses — in legal and sometimes real life environments for women, notwithstanding some daunting challenges that remain.

The Inter-American Commission is responsible for oversight and enforcement of the human rights norms in the entire OAS system; given the dearth of resources its challenges are far greater than the cultural assumptions discussed above. The commission's oversight and enforcement obligations span thirty-four countries with a population of more than 600 million human beings. Yet to carry out these tasks the Commission has only seven members, a staff of ten lawyers, a secretarial staff of seven, and an annual budget of less than \$1.6 million.<sup>43</sup> The Commission's tasks are rendered even more difficult by the social and economic heterogeneity of the Americas,<sup>44</sup> the intermittent civil strife that still afflicts many countries,<sup>45</sup> the terrorism and narcotics traffic that compound existing human rights problems and present special human rights problems of their own, and the sporadic coups.<sup>46</sup> The suspension of constitutional order has never meant that the Commission's jurisdiction is impaired; indeed, constitutional order itself is a requirement of the American Convention as well as a precondition

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and energies that are offered to her by nature or society. In the world created in the image of men, woman is only a reflection of men. Passive she becomes a goddess, a person who embodies the stable ancient elements of the universe; earth, mother, and virgin; active she is always a vessel, means, conduit. Femininity is never an end in itself as is manhood.

43. See W. MICHAEL REISMAN & WESLEY NEWCOMB, PRACTICAL MATTERS FOR CONSIDERATION IN THE ESTABLISHMENT OF A REGIONAL HUMAN RIGHTS MECHANISM: LESSONS FROM THE INTER-AMERICAN EXPERIENCE, St. Louis-Warsaw Trans'l 89, 93 (1995).

44. See *id.*

45. See *id.*

46. See *id.*

for the fulfillment of many other rights set out therein.<sup>47</sup> In all cases, and notwithstanding these difficulties, below I provide examples of the successes of the human rights system in addressing issues of sex/gender equality and non-discrimination. First, I describe several significant cases; next, I list numerous government initiatives in establishing agencies that address sex/gender issues within the national context; and finally, I describe some changes effected in several States' constitutions and codes that reflect those nations' efforts at promoting women's equality.

#### D. Cases

In 1983, the State of Costa Rica asked the Inter-American Court for an advisory opinion on the compatibility of several proposed amendments to the Constitution of Costa Rica concerning nationality and naturalization with the gender equality mandate of the human rights system. One of the amendments with respect to which Costa Rica sought the Court's advice would have given a foreign woman who married a Costa Rican man special consideration in obtaining citizenship, but provided no corresponding consideration for a foreign man marrying a Costa Rican woman.<sup>48</sup>

In the face of such patent disparity in treatment based on sex, the Court concluded that the provision was not compatible with equality requirements. In its holding the Court articulated the following standard as a guidepost to ascertain whether a distinction based on sex is in contravention of the human rights standards: a distinction in treatment is discriminatory if it "has no objective and reasonable justification." The Court determined that the preference for according a husband's nationality on his wife but not the reciprocal preference for according a wife's nationality on her husband was based on the historical, and I suggest patriarchal and cultural, practice of conferring authority within matrimony and the family upon the husband/father. As such, the court deemed the practice to be "an outgrowth of conjugal inequality" that could not be justified, and was incompatible with the right to equal protection generally (Article 24),<sup>49</sup> and, in particular, with the requirement that States "take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities . . . [in] marriage" (Article 17).<sup>50</sup> Thus, in this

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47. See *id.*

48. See *Advisory Opinion on the Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica* (OC-4/84), reprinted in 5 HUMAN RTS. L.J. 161-90 (1984). This decision, did not result not from an adversarial process, but from a request by the government of Costa Rica for an advisory opinion.

49. See American Convention, *supra* note 7, art. 24 ("All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law").

50. See *id.* art. 17(2) (noting "the right of men and women of marriageable age to marry and raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar

advisory opinion the Court effectively made enormous strides in breaking down, at the legal level, unequal positions of women — effectively a second-class citizenship of women — within *la familia*.

Another significant ruling was delivered in the case of Raquel Martín de Mejía adopted in March of 1996.<sup>51</sup> In this case Martín de Mejía sought to hold Perú responsible for an alleged rape committed by Peruvian military officials who, after arresting a political activist named Mejía, raped her — his wife. Specifically, the case addressed the question of rape as torture under the American Convention and under the Convention to Prevent and Punish Torture.

Perú contested Martín de Mejía's claim, but never responded to the complaint. In analyzing the facts before it, the Commission took into account that the region of the country in question had been under a state of emergency and under military control at the time of the alleged occurrence. The Commission also considered that the practice of rape by members of the security forces in such areas had been extensively documented and reported on by intergovernmental and non-governmental groups. On the basis of the petitioner's claims and the other available factual reports, measured against the criteria of "consistency, credibility and specificity," the Commission presumed the truth of the facts alleged.

In its ruling on the rape, the Commission determined that each of the three elements set forth in the Inter-American Convention to Prevent and Punish Torture had been met. That is, the Commission found that the rape was (1) "an intentional act through which physical and mental pain and suffering is inflicted on a person;" (2) "committed with a purpose;" (3) "by a public official or by a private person acting at the instigation of the former." The Commission characterized sexual abuse generally as "a deliberate outrage" to the dignity of women.<sup>52</sup> This case is significant because the Commission's decision that rape is torture made it plain that women's bodies are not war booty, and that the violation of women's physical and mental spaces will not be tolerated. Unlike Paz's insinuations, the Commission's ruling establishes that women too have dignity, solely on their own rights.

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as such conditions do not affect the principle of non-discrimination established in this convention.")

51. See Raquel Martín de Mejía v. Peru, Report No. 5/96, Case 10.970, Annual Report of the IAHR, OEA/Ser. L/V/II 91, doc. 7 rev., Feb. 28, 1996 at 157. Mejía was never seen again. Initially, Martín de Mejía lodged a complaint before the commission alleging Peru's violation of the American Convention for the disappearance of her husband. The case referenced here, however, is the result of a claim she later initiated charging Peru for violations of her human rights. Her husband's disappearance was addressed in a separate proceeding.

52. See *id.*

One final noteworthy case that bears mention is the Case of X and Y. In October of 1996 the Commission adopted its final report on this case which concerned a practice in Argentina of routinely requiring that female family members wishing to have personal contact visits with an inmate undergo vaginal inspections.<sup>53</sup> A petition was filed with the Commission in December of 1989 alleging that the wife of an inmate and their 13-year-old daughter had been subjected to such inspections without regard for whether there were special circumstances to warrant the extraordinary measures. Ms. X had filed a writ of *amparo*<sup>54</sup> demanding that the inspections cease. At the national level, the Argentina court of first instance rejected the writ. Thereafter, however the writ was accepted on appeal by the intermediate court but then it was rejected by the Supreme Court of Argentina on the grounds that the inspections were not flagrantly arbitrary under the terms of the *amparo* laws.

It is the holding of the Supreme Court of Argentina that was challenged at the regional level. The Commission viewed the events dramatically differently than the State's highest court. In balancing the interests of those subject to searches against the State's interest in security, the Commission characterized "a vaginal search [as] more than a restrictive measure as it involves the invasion of a woman's body. . . . Consequently, the balancing of interests involved [must hold the government] to a higher standard." In its report the Commission set out a four-part test to determine lawfulness of vaginal inspections: "1) it must be absolutely necessary to achieve the security objective in the particular case; 2) there must not exist an alternative option; 3) it should be determined by judicial order; and 4) it must be carried out by an appropriate health professional." The Commission concluded that, with respect to Ms. Y who was 13, "it is evident that the vaginal inspection was an absolutely inadequate and unreasonable method."<sup>55</sup> This case builds on the Martín de Mejía case in creating a jurisprudence of respect for women's bodies, dignity, and privacy. By setting up a stringent standard, even in the context practices

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53. See Report 38/96, Case 10.506, Annual Report of the IAHCR, OEA/Ser. L/V/II 91, doc. 7 rev., Feb. 28, 1996 [hereinafter Inspections].

54. Amparo is literally, a "writ of protection." Although much more complicated and without a conceptual counterpart in U.S. law, put simply the amparo allows individuals to sue with respect to laws that are unconstitutional and, in judicial matters, to examine the legality of judicial decision. For a discussion of the use of *amparo* in varied judicial contexts, see e.g., Robert E. Lutz, *Law, Procedure & Culture In Mexico Under the NAFTA: The Perspective of a NAFTA Panelist*, 3 SW. J. L. & TRADE AM. 391 (1996); see also S. James Anaya, *THE SACRED AND THE PROFANE: Second Annual Academic Symposium in Honor of the First Americans and Indigenous Peoples Around The World: The Awas Tingni Petition to the Inter-American Commission on Human Rights: Indigenous Lands, Loggers, and Government Neglect in Nicaragua*, 9 ST. THOMAS L. REV. 157 nn.34-35 (1996).

55. See Inspections, *supra* note 53.

pursuant to local criminal law enforcement efforts, the Commission raises the bar against sex-discrimination and eschews any contemplation that the commodification of women is an acceptable practice in any social context.

### E. Codes, Constitutions, and Government Programs

Beyond the case law which, as shown above, has effected top-down changes in member States' practices that affect women, the international system also has resulted in changes in State laws by virtue of the existence of regional and international norms that require States to adopt necessary legislative or other measures to give effect to the rights or freedoms protected by international and regional norms. Following are some examples of State laws that have been implemented to comply with international standards specifically concerning the rights of women, in particular by the creation of agencies to address the rights, needs, and development of women's protections.

For instance, Mexico started the National Program for Women to advance the promotion and full participation of women in society, with opportunities equal to those of men.<sup>56</sup> Panama's Ministry of Health initiated an integrated health promotion plan for women through the Women, Health, and Development Program.<sup>57</sup> In 1983 Brazil created the National Council of Women's Rights (CNDM) under the Ministry of Justice.<sup>58</sup> CNDM was established to promote, at the national level, public policies whose aims are to eliminate any kind of discrimination against women and to assure both liberty and equality of rights for women including their participation in the country's political, economic and, social-cultural activities. Between 1984 and 1987, Argentina created, within the

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56. See Report, *supra* note 2; see also *Mexico's National Program For Women: A Response to the Challenge of Discrimination Against Women*, <<http://www.datasys.com.mx/conmujer/liblon1.htm>> (visited Aug. 19, 2000) (stating that several government programs and actions have been carried out over the last twenty years in order to contribute towards the improvement of women's condition. In 1974, the National Program for the Integration of Women to Development was created. In 1985, the National Commission for Women was established to represent Mexico in the III World Conference on Women held in Nairobi on 1985; see also *Inter-American Commission on Human Rights, Country Report—Mexico—1998*, <<http://www.cidh.oas.org/countryrep/Mexico98en/Chapter-9.htm>> (visited Aug. 19, 2000).

57. See Report, *supra* note 2.

58. See *id.*; see also *Brazilian Government, O Conselho Nacional dos Direitos da Mulher*, <<http://www.mj.gov.br>> (visited July 13, 2000) (observing that the CNDM was created by the 7.353 Act, on Aug. 29, 1985 to propose changes in legislation, coordinate public policies and develop educational programs and campaigns to support women's growing equality). However, by 1990 when a new set of politicians came to power CNDM lost most of its power and autonomy and was limited to the area of women's health; see *Inter-American Commissioner of Human Rights, Annual Report 1997*, <<http://www.cidh.org/annualrep/97eng/97ench6.1an.htm>> (visited on July 10, 2000).

country's Executive Branch, the Subsecretariat of Women — an entity that reports to the Ministry of Health and Social Action; the Directorate of Women, which reports to the Ministry of Foreign Affairs and Worship; and the Women's Health and Development Program, which falls under the Ministry of Health and Social Action.<sup>59</sup>

Costa Rica established various initiatives. First it created the Commission for Attention to and Prevention of Intrafamily Violence. In addition, the 1990 Law on the Promotion of Social Equality for Women provided that the Ministry of Justice, in coordination with the National Center for the Development of Women and the Family, would promote programs to guarantee protection and guidance for the victims of aggression and work towards its prevention.<sup>60</sup> In 1991 Chile created, the National Women's Service (SERNAM), a body with responsibility for formulating and coordinating policies to improve the situation of women.<sup>61</sup> In 1992, Paraguay created the Secretariat of Women as an agency which, working closely with Ministries and other independent agencies, has set up mechanisms to achieve equality.<sup>62</sup> In Uruguay a Technical Office to support Victims of Family Violence has been functioning under the Ministry of the Interior also since 1992. The State also established the National Institute of Women for the integration and development of the rights of women in national policies.<sup>63</sup>

In 1994, Ecuador established the National Directorate of Women. Its functions include promoting and coordinating training programs with a gender perspective. In Guatemala the National Office of Women (ONAM) was created under the Ministry of Labor and Social Security, and in 1996

59. See Report, *supra* note 2.

60. See Report, *supra* note 2; see also *Unifem*, <<http://www.unifem.undp.org/cedaw/cedawen7.htm>> (visited July 10, 2000). For example, some of the major provisions of the law, which require: (1) the State . . . [to] share the cost of child care with all working parents of children under seven; (2) Property title [registration] under the names of both spouses; (3) protection of dismissal of women on account of their becoming pregnant; (4) allowance of three months maternity leave; (5) equal rights for mothers and fathers over children; (6) inheritance of property between common law spouses.

61. See *id.*; *Servicio Nacional de la Mujer*, <<http://www.sernam.cl/quees.htm>> (visited Aug. 18, 2000) (detailing SERNAM's objective to co-ordinate public policies that eradicate discrimination against women, which is fostered by the Chilean legal system's recognition of its independent juridical recognition).

62. See Report, *supra* note 2. See generally *US Department of State*, <[http://www.state.gov/www/global/human\\_rights/1998\\_hrp\\_report/paraguay.html](http://www.state.gov/www/global/human_rights/1998_hrp_report/paraguay.html)> (visited Aug. 18, 2000) (recognizing the Secretariat's efforts in developing a national plan to prevent and punish violence against women).

63. See Report, *supra* note 2; see also *Economic and Social Council, Commission on Human Rights, Report of the Special Rapporteur on Violence*, E/CN.4/1999/68, 10 March 1999, <<http://hri.ca/fortherecord/1999/documentation/commission/e-cn4-1999-68.htm>> (visited Aug. 18, 2000).

the State initiated a project of technical and political support for women and of judicial reform. One of its many functions is to prepare drafts reforms to the Civil Code as well as draft legislation to amend the Electoral and Political Party Act.<sup>64</sup> In 1993, Bolivia established the Directorate of Gender and Family Matters. The Directorate was attached to the Vice Ministry of Gender, Generational and Family Matters, and its purpose was to design standards and policies to achieve gender equality and to create institutions that guarantee equality of opportunities.<sup>65</sup>

In Canada, the federal government and the territories and provinces have a Minister or Secretary of State Responsible for the Status of Women, as well as agencies which work with other Ministries to advise on gender analysis, public policies and legislative reforms.<sup>66</sup> There are also government programs designed to support the involvement of nongovernmental organizations and the community in this sphere.

Similarly, in Colombia, the National Directorate of Equity for Women was created to implement gender policy nationwide. Women embraced the effort and were loudly vocal when President Pastrana was deemed not to meet the government's promises.<sup>67</sup>

Similar to these changes to executive institutions structures, internal legal changes — changes to the constitutions and civil codes — have been implemented in countries to protect the civil and political rights of women. For example, in 1985 Argentina approved law 23,264 to amend the previous Civil Code provisions covering parental authority<sup>68</sup> and filiation.<sup>69</sup>

64. See *id.* for a discussion of the objectives and functions of ONAM see *Economic Commission for Latin America and the Caribbean (ECLAC)*, <<http://www.cepal.cl/espanol/investigacion/series/mujer/directorio/guatemala.htm>> (visited Aug. 18, 2000).

65. See *id.*

66. See *Report, supra* note 2.

67. See *Society Watch, President Pastrana Fails to Fulfill International Agreements Acquired by Columbia with the Women*, <<http://www.socwatch.org.uy/1999/eng/documents/columbia.htm>> (visited Aug. 18, 2000) (explaining the astonishment and indignation felt by Columbian women when the organization was relegated.)

68. See *Report, supra* note 2; see also Argentina's Law 23, 264, Art. 264 recognizing that parental authority encompasses the overall duties and rights of parents over children. In particular, the authority is expressed as:

(1) [for a married couple] authority shall be jointly exercised by both parents, if they are not separated or divorced or if their marriage is not void. It shall be presumed all acts independently done by one of the spouses are consented and authorized by both, unless the causes foreseen within article 264, are present or where expressed opposition exists, (2) In cases of separated and divorced parents or parents whose marriage has been void, the parental authority belongs to either the father or mother who legally exercised the tenancy, without perverting the other's rights to have adequate communication with the child and have



In addition, in 1987 it amended its family law regime to give both spouses equal standing before the law. Canada's 1985 Charter of Rights and Freedoms guarantees equality before the law without discrimination.<sup>70</sup>

In Belize, women enjoy full capacity to acquire, administer, and dispose of property and to assume rights and obligations.<sup>71</sup> Brazil's 1988 Federative Constitution incorporated regulations representing a major step forward for women's rights by establishing equality between men and women before the law and with respect to rights and obligations.<sup>72</sup> Chile's 1989 law reform process ensured progress with respect to the capacity of women who had previously been classified with minors.<sup>73</sup> Bolivia's Political Constitution of

supervision of child's education, (3) If death, absence with death presumption or parental authority's deprivation of one of the parents, the parental authority shall be exercised by the other, and (4) In cases of children born outside of wedlock, but recognized by one of the parents, the parental authority shall be exercised by whom have done such recognition, and (5) In cases of children born outside of the wedlock but recognized by both parents, the parental authority shall be jointly exercised if agreed, otherwise it shall exercised by the one who by conventional agreement or judicial other so shall be granted.

*Id.*

69. See Argentina's Law 23,264, Art. 240 which states "[that] filiation only take place by means of nature or adoption. The first may be marital or extramarital. The marital and extramarital filiation as well as the one originated by means of plenty adoption have the same effects pursuant the provision of this Code."

70. See Constitution Act 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (providing for "equality before and under the law and equal protection and the benefit of the law").

71. See *Constitution of Belize, Part 1(e)*, <<http://www.georgetown.edu/LatAmerPolitical/Constitutions/Belize/belize.html>> (last visited Aug. 18, 2000) ("requir[ing] policies of state [to] protect and safeguard the unity, freedom, sovereignty and territorial integrity of Belize; [to] eliminate economic and social privilege and disparity among the citizens of Belize whether by race, colour, creed or sex; which prowl the rights of the individual to life, liberty and the pursuit of happiness; [to] preserve the right of the individual to the ownership of private property and the right to opera private or by the State").

72. See *Constitution of Brazil, Title II, Chapter 1, Art. 5*, <<http://www.georgetown.edu/LatAmerPolitical/Constitutions/Brazil/brtitle2.html>> (visited Aug. 18, 2000) (recognizing that "[a]ll persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms . . . men and women have equal rights and duties under the terms of this Constitution").

73. See *Constitution of Chile, Chap. III, Art. 19*, <<http://www.georgetown.edu/LatAmerPolitical/Constitutions/Chile/chile89.html>> (visited Aug. 19, 2000)( providing in part, "De los derechos y deberes constitucionales Art. 19. La Constitución asegura a todas las personas: El derecho a la vida y a la integridad física y psíquica de la persona. La ley protege la vida del que está por nacer. La pena de muerte sólo podrá establecerse por delito contemplado en ley aprobada con quórum calificado. La igualdad ante la ley. En Chile no hay persona ni grupo privilegiados. En Chile no hay esclavos y el que pise su territorio queda libre. Ni la ley ni autoridad alguna podrán establecer diferencias arbitrarias . . ." [The constitution

the State and the Civil Code, recognize the human personality and juridical capacity of all individuals without distinctions based on sex.<sup>74</sup>

Similarly, Colombia's Constitution prohibits discrimination of any kind against women.<sup>75</sup> Moreover, according to the Civil Code and subsequently approved legislation, married women are no longer deemed incompetent but rather now can claim equal rights and obligations.

The Civil Codes of Costa Rica and Ecuador recognize women's full legal capacity on equal conditions with men to contract, administer, and dispose of assets of the conjugal union.<sup>76</sup> Mexico also recognizes gender equality in its Constitution, stating that men and women are equal before the law.<sup>77</sup> Similarly, the Civil Code for the Federal District establishes that men and women have equal legal capacity, which applies to the administration and organization of the family.<sup>78</sup>

However, full equality in law is still not a reality. For example, Guatemala's Civil Code, while establishing that spouses have equal capacity in certain respects to acquire, administer, and dispose of the assets of the conjugal union, grants head of household status to the husband and the Code establishes limitations on women who pursue activities outside the

protects all persons': Right to life and physical and psychological integrity. The law protects the life of the unborn. The death penalty may only be imposed for specific crimes listed in an appropriately passed law . . . [All persons are] equal before the law. In Chile there is no privileged person or groups. In Chile there are no slaves and one who comes into the territory is free. Neither law nor any authority may establish arbitrary differences.]

74. See *Constitucion Politica de Bolivia, Art. 6* <<http://www.georgetown.edu/LatAmerPolitical/Constitutions/Bolivia/bol95.html>> (visited Aug. 18, 2000). "Todo ser humano tiene personalidad y capacidad jurídica, con arreglo a las leyes. Goza de los derechos, libertades y garantías reconocidos por esta Constitución, sin distinción de raza, sexo, idioma, religión, opinión política o de otra índole, origen, condición económica o social u otra cualquiera." (Translation: "Every human being has legal personality and capacity, before the laws. One shall enjoy all the rights, freedoms and warranties recognized by this Constitution; without distinction of his/her race, sex, language, religion, politic opinion or any other kind of opinion, origin, economic, social or any other condition.").

75. See *Constitution of Columbia, Title I, Art. 43*, <<http://www.georgetown.edu/pdba/Constitutions/Columbia/colombia.html>> (visited Aug. 18, 2000) ("La mujer y el hombre tienen iguales derechos y oportunidades. La mujer no podrá ser sometida a ninguna clase de discriminación. Durante el embarazo y después del parto gozará de especial asistencia y protección del Estado, y recibirá de éste subsidio alimentario si entonces estuviere desempleada o desamparada." [Women and men have equal rights and opportunities. Women can not be subject to any type of discrimination during pregnancy and after child birth she will enjoy special assistance and protection from the state and shall receive from the State a food subsidy if she is unemployed or without means.]).

76. See *Report, supra* note 2.

77. See The Mexican Constitution in Art. 4 states that "men and women are equal before the law," and that "all persons have the right to decide in a free, responsible and informed manner, on the number and spacing of their children."

78. See *Report, supra* note 2.

home.<sup>79</sup> In Jamaica, women enjoy the same legal capacity as men with respect to acquiring, administering, and disposing of assets and entering into contract relations,<sup>80</sup> but there are differences in the case of married women. Similarly the Dominican Republic's civil code recognizes full capacity for women but as late as 1998 there were limitations such as women not being able to own plots of land — a law that is in the process of being amended by a new agrarian law.<sup>81</sup>

As these examples of the domestic laws of various Latin American countries show, there have been many advances in national systems for women — even against the weight of culture and tradition — that are attributable to the larger international and regional human rights umbrellas. These advances have been achieved through both regional case law and internal legal reform that is often based on regional human rights mandates. However, the reality also indicates that problems persist in the region regarding full equality for women. The remaining difficulties are generally found in the following areas:

- Restrictions on the exercise of a profession or on work by women insofar as the authorization of the husband is required (Bolivia, Guatemala, Panama, Peru and the Dominican Republic);
- Differentiation between men and women with respect to the authorization to contract marriage (Bolivia, Brazil), or to remarry (Mexico, Costa Rica);
- Inequality between men and women in acquiring, administering, and disposing of assets of the conjugal union (Argentina gives husbands preferences over assets whose origin cannot be determined; Chile grants the husband, in certain cases, the right to administer the assets of the union as well as those of his wife; Brazil does not recognize a married woman equal capacity with her husband to administer certain assets);
- Differences between men and women with respect to parental/authority (in Chile the father exercises parental authority and is conferred upon the mother only in his absence);
- Classification of women with minors in labor legislation (Bolivia, Costa Rica, Ecuador, and Guatemala);
- Restrictions on a woman's right to property (the Dominican Republic's Constitution restricts *campesinas* from owning plots of land);

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79. See Report, *supra* note 2.

80. See Report, *supra* note 2.

81. See Report, *supra* note 2.

- Difference of treatment between women and men with respect to certain criminal offenses (El Salvador and Venezuela treat men and women differently regarding adultery).

In addition, women in the Inter-American system, much like women worldwide, remain second-class citizens in the economic realm. For example, notwithstanding the principles of equality and non-discrimination there remain huge income gaps between men and women in most of the countries in the region. In Costa Rica as of 1990 the average monthly salary of women was 82% that of men; in rural areas 60% of the women earned less than the minimum wage; and 34% earned half that amount. In Brazil, income earned by women was 54% that of men; and in Uruguay, as in the United States. Women earn 75% of men's income.

### F. Conclusion

As these examples reveal, there have been innumerable progressive changes that have resulted from the human rights regime in the Inter-American system. Nonetheless, serious problems persist. Given these successes, perhaps the next move is to accept the reality of economic violence that women endure, deal with such oppression under the human rights paradigm, and see the successes that can be achieved there too as part of the commission's developing practice of regularly analyzing gender specific human rights problems. Those areas that still need to be addressed, the persisting disparities that are yet to be remedied such as the wage disparities noted above, provide opportunities and obligations. One opportunity is to establish a human rights-trade partnership as it is at this intersection that globalization provides a rich location in which to effect change.

For example, notwithstanding the rule of law regarding non-discrimination on the basis of sex — as stated both in human rights documents and trade agreements — women world wide are subject to harassing working conditions, pregnancy tests and other discriminations, lower wages, and concrete ceilings. Civil and political rights — those so called first generation human rights — are indivisible from and interdependent with economic well-being — a condition protected by so-called second generation social, economic and cultural rights. Together, these sets of rights can work to promote women's well-being. All in all, the human rights system, as an alternative to the courts, has done a terrific job; but a job that is a work in progress when it comes to protection of the rights of women. The future success of this work is inextricably intertwined with economic development. Only a holistic approach, particularly in light of the gendered cultural tropes discussed in this essay, can ensure continued progress toward women's equality.