Abstract

During the past decades, legal advocacy has played a critical role in changing the realities of women's reproductive lives in countries worldwide. The courts may be an excellent venue for bringing about change, especially where there is a disconnect between international, constitutional, or legislative norms and the reality of women's lives. The Center for Reproductive Rights' International Legal Program and its partner organizations in Latin America have pioneered the use of international litigation as a strategy to ensure that legislation and policies better reflect the international community's recognition of reproductive rights. This article aims to share the Center's experiences; explore the use of high-impact litigation to further reproductive rights; evaluate whether the time is right for litigation; examine the process of identifying issues and cases; and understand the potential pitfalls and opportunities of such litigation.

Au cours des dernières décennies, les partisans des transformations juridiques ont joué un rôle crucial en changeant les réalités de la vie reproductive des femmes dans un certain nombre de pays du monde entier. Les tribunaux peuvent constituer un excellent moyen de produire des changements, en particulier dans les cas où il existe une rupture entre les normes internationales, constitutionnelles ou législatives et la réalité de la vie de femmes. Le programme légal international du Centre pour les droits reproductifs et les organisations qui collaborent avec lui en Amérique Latine ont fait œuvre de pionniers en utilisant les procès comme stratégie pour assurer que les lois et politiques reflètent mieux la reconnaissance des droits reproductifs par la communauté internationale. Cet article a pour objet de partager les expériences du Centre; d'explorer l'emploi de procès à impact élevé pour promouvoir les droits reproductifs; d'évaluer si le moment est propice pour intenter des procès; d'examiner le processus d'identification des problèmes et des cas; et de comprendre les risques ainsi que les opportunités que de tels procès présentent.

En las últimas décadas, la defensa legal ha jugado un papel crítico para el cambio de la realidad de la vida reproductiva de las mujeres en países alrededor del mundo. Los tribunales pueden ser un foro excelente para producir el cambio, sobre todo cuando existe una ausencia de vínculo entre las normas internacionales, constitucionales o legislativas y la realidad de las vidas de mujeres. El Programa Legal Internacional del Centro de Derechos Reproductivos y sus organizaciones asociadas de América Latina han sido pioneros en el uso de los litigios internacionales como una estrategia para asegurar que la legislación y las políticas reflejen de mejor manera el reconocimiento de los derechos reproductivos por parte de la comunidad internacional. Este artículo procura compartir las experiencias del Centro; explorar el uso de los litigios de alto impacto para promover los derechos reproductivos; evaluar si el momento es oportuno para litigios; examinar el proceso de identificación de temas y casos; y entender los escollos potenciales y las oportunidades de defensa de los litigios.

What Role Can International Litigation Play in the Promotion and Advancement of Reproductive Rights in Latin America?

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During the past decades, legal advocacy has played a critical role in changing the realities of women's reproductive lives in countries worldwide. Much of the global advocacy effort has focused on establishing an appropriate legal and political framework to advance reproductive rights and, more broadly, women's human rights at both national and international levels. Although global advances in Latin America have shaped national legal and policy reforms, they have not led to full respect for women's reproductive rights. Public-interest litigation has been used as a strategy at the national level for the promotion of social change during recent decades, but women's rights groups throughout the world continue to underutilize this strategy. For various reasons, the judicial system has not been viewed as a key element in advancing standards to protect women's rights.

Yet, despite limitations at both the national and international levels, the courts can provide excellent venues for bringing about change, especially when a disconnect exists between an international, constitutional, or legislative norm and the reality of women's lives. For example, a court may order a government to remedy a victim's situation and may also issue a prescriptive order to improve conditions for a broader class of similarly situated women, thereby facili-

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tating greater future protection. When a national court falls short of the desired outcome, international human rights litigation can also offer an opportunity to address reproductive-rights violations. Therefore, advocates in Latin America and worldwide should be able to evaluate the potential of this strategy. The Center for Reproductive Rights and its partner organizations in Latin America have pioneered the use of international litigation as a strategy to ensure that national-level legislation, policies, and jurisprudence better reflect the international community's recognition of reproductive rights. International litigation has also been used to push for development of new standards for the protection of reproductive rights under international law.[1]

During the past five years, the Center and its partners, with the full and informed consent and authorization of each victim, have filed three cases before the Inter-American Commission on Human Rights (IACHR) and one case before the United Nations (UN) Human Rights Committee (UNHRC). The cases before the IACHR have involved issues of quality of care, violence against women in public health facilities, coercive sterilization, and denial of access to abortion services. The case pending before the UNHRC is the first individual complaint dealing with abortion to be considered by the UN human rights treaty-monitoring system.

This article draws from the Center's experience in the UN and Inter-American systems and briefly describes where claims can be brought when reproductive rights have been violated. It also examines the issues pertaining to women's reproductive rights that have been brought before certain international bodies and examines potential advantages and pitfalls of litigation, as well as the advocacy opportunities such litigation presents. This article seeks to contribute to the debate on whether and how a litigation strategy can be a viable means for promoting standards for the protection of human rights and for seeking redress for violations of women's reproductive rights.

Legal Advocacy of Reproductive Rights: The Global Perspective

Women's reproductive rights began receiving international recognition in the 1960s, when individuals' rights to make choices in matters of reproduction were explicitly recognized.[2] Subsequent decades witnessed various international conferences whose final documents reaffirmed those rights.[3] This political momentum led to a major turning point during the 1990s, when women's reproductive rights were recognized by the international community and reiterated in declarations drawn up at international conferences.[4]

These declarations acknowledge the importance of protecting women's human rights—specifically reproductive rights—as a category involving political, economic, social, and cultural rights at both individual and collective levels.[5] By endorsing these international documents, governments pledged to adjust their internal legislation to protect and ensure reproductive rights, while also formulating and implementing policies to promote these rights.

From the international legal perspective, several instruments were recently and widely adopted, recognizing and further helping to make women's reproductive rights part of the global and regional human rights agenda. On a regional level, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (the Convention of Belém do Pará)—the only international convention directly addressing violence against women—was adopted.[6] In addition, the Rome Statute of the International Criminal Court included crimes related to sexual and gender violence.[7] The adoption of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women promises greater potential for enforcement of women's human rights in general.[8]

Based on these international legal and political documents, it is possible to adduce that reproductive rights are rooted in basic human rights notions and generally encompass two broad principles: the right to reproductive health care and the right to reproductive self-determination.[9,10] The rights to reproductive and sexual health care, to physical integrity, and to security and autonomy make governments

obligated to ensure the availability of reproductive health services and to remove existing legal barriers to reproductive health care. The right to reproductive autonomy, including the right to privacy and the right to decide the number and spacing of one's children, obligates governments to ensure that men and women have equal access to a full range of contraceptive choices and reproductive health services; that they have access to information about sexual and reproductive health; and that their decisions pertaining to their reproductive choices are fully respected by the government and third parties.

Latin America: Law and Policy vs. Reality

In Latin America, in large part due to the work of activists, governments have been increasingly acknowledging and pledging to expand and promote women's rights through legal and policy development. Governments in the region have generally supported and adopted the various international conventions and conference documents.

In the 1990s, transformative constitutional and judicial reforms took place in Latin America, including elimination of many discriminatory provisions contained in penal and civil codes.[11] In addition, normative changes have taken place at the national level due, in great part, to the development and subsequent incorporation of international human rights treaties into national constitutions or directly into domestic law. For example, adoption of the Convention of Belém do Pará helped push governments to enact national laws to address violence against women. Many national health laws and policies have also incorporated the commitments of governments at the international level, showing a change of direction toward making reproductive rights human rights.[12,13]

While the principles and commitments contained in international legal instruments and conferences have begun to affect internal norms and public policies in Latin America, they are not enforced in a way that fully guarantees women in the region their sexual and reproductive

rights.[14] For instance, even though Latin American governments have begun to adopt policies and health care guidelines to address HIV/AIDS, their efforts remain tepid at best. Women's human rights to life, health, and reproductive health continue to be severely compromised by the feminization of HIV/AIDS transmission and the lack of regulations regarding HIV/AIDS and other sexually transmitted infections (STIs).[15] Also, despite national norms and international conventions and conferences that reaffirm the rights to access reproductive health services and to decide the number and spacing of one's children, information and access to emergency contraception are sporadically disseminated and seldom offered in public health facilities.

Cases have been filed in the judicial systems of several countries of the region to challenge the sale and distribution of emergency contraception. Conservative groups, not the judicial system, have challenged this. Some cases have succeeded; others are pending. Similarly, although regulations and policies do address sexual and reproductive health concerns in Latin America, certain issues—such as abortion and adolescents' access to sexual and reproductive health information and services—still lack a consistent legal and policy framework that reflects a commitment to the exercise of women's reproductive rights.[16] This situation is critical in a region where adolescents' maternal mortality and unintended pregnancy rates remain very high.[17] Furthermore, although domestic and social violence have become central issues in the policymaking of governments in the region, levels of domestic violence continue to be high. Estimates indicate that between 30% and 50% of women who have partners are victimized psychologically each year, and 10% to 35% suffer physical violence.[18]

While governmental inaction in many areas impedes the exercise of reproductive rights, this is probably most apparent in relation to abortion. Despite the global trend toward legalization, abortion remains illegal in almost all countries in Latin America and continues to be one of the main causes of maternal mortality in the region, causing approximately 5,000 women to die each year.[19]

The Role of National and International Judiciaries in the Protection of Reproductive Rights

Successes in gaining regional and national legal and policy recognition of women's sexual and reproductive rights have not always been effective in protecting those rights. The question of accountability is intrinsically related to, and must be considered in tandem with, governments' commitments to their international obligations and to implementation within their own constitutional provisions and laws. The realization of women's reproductive rights must be monitored vigilantly. How much meaning do governmental legislation and public policy initiatives have if women's conditions remain the same despite legal and policy changes?

Judicial bodies, at both the national and international levels, should protect women's rights by holding governments accountable for their actions or inactions and should guarantee the implementation and enforcement of legal reforms.[20] Although the mechanisms for protecting legal rights in many Latin American countries appear adequate, in practice these mechanisms are sometimes insufficient.[21,22] In Latin America, in particular, where democracies remain fragile and commitment to protecting human rights is limited, the courts can play a fundamental role. A recent study, however, reveals that courts at the highest national levels have failed to protect the rights of women even as these rights have been recognized in national constitutions and in international conventions.[23] This study shows that strategies need to be developed to ensure that national-level judiciaries fully participate in protecting women's reproductive rights.[24]

International judicial and quasi-judicial bodies also play an important role in the promotion of human rights. Certain groups, particularly those working for civil and political rights within different countries, have demonstrated how litigation at the national and international levels can provide redress for individual violations and advance human rights standards.[25] These groups use litigation as a means to ensure accountability and to help reform current laws and policies that violate human rights. Litigation may also mobilize and foster alliances that can prompt political

action and promote creation of new standards for interpreting human rights at both the international and national levels when applied by domestic courts. Furthermore, litigation may foster awareness of human rights violations, helping to create a culture that encourages private and governmental actors to respect and safeguard human rights.

Using international litigation as a viable legal strategy to further and strengthen reproductive rights standards is a logical next step in seeking accountability for the advancement of women's human rights in general, and reproductive rights in particular.

International Human Rights Litigation and Women's Rights

International human rights litigation is conducted before international human rights systems. These systems consist of quasi-judicial bodies created by the UN or by regional human rights conventions whose mandate is to monitor the compliance of States parties with the human rights obligations contained in a specific treaty. Some of these bodies or committees incorporate an individual complaint procedure to carry out their mission. This procedure is similar to traditional litigation in which a victim of human rights violations sues a state for its noncompliance with the obligations to respect, protect, and/or fulfill human rights imposed by the particular treaty. The relevant body carries out a quasi-judicial proceeding and decides if the state should be declared internationally responsible. If so, it recommends measures the state must take to redress the violation and compensate the victim.

In addition to the individual complaint procedure, all UN and regional systems have a wide array of mechanisms to monitor, advance, and protect human rights, including country reports, on-site visits, and special reports. The UN human rights system comprises the six most important human rights treaties adopted by the UN General Assembly and its respective monitoring bodies.[26] Periodic state reporting is the main mechanism used by these treaty-monitoring bodies to evaluate state compliance. All but two of the six treaties have an individual complaint procedure.[27] The indi-

vidual complaint procedure is incorporated through a protocol that is open but optional to the States parties of the original treaty.[28] The UNHRC, which oversees compliance with the International Covenant on Civil and Political Rights (ICCPR), has been functioning since 1976—making it the oldest of the treaty bodies.[29]

Apart from the UN system, regional systems exist in Europe, the Americas, and Africa. Each of these is linked to the organization of states for the region, namely the Council of Europe (COE), the Organization for American States (OAS), and the African Union (formerly the Organization of African Unity), respectively.

The Inter-American system is the oldest human rights system, having begun operation through the IACHR in 1959.[30] It was later complemented by the Inter-American Court of Human Rights, created by the American Convention on Human Rights, which was adopted in 1969 and entered into force in 1978.[31] The system includes an individual complaint procedure, modeled after the European system, that requires an individual petition to be filed with and evaluated by the IACHR before it can be heard by the court.

While the recommendations issued by the Commission are binding, enforcement rests solely with the voluntary good will of the State party. Although this issue has raised significant skepticism regarding the Inter-American system's power to implement and maintain resolutions, in reality, more often than not, States parties have willingly enforced these recommendations and have taken steps to effect change. This decision to abide by the Commission's recommendations is partly influenced by the desire to avoid the international "shaming effect" that has been an effective legal and political strategy for holding states accountable for their actions, as well as for their commitment to promoting national legal and policy changes.

When Can Human Rights Be Litigated Internationally?

Because international human rights tribunals are meant to be subsidiary, and because of the international law principle of sovereignty, each country must first have the opportunity to use its internal legal resources to redress a

human rights violation.[32] Therefore, no international human rights tribunal will admit a petition until petitioners have exhausted all internal legal remedies. It is, however, possible to demonstrate a lack of effective internal remedies or a state's unwillingness or inability to guarantee a fair adjudication.[33]

The individual who files the complaint must include a petition containing a list of the human rights protected under a specific human rights convention that have been allegedly violated and must ensure that no other international body is considering the same substantive claim.

Who Can Litigate Human Rights?

The rules of standing in international human rights litigation vary according to the tribunal. Most cases require a victim's consent, but in the Inter-American system the rule is much broader, permitting any person or group of persons to file complaints even without a victim's authorization.[34] Several nongovernmental organizations (NGOs) have sought redress for human rights violations by engaging in litigation to remedy systemic problems that result in human rights violations.[35] These NGOs regularly offer their services and expertise to individuals and the local NGOs that represent them.

Issues Addressed through Human Rights Litigation

Most cases presented before the IACHR deal with violations that occurred during military governments, including violations of the right to life and physical integrity, to a fair trial, to be free from torture, and to due process.[36] The Inter-American Court's decisions on a government's obligation to protect individuals from violations committed by private actors and on victim reparations have set important precedents in international human rights law.[37,38] Moreover, one of these decisions, known as the Velásquez-Rodríguez case, set an important precedent for defining state obligations not only to respect, but also to promote and protect human rights.[39]

The jurisprudence of other human rights systems, such as the European Court of Human Rights (ECHR) and the

UNHRC, includes decisions that address issues of legitimate exercise of state power and individual freedoms in contexts such as the appropriate length of pre-trial detention and the right to privacy, the right to be free from discrimination based on sexual orientation, the limits of "hate speech" legislation, and the death penalty as a violation of the right to be free from cruel and inhuman treatment.[40-42]

Jurisprudence on Women's Human Rights

International human rights jurisprudence on women's rights, particularly reproductive rights, has been scant and unevenly developed, both geographically and thematically. For these reasons, the analysis here is limited to those issues that have been directly addressed. Several cases before the UNHRC and the European and Inter-American systems have construed a broad understanding of what reproductive rights include. Likewise, discussions relating to the "right to health," such as those of the ECHR, have been deliberately excluded since the IACHR and the UNHRC have not dealt with international standards of protection of the right to health in their decisions. Even though the issues are closely intertwined, we have divided these cases into two categories: physical integrity and security; and reproductive health, privacy, and autonomy.[43]

Physical Integrity and Security: *Violence Against Women*[44]

The cases of rape filed before the Inter-American system have generally involved the detention and rape of women by military personnel.[45] The IACHR has held the governments of El Salvador, Mexico, and Peru internationally responsible in several cases of rape of women.[46-48] Furthermore, in accordance with the Inter-American Convention to Prevent and Punish Torture, the IACHR established that rape committed by a public official constitutes a form of torture.[49]

The Latin American women's movement has been using the jurisprudence of the Inter-American system to protect individuals from violations perpetrated by private actors.[50] The Center for Justice and International Law (CEJIL) and the Committee for the Defense of Women's

Rights (CLADEM) first used the Convention of Belém do Pará in a case of a woman whose husband had been abusing her for years. The husband eventually paralyzed his wife in a failed attempt to murder her. Brazilian authorities did not respond to the reports this women repeatedly filed over the 15 years of her abuse, and as a result the IACHR held the Brazilian government responsible for violation of the woman's rights and for a general pattern of government tolerance of, and law enforcement's ineffectiveness in responding to, cases of domestic violence.[51]

Reproductive Health, Privacy, and Autonomy

Pregnancy Discrimination

The IACHR recently addressed discrimination on the basis of pregnancy in a 2002 case of a 15-year-old student who was denied enrollment in a public school because she was pregnant. The settlement in this case resulted in the government acknowledging that the rights of the petitioner enshrined in the American Convention on Human Rights—namely, freedom from arbitrary or abusive interference with private life and equal protection of the law—were violated when her enrollment was refused and she was forced to leave school.[52]

Abortion

The Inter-American system addressed a petition against the United States and the Commonwealth of Massachusetts in a case known as "Baby Boy" in which the Supreme Court of Massachusetts acquitted Dr. Kenneth Edelin for having performed an abortion in Boston on October 3, 1973.[53] The IACHR explicitly stated that the right to life protected by the American Declaration on the Rights and Duties of Man should not be understood to protect fetal life and to prohibit legal abortion.[54]

The issue of abortion has been most developed in the European forum. The ECHR has addressed the issue of abortion within the scope of the right to life, the right to private life, and, primarily, the right to freedom of expression. It has emphasized, however, that since national legislation on abortion differs considerably, states are given a wide margin

of appreciation, and the ECHR has been very hesitant to fully support women's absolute right to an abortion.[55] Notwithstanding this very sensitive issue, the ECHR has been much more open to protecting the right to freedom of expression and to receiving and imparting information about abortion than other regional systems.[56]

Vaginal Inspections

The case of *X and Y* v. *Argentin*a, presented to the IACHR in 1996, sought to stop the practice of vaginal inspections of girls and women visiting inmates in Argentine prisons. The IACHR concluded that the inspections constituted an invasion of girls' and women's bodies and violated their rights to privacy, physical and psychological integrity, the protection of the family, and the rights of the child.[57] The decision further established the close connection between the right to privacy and the right to physical and psychological integrity. The IACHR stated that the right to privacy comprised protection against publicity as well as the physical and moral integrity of the person.[58]

The jurisprudence on women's rights generated by the Inter-American and UN systems, though limited, has made tremendous strides in establishing standards of protection on matters of privacy and state responsibility. The measure of how well governments uphold their obligations to ensure and advance these standards of protection of women's reproductive and sexual rights will be reflected in their efforts to advance the right to health and the right to nondiscrimination, as well as in public officials' accountability for their related actions.

Advancing Reproductive Rights in Latin America: Cases Litigated by the Center and its Partners

A main project of the Center's Latin American program (created in 1996), in collaboration with national women's rights organizations, has been an analysis of the laws and policies affecting women's reproductive lives in the region. This research identified critical laws affecting women's rights and has been used as the basis for developing strategies in some countries that frame, document, and denounce

violations of reproductive rights as violations of human rights.[59] To carry this out, the Center worked with its partners to develop reports that documented patterns of violations and then to select specific cases that illustrated a government's role in committing or failing to prevent individual violations that constituted breaches of a Latin American country's international human rights obligations.

The Center, in partnership with NGOs such as CLADEM, the Counseling Center for the Defense of Women's Rights (DEMUS), and CEJIL, has brought four cases before the IACHR and the UNHRC. These partner organizations, in pursuit of judicial remedies at the national level, first identified the cases. These cases reveal various violations of sexual and reproductive rights and demonstrate that existing laws and policies often adversely affect women's sexual and reproductive health, or, even when adequate, are not enforced in ways that guarantee protection. By exposing the conduct of government officials, as well as that of private citizens, negotiations in two of the cases resulted in the adoption of policies that aim to eliminate these types of violations. The other two cases are only at an initial stage.

Although three out of the four cases involve the government of Peru, that is no indication that these types of violations are exclusive to that country. As mentioned earlier, the cases described below represent reproductive rights violations that occur throughout the region. Successfully initiating and developing a joint strategy of international litigation depends on the support of established local groups at the national level. CLADEM and DEMUS, both based in Peru, had the reputation and experience needed to successfully bring cases to international attention.

Physical Integrity and Security: *MM* v. *Peru*

The Center and CLADEM documented the critical problem of violence against women in public health facilities.[60] The facts of *MM* v. *Peru* are as follows: In 1996, MM went to the emergency room of the Carlos Monge Medrano Hospital in Juliaca, Peru, complaining of a headache and fever. She was examined by Dr. Salmón Horna, who told her to take off her clothes. To her surprise and confusion he per-

formed a gynecological exam on her. He then convinced MM that he needed to continue the exam in his private office where he had the necessary instruments to treat her. MM accompanied him to his private office, which was off hospital grounds. The last thing she remembers was receiving an anesthetic. When she awakened, she was naked and he was standing beside her with bloodied hands and his pants half off.

The same doctor had previously been accused of the attempted rape of a 15-year-old girl. Yet when MM filed a complaint with the medical examiner, she was ridiculed and told no one would believe her. The Peruvian criminal process initially acquitted Horna. When the Center and CLADEM took on MM's cause, an eight-week fact-finding mission began that documented 50 cases of women who had been mistreated and abused by health providers in five regions of Peru.

The Center, CLADEM, and CEJIL submitted a petition to the IACHR alleging that the state's administrative and judicial processes discriminated against MM and violated rights established in various international treaties. The petition argued that rape by a doctor working as an agent of the state for the Peruvian public health system violated MM's right to life, as well as her right to physical and psychological integrity.[61,62] It was the first case before the IACHR to assert that a state has international responsibility for violations committed by its public health sector. The petition further alleged that these violations were conducted against MM based on her economic situation, youth, and indigenous ancestry.[63] Horna, as a public health official, failed to follow the standard procedure for a pelvic exam, jeopardizing MM's health and violating her rights to health, to liberty, and to provide free and informed consent to a medical procedure.[64,65] Finally, it was alleged that sexual abuse occurred when the victim's privacy was violated and her honor and dignity were deliberately abused.[66,67]

The petition also maintained that the Peruvian government denied MM the right to a full investigation of her complaint and to a trial by an impartial court within a reasonable time period.[68] Members of the judiciary further violated MM's right to judicial protection by presiding over a

process plagued by bias and gender prejudice.[69] The prosecutor's office and the investigative judge conducted a negligent and inefficient investigation of MM's case and arbitrarily evaluated the evidence by assigning lesser weight to critical evidence presented by MM and greater weight to irrelevant documents submitted by the defendant.

On March 6, 2000, following several months of negotiations among representatives of the government and of CLADEM, CEJIL, and the Center, the parties signed a friendly settlement that continues to be monitored by the IACHR. The Peruvian government agreed to compensate MM for her pain and suffering and to report Horna to the Medical College of Peru for professional sanctions. In addition, the government agreed to create a commission to monitor compliance with the terms of the agreement. These follow-up procedures are crucial to ensuring full compliance with the settlement.

This case was resolved in a way that not only benefited MM, but that also compelled the Peruvian state to recognize its responsibility for the violation of MM's rights and adopt legislative and administrative measures designed to improve the situation of rape survivors and the quality of care in public health services. Because Horna had already been acquitted under Peruvian law and could not be prohibited from practicing medicine, he was transferred to the hospital pharmacy, where he could not interact directly with patients. At one point the hospital requested his help to treat a patient during an emergency, and Horna raped another woman. This most recent criminal case is pending, but the medical association finally revoked his license. Horna's attempts to continue working in the public health sector and the government's other obligations under the settlement agreement continue to be monitored by the IACHR.

Reproductive Health, Privacy, and Autonomy: *María Mamérita Mestanza Chávez* v. *Peru*[70]

This case illustrates the adverse consequences of Peru's family planning policy that was in effect during the government of Alberto Fujimori (1990 to 2000). That policy was more concerned with achieving quantitative goals than

with guaranteeing the reproductive rights of women.[71]

Mestanza was a 33-year-old woman from rural Cajamarca, Peru, who lived with her longtime domestic partner and their seven children. In 1996, officials from the Encañada District Health Center threatened to report Mestanza and her partner to the police if she did not undergo surgical sterilization, claiming that having more than five children was a crime. Finally, as a result of the coercion, Mestanza's partner agreed to having her undergo a tubal ligation. The surgery was performed without prior medical examination, and officials waited until the day after surgery to give Mestanza a medical consent form, which was not read to her even though they knew she was illiterate. Mestanza was discharged despite serious complications, including vomiting and severe headache. Over the next few days her partner informed medical personnel at the Health Center that Mestanza's health was deteriorating. The physicians refused to treat her and insisted that she was only suffering from the post-operative effects of anesthesia. Mestanza died in her home nine days after the operation.

Mestanza's case was initially presented to the Commission on June 15, 1999, by CLADEM, DEMUS, and the Association for Human Rights (APRODEH). The Center and CEJIL participated as petitioners on April 12, 2000. The petition alleged violations of Mestanza 's rights to life and personal integrity because she was not given a medical examination prior to the surgery.[72,73] The petitioners claimed that state agents put Mestanza's physical health at risk by performing unnecessary surgery without her informed consent and without a pre-operative exam, thereby violating her rights to health and to free and informed consent.[74,75] Mestanza was also treated in a negligent, cruel, inhuman, and degrading manner by Peruvian health service employees when she was refused necessary post-operative care, despite her partner's repeated requests for medical assistance.

In the case of Mestanza, the family planning policy was clearly applied in a discriminatory manner. For example, health officials violated Mestanza's rights to equality and non-discrimination when they bypassed Mestanza and gave her partner the sole power to decide whether

Mestanza should undergo sterilization, an invasive medical procedure.[76,77]

Although Mestanza's family members filed a complaint, they were denied an effective judicial remedy because state authorities refused to conduct an impartial investigation into her death. The petitioners succeeded in having the case declared admissible on the grounds that judicial protection and access to justice constitute indispensable human rights; they are the basis for the realization of all other rights because they guarantee the legal security of an independent and impartial court that will rule, remedy, and order compensation for any type of illegal act.[78]

In March 2001, the Peruvian government signed an initial agreement recognizing its international legal responsibility for violation of Mestanza's rights. In October 2002, the Peruvian government agreed in principle to a settlement, recognizing violations of the right to life, to physical integrity and humane treatment, to equal protection under the law, and to be free from gender-based violence.[79] After delaying for nine months, the Peruvian government signed a final agreement in August 2003. The agreement provides monetary compensation to Mestanza's family, punishment to those responsible for the violations of Peruvian and international legal standards, modification of discriminatory legislation and policies, and prompt implementation of recommendations made by Peru's Human Rights Ombudsman, which include improving pre-operative evaluations of women being sterilized, requiring better training of health personnel, creating a procedure to ensure timely handling of patient complaints within the health care system, and implementing measures to ensure that women are given genuine informed consent, including enforcing a 72-hour waiting period before sterilization.

Abortion: *Paulina Ramírez* v. *Mexico*

Abortion is a highly restricted procedure in Latin America. Although making abortion illegal does not prevent women from having abortions, criminalizing abortion does increase the chances of receiving unsafe abortions and, as some of the UN treaty-monitoring bodies have acknowledged, has a direct impact on the high rate of maternal mor-

tality, which violates the right to life.[80] In addition, even those women who are entitled to legal abortions must often face government officials who want to impose their own personal beliefs rather than to uphold the provisions of the law. The continued denial of access to legal abortions is common in countries such as Mexico, Argentina, Peru, and Bolivia. Various organizations have begun working to bring these cases to international attention to seek reparation for victims, to create awareness of reproductive rights violations as human rights violations, and, hopefully, to contribute to broader efforts to advance legal reform.

The Center and its Mexican partners were among the first to pursue claims asserting the state's responsibility to ensure a legal right to abortion in the IACHR. Paulina Ramírez was 13 years old when she was raped by an intruder to her home in Baja California, Mexico, on July 31, 1999. She immediately reported the offense to the Agency of the Public Ministry Specializing in Sexual Crimes and Domestic Violence. Although this investigative agency was familiar with emergency contraception (EC), it offered Ramírez neither information on nor access to EC. Several weeks later, a private gynecologist told Ramírez that she was pregnant, at which time a public ministry official granted her authorization to have an abortion in a state hospital.[81]

On two separate occasions, Ramírez checked into the hospital to terminate her pregnancy. During each stay, she was subjected to an unnecessary fast and was given various excuses about why the abortion was not being performed. Over a period of two months, authorities relentlessly pressured Ramírez and her mother into changing their minds about the abortion, going to such lengths as having a state attorney from the Department of Justice take them to a Catholic priest who threatened them with excommunication if they insisted on getting an abortion. During one of her hospital stays, Ramírez's rights to dignity, privacy, and informed consent were violated when she was visited by two women who showed her explicit and disturbing pictures of abortion procedures.[82,83] Finally, only hours before the procedure was scheduled, Ramírez's mother met with the director of the hospital, who misinformed her about the risks of the procedure and told her that if something hap-

pened to Paulina, it would be her fault.[84] Her mother then felt compelled to withdraw her consent and the abortion was not performed.

In this case, the petitioners argued that the state violated its obligation to respect and guarantee the rights established in the American Convention, particularly by its lack of judicial guarantees and protection.[85,86] Mexico's rape exception to its abortion ban is not regulated, enabling public officials to act arbitrarily in cases of rape and to neglect their obligation to respect and guarantee women's rights to physical and psychological integrity, health, liberty, informed consent, honor, dignity, privacy, and freedom of religion.[87-89] The lack of a clear procedure and of a speedy and effective remedy that permits the timely guarantee of the right to a legal abortion resulted in subsequent violations involving various public officials. Consequently, Ramírez suffered irreparable damages from a pregnancy that resulted from a violation of her sexual integrity.

The Center and Mexican organizations Alaíde Foppa and Epikeia presented the case to the IACHR on March 8, 2002.[90] The Commission has not yet formally admitted the case, though we expect it will address the case by the end of 2003. At that time, local advocacy strategy and the petitioners' collaboration with local partners will play a key role in advancing the case before the IACHR.[91] Part of the Center's and its partner organizations' strategy is to strengthen local and international advocacy efforts. Fostering local organizations' commitment to reproductive rights issues is especially important, as is sensitizing IACHR Commissioners by using briefings, on site follow-up visits, and providing general information on protecting reproductive rights and reinforcing the standards established by the treaty-monitoring bodies.

Karen Noelia Llontoy Huamán v. *Peru*

Another problem in various countries in Latin America is the narrow interpretation of the right to health and reproductive health. In Peru, abortion is legal for therapeutic reasons.[92] Peru, however, has failed to adopt clear regulations to ensure access to abortion services, and women whose pregnancies may endanger their health are left to the mercy of public officials. In *Karen Noelia Llontoy Huamán* v. *Peru*,

the plaintiff was a 17-year-old woman who was 14 weeks pregnant when doctors at a public hospital in Lima discovered that the fetus she was carrying was anencephalic, meaning that it lacked most or all of a forebrain. Such a fatal, congenital anomaly falls under the medical guidelines for a therapeutic abortion, and, after much soul-searching, Huamán decided to go ahead with the procedure. The public hospital's director, however, determined that her case did not fit the therapeutic exception, denying her access to an abortion.[93] On January 13, 2002, Huamán delivered the fatally ill child who she was forced to breast feed until the baby died four days later.

The complaint filed before the UNHRC on November 8, 2002, asserted that Huamán's pregnancy severely compromised her life by endangering both her physical and psychological health, and that the final half of her pregnancy was a clear violation of international standards prohibiting violence against women, as well as cruel, inhuman, and degrading treatment by state officials.[94] The complaint was also supported by medical scholars and specialists who, in a written submission to the U N H C R, addressed the medical risks that Huamán suffered as a result of carrying an anencephalic fetus to term.

Peru recognizes the UNHRC's authority to examine individual complaints, to determine whether violations of the ICCPR occurred, and to suggest remedies for cases that have not been effectively resolved by the country. It is on the basis of this commitment that the co-petitioning organizations are asking the UNHRC to find Peru in violation of Huamán's rights and to further recommend that the government compensate her for severe suffering. In addition, they have put forth a plan recommending that Peru adopt clear regulations to ensure that women seeking to terminate a pregnancy pursuant to Peruvian law have prompt access to safe abortion services. At this time, the U N H C R has yet to formally admit the case.

In both *Ramírez* v. *Mexico* and *Huamán* v. *Peru*, the issue of abortion underlies the claims of a human rights violation. Denial of access to safe and legal abortion services not only infringed on these women's rights to life and

health, but also violated local judicial and legislative processes. Both cases have faced "political issues," prompting an exhaustive debate that has created a higher level of scrutiny in the review of these cases.[95]

Taken together, these cases reveal how international human rights litigation may provide opportunities to effectively advocate for reproductive rights. These cases have helped raise awareness of reproductive rights at national and international levels. They illustrate how one case can be indicative of patterns of violations of women's human rights that must be adressed, not only on an individual level but also in law and policy. The facts of these cases also show the need to hold public health systems accountable, even at the international level, and how the movement to recognize women's reproductive rights as human rights must be fought internationally by participating in world conferences and treaty-drafting, as well as in international judicial and quasi-judicial arenas. In addition, these cases reveal the considerable challenges organizations face when attempting to hold governments accountable for violating women's reproductive rights.

Opportunities, Challenges and Limitations to Using International Litigation to Promote Reproductive Rights

Ensuring that legislative changes are effective requires proper implementation and enforcement. The emerging international jurisprudence on women's reproductive rights came about in response to egregious violations committed against women despite existing legal frameworks that ostensibly protected women's rights. In this way, international litigation has influenced the human rights discourse and has contributed to the articulation of standards of interpretation that can help establish international parameters of adequate protection for women in Latin America.

In Latin America, where most laws and constitutional principles guarantee rights even as they are not enforced, the Center has begun using international litigation as a new strategy that can also help international mechanisms, such as the IACHR, better incorporate a gender perspective into their work. This, in turn, has promoted articulation of new standards of interpretation, including international responsi-

bility for ensuring reproductive rights. Litigation can also reveal the gap between national and international human rights standards, and their application in Latin American courts can help document, monitor, and publicize serious and/or systematic violations of women's rights. Finally, litigation can help raise public awareness of issues that are not traditionally regarded as human rights issues.[96] International litigation, however, does present various challenges that may undermine its potential for success.

Opportunities

International human rights litigation provides an opportunity for redressing violations of human rights and for effecting change within international and national human rights systems.[97] International litigation can also contribute to human rights protections by advancing negotiation processes between a government and petitioners, and by providing formal rulings that can influence future national litigation strategies that, in turn, may help establish a precedent for bringing cases before other regional and international bodies. In this regard, a litigation strategy that incorporates a comparative and cross-national perspective can play a key role in the promotion and cultural acceptance of reproductive rights as human rights. Activists and various monitoring bodies can use emerging jurisprudence from other international tribunals or courts. Even though courts are not always bound by other courts' rulings, positive examples of jurisprudence can be used persuasively.[98]

Collaborative awareness-raising efforts illustrate the importance of having a host of local and international organizations strategically working together, sharing knowledge, and fostering understanding. Such collaboration strengthens partnerships and leverages expertise from different organizations. This sharing of knowledge also creates an understanding of the procedures of international litigation, thus helping organizations to become familiar with the system and bring more cases on their own. The Center's experience in the area of international litigation has shown that advocating for the protection of reproductive rights through individual cases is not enough. The strategy must include also the sensitization of decision-makers on specif-

ic issues. Efforts of national level organizations are also key to publicizing violations at the international level. The participation of international organizations through litigation can help bring international awareness to regional issues that would not otherwise be known through advocacy efforts at the national level.[99] This in turn can help exert pressure on national governments to address the issue.

Litigation can also complement efforts of broader social movements or institutions that seek to highlight human rights violations, reform the law, and effect change in cultural attitudes toward upholding human rights. The interplay between international and national legal processes and advocacy efforts can have a profound influence on local discourse. For example, even though Argentina's federal constitution lacks explicit protection of rights, the direct incorporation into the constitution of the most important human rights treaty provisions guarantees at least minimum protection of internationally recognized rights by Argentine courts. Furthermore, Argentina's Supreme Court has recognized the authority of the IACHR, and Argentine courts are bound to act in accordance with the jurisprudence emanating from the Inter-American system of Human Rights.[100]

Even if it takes many years before a final settlement or recommendation is adopted, or if the litigation itself is ultimately unsuccessful, litigation still provides an opportunity to bring both national and international attention to an issue.[101] In many reproductive rights cases, the UNHRC examination process becomes crucial. This is particularly true when there is no political will to achieve legal or policy reform at the national level through the legislature, and judicial review is either unavailable or judges operate their courtrooms based on politics rather than dispensing justice based on fundamental rights. It is important to create a climate among activists that favors reform through the development of an advocacy strategy that helps encourage national-level courts to incorporate international standards in their decisions.[102]

Challenges and Limitations

In Latin America, democracies remain fragile, and advocates must consider and take into account the local, politi-

cal, social, and cultural context in which litigation will take place. Within this context, national organizations face enormous problems, including dependent judiciaries, government officials who often operate with impunity, inadequate governmental resources, negative public attitudes toward the law, and insufficient and unsecured funds to carry out their activities. Litigation has to be used strategically because cases can take years to be decided, during which time government positions may be affected by changes in political administrations. All of these factors should be considered and weighed in using international litigation versus other advocacy strategies. Another obstacle is that many civil society organizations, such as bar associations (where they exist), have limited authority and rarely contribute to mobilizing for social change or encouraging pro bono work within law firms, legal clinics, or other institutions.

Members of human rights bodies, committee members, and judges act in their individual capacity and are supposed to be impartial experts in the field of human rights; however, this is frequently not the case. Very often these individuals are former government officials or diplomats who have represented their country and defended specific positions on issues. It is therefore important for advocates to "forum shop"—in other words, to consider the composition of these bodies and to investigate what kinds of positions the different members of a commission or committee have adopted with regard to a certain issue.

The decision-making process used by organizations bringing a claim may also be the source of some tension. Although these organizations may share a common agenda, their strategies for carrying out the litigation process or negotiating with a government may differ. It is therefore important to carefully map out internal strategies and decision-making processes. The Center and partners such as CEJIL commonly defer the final decisions about strategy to the local partners.

For the most part, local organizations determine the legitimacy of a claim and make the initial suggestion to bring a case to an international level. Yet, asking questions about the accountability of advocates and about which constituencies are represented is valid. For instance, many

question the legitimacy of claims brought by international organizations that seem to be geographically removed from the region in question. This tension is an ongoing issue that reflects and questions the North/South power dynamics that may influence the development of strategies. Working collaboratively with local groups can ensure that any claims brought reflect the context in which the violations were committed.

Conservative groups present a further challenge to litigation strategies. In the case of reproductive rights, conservative groups have learned also that litigation at the national level can be an effective tool for social change. To that end, they have used conservative forces in the region, such as the Catholic church, to influence national processes, and they have also litigated cases at the national level. For instance, conservative groups in Argentina challenged the constitutionality of the National Reproductive Health Law.[103] The use of international litigation to further conservative agendas has been used not only in Argentina but also in Colombia, Mexico, and Chile, where emergency contraception has been challenged in the courts, and could jeopardize the recognition of reproductive rights within a human rights context even at the international level. The risks are even greater as conservative groups become stronger at international conferences, and governments, such as the United States, fund and implement conservative agendas at every level.

Furthermore, at a time when fundraising for nonprofit organizations becomes increasingly complicated due to cyclical economic crises and the increase in the number of NGOs that seek funding, the question of how to make a human rights litigation strategy sustainable remains. Funders and donors must be aware of the importance of long-term sustainability and of following a strategy through to its end. The gains of one case may be lost if resources to further the strategy are unavailable.

Conclusion

This article has examined the role of legal advocacy in advancing reproductive rights. The successful advancement

of these rights depends in great part on the implementation and enforcement of commitments made in human rights treaties and at international conferences, and through their implementation of national-level legal reforms. National litigation strategies can be used to advance reproductive rights, not only by redressing the violations suffered by individuals but also by bringing international attention to systematic violations. The "shaming" effect that international decisions have on governments has been a successful legal and political strategy for holding governments accountable for human rights violations and for promoting and upholding important legal and policy changes.

The emerging jurisprudence in the European context, as well as in the United Nations human rights system, has recognized and further advanced women's human rights. These bodies have ruled on certain issues pertaining to women's sexual and reproductive rights and have the potential to generate worldwide change and sensitization. This jurisprudence may ultimately permeate other bodies, such as the Inter-American system, which has recognized matters of nondiscrimination but has yet to fully acknowledge and recognize reproductive rights.

The global road to advancing women's rights will be smoother with the participation of key actors, including women's rights organizations, health organizations, and health providers, acknowledging their interrelationship and their role in unifying and promoting standards of protection for reproductive rights. Such actions may also permeate national systems that can improve women's lives. The greatest challenge to global advocates is the realization that the promotion of women's reproductive rights can no longer be viewed in isolation, but must be considered as part of an overarching global human rights agenda that incorporates regional and national approaches and strategies and that connects as well as unifies local legal and social advocacy efforts. In defining the future success of any strategy, it is important to look back to the past century's social and legal advancements at the national and international levels. The great gains in women's lives are the result of numerous positive achievements attained by women activists. Today,

Latin American activists have a duty to defend, uphold, strengthen, and broaden these accomplishments—which now more than ever are being challenged by aggressive conservative forces. Women's rights activists have been key in guaranteeing a legal framework that would give shape to those rights; now they must ensure that institutional and judicial bodies enforce these rights and ensure redress.

The success of international litigation as a viable legal advocacy strategy depends on a clear understanding of the elements that are unique to each case being considered. Furthermore, a strategy should be devised according to the challenges posed by the political environment surrounding a case, the level of local and international sustainability and capacity of the organizations, power dynamics between North and South, accountability of advocates, financial sustainability, venue selection, and timing. In other words, a strategy should reflect and respond to the demands of each case individually. The likelihood of success will be enhanced if all of these elements are taken into account. The ultimate challenge and goal is to make meaningful changes in women's everyday lives.

References

1. The Center for Reproductive Rights was formerly known as the Center for Reproductive Law and Policy.

2. For a brief description of the history of the development of the reproductive rights legal framework, see Center for Reproductive Rights, *Reproductive Rights 2000: Moving Forward* 10 (2000). See also R. Cook, "Human Rights and Reproductive Self-Determination," *American University Law Review* 975 (1995): 44.

3. From the First World Conference on Women (Mexico City 1975), see Report of the World Conference of the International Women's Year, Mexico City, Mexico, 19 June–2 July 1975, U.N. Doc. E/CONF.66/34, U.N. Sales No. E.76.IV.I (1976); from the Second World Conference on Women (Copenhagen 1980), see Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, Copenhagen, Denmark, July 14-30, 1980, U.N. Doc. A/CONF.94/35, U.N. Sales No. E.80.IV.3 and Corrigendum (1980); from the World Conference to Review and Appraise the Achievements of the UN Decade for Women (Nairobi 1985), see Report of the World Conference to Review and Appraise the Achievements of the UN Decade for Women: Equality, Development and Peace, Nairobi, Kenya, 15–26 Jul. 1985. See also Center for Reproductive Rights, *Reproductive Rights 2000*, note 2, p. 10.

4. Indeed, the 1990s came to be regarded as a key period in the advancement of human rights issues in the international community as many critical changes took place in both national and international spheres. The documents emanating from three world conferences, including the United Nations World Conference on Human Rights (Vienna 1993) (Vienna Declaration and Program of Action, World Conference on Human Rights, Vienna, June 14-25, 1993, U.N. Doc. A/CONF.157/23 (1993), the United Nations International Conference on Population and Development (ICPD) (Cairo 1994) (Program of Action of the International Conference on Population and Development, Cairo, 5–13 Sept. 1994, U.N. Doc. A/CONF.171/13/Rev.1 (1995), and the United Nations Fourth World Conference on Women (Beijing 1995) (Beijing Declaration and the Platform for Action, Fourth World Conference on Women, Beijing, 14–15 Sept. 1995, U.N. Doc. A/CONF.177/20 (1995), were decisive in the recognition of reproductive rights as human rights.

5. At the Vienna World Conference on Human Rights, governments recognized "on the basis of equality between women and men, a woman's right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels." See Vienna Declaration and Program of Action, note 4, para. 41. At the ICPD held in Cairo, it was noted for the first time that "reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents." See ICPD Program of Action, note 4, para. 7.3. Consistent with its broad view of reproductive health, the ICPD Program of Action directs states to address gender inequities that impede reproductive health, including "discriminatory social practices; negative attitudes towards women and girls; and the limited power many women and girls have over their sexual and reproductive lives." See ICPD Program of Action, note 4, para. 7.3. The Beijing Conference produced two documents, known as the Beijing Declaration and the Beijing Platform for Action, that reaffirm the principles adopted in Cairo. The Beijing Platform replicates the key language from the ICPD Program of Action, but goes further by recognizing women's right to control their own sexuality and sexual relations and to decide upon these matters on an equal basis with men. See Beijing Declaration and Platform for Action, note 4, para. 96. For purposes of this article, "reproductive rights" is intended to encompass a number of rights that are often also referred to as "sexual rights," including the right to be free from sexual violence and coercion and the right to the highest standard of sexual health. Similarly, we interpret the term "reproductive health" to encompass many of the elements of "sexual health." For further information on sexual rights and sexual health, see International Women's Health Coalition, Sexual Rights at www.iwhc.org/index.cfm?fuseaction=page&pageID=22 (last visited July 14, 2003).

6. See Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Convention of Belém do Pará, G.A.O.A.S., 24th Session, O.A.S./Ser.L/V/1.4 Rev. 9 (2003) adopted June 9, 1994 (entered into force March 5, 1995), http://www.cidh.oas.org/Basicos/basic13.htm (last visited July 11, 2003).

7. See Rome Statute of the International Criminal Court, adopted July 17, 1998, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, Italy, U.N. Doc. A/CONF. 183/9 (1998) (entered into force 1 Jul. 2002).
8. See Optional Protocol to the Convention on the Elimination of Discrimination against Women, Oct. 6, 1999, G.A. Res. 54/4, U.N. GAOR, 54th Sess., U.N. Doc. A/RES/54/4 (1999) (entered into force Dec. 22, 2000).
9. As set forth at the ICPD, comprehensive reproductive health care should include measures to promote safe motherhood, care for those with HIV/AIDS and other STIs, abortion, infertility treatments, and a full range of quality contraception, including emergency contraception. See ICPD Program of Action, note 4, para. 7.2.
10. This right has support in the right to plan one's family, the right to freedom from interference in reproductive decision-making, and the right to be free from all forms of violence and coercion that affect a woman's sexual or reproductive life. See ICPD Program of Action, note 4, para. 7.3; Beijing Declaration and Platform for Action, note 4, paras. 95-96.
11. For instance, Colombia's new Penal Code reformed the definition of "carnal access," thereby broadening the jurisprudence and legal principles in the area of sexual violence. In its attempt to extend power to the judiciaryin the realm of domestic violence, Law 575 of 2000 gave family courts the power to order protection measures. In addition, countries like Argentina, Peru and Mexico have eliminated discriminatory provisions from both the penal and civil codes. See The Center for Reproductive Rights & DEMUS Estudio Para la Defensa de los Derechos de la Mujer, *Women of the World: Laws and Policies Affecting Their Reproductive Lives: Latin America and the Caribbean, Progress Report 2000* (2000), p. 86. Also, Colombia's Penal Code was amended, maintaining the protected legal rights of sexual freedom and adding the protection of education and sexual integrity. See id., p. 84.
12. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, U.N. Doc A/6316 (1966), 999 U.N.T.S. 3 (entered into force Jan. 3, 1976).
13. For example, in cases where laws and policies incorporating demographic goals were still in place, there has been a tendency to abandon this approach in favor of one that takes into account human rights, the quality of life, gender equality and sustainable development. In many countries, policies and laws that promote reproductive rights have been incorporated. For example, countries such as Argentina have passed federal and provincial reproductive health laws. See Center for Reproductive Rights and DEMUS, *Women of the World 2000*, note 11, p. 12.
14. See The Center for Reproductive Rights and Facultad de Derecho Universidad de los Andes, L. Cabal, M. Roa and J. Lemaitre (eds.), *Cuerpo y Derecho Legislación y Jurisprudencia en América Latina* (Bogotá: Editorial Temis S.A, 2001), pp. 63, 222.
15. Throughout Latin America, the HIV/AIDS epidemic is increasingly becoming feminized. For example, in Colombia, the annual male to female ratio has changed from 18:1 in 1986 to 4:1 in 2000. See UNAIDS & World Health Organization (WHO), Epidemiological Fact Sheets on

HIV/AIDS and Sexually Transmitted Infections 2002: Update Colombia (2002), http://www.unaids.org/hivaidsinfo/statistics/fact_sheets/pdfs/Colombia_en.pdf (last visited May 22, 2003). In Peru, the annual male to female ratio has changed from 15:1 in 1990 to 5:1 in 1998. See Richard Webb & Graciela Fernandez Baca, *Perú en Números 1999* (Lima : Cuánto, 1999), p. 374.

16. See Center for Reproductive Rights and DEMUS Estudio Para la Defensa de los Derechos de la Mujer, *Women of the World Laws and Policies Affecting Their Reproductive Lives Latin America and the Caribbean* 206 (1997), p. 206.

17. In Bolivia, for example, 38% of adolescent childbirths are a result of unintended pregnancies. See Archivos "i" [The "I" Files], Madres Siendo Aún Demasiado Hijas 3 (June 1998).

18. See A. R. Morrison and M. L. Biehl (eds.), *Too Close to Home: Domestic Violence in the Americas* (Baltimore: Johns Hopkins University Inter-American Development Bank, 1999), p. 3.

19. The estimated proportion of the annual maternal mortality rate due to unsafe abortion in the 1995-2000 period for the Caribbean was 17.5%; for Central America, 15%; for South America, 24%. WHO, Unsafe Abortion: Global and Regional Estimates of Incidence of and Mortality Due to Unsafe Abortion with a Listing of Available Country Data, Ref. WHO/RHT/MSM/97.16 (3d ed. 1997) (last visited July 11, 2003).

20. In many Latin American countries individuals may, in some instances, present actions to protect basic human rights, such as actions for compliance (acciones de cumplimiento) to seek the government's enforcement of its own laws and regulations. The Center for Reproductive Rights and Universidad de los Andes School of Law, *Bodies on Trial: Reproductive Rights in Latin American Courts* (New York: The Center for Reproductive Rights, 2003), pp. 58-59.

21. Such mechanisms may include, among others, the creation of ombudsmen offices and petitions for *tutela*.

22. For an analysis of the efficacy of these mechanisms in protecting women's reproductive rights, see Center for Reproductive Rights & Facultad de derecho universidad de los andes, *Cuerpo y Derecho*, note 14.

23. See Center for Reproductive Rights & Universidad de los Andes, *Bodies on Trial*, note 20, p.11.

24. The Ford Foundation, *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World* (New York: The Ford Foundation, 2000), pp. 74-83. Though national level judiciaries remain a challenge, this article will only focus on international litigation as a means to advance reproductive rights.

25. See id., pp. 283-296.

26. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, G.A. Res. 39/46, UN GAOR, 39th Sess., Supp. No. 51, at 197, UN Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (entered into force June 26, 1987) (Committee Against Torture [CAT]); Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) (entered into force Sept. 3, 1981) (Committee on the Elimination of

Discrimination against Women [CEDAW]); International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) (Committee on the Elimination of Racial Discrimination [CERD]); Economic, Social and Cultural Rights Covenant, note 12 (Committee on Economic, Social and Cultural Rights [CESCR]); Convention on the Rights of the Child, adopted Nov. 20, 1989, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, UN Doc. A/44/49 (1989), reprinted in 28 I.L.M. 1448 (entered into force Sept. 2, 1990) (Committee on the Rights of the Child); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (Human Rights Committee (UNHRC)). See Center for Reproductive Rights and University of Toronto International Programme on Reproductive and Sexual Health Law, *Bringing Rights to Bear: An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights* (New York: The Center for Reproductive Rights, 2002), p. 12.

27. The CESCR (1976) and the Committee on the Rights of the Child (1990) do not have individual complaints procedures. For more information on the complaints mechanism of the UN Treaty Monitoring Bodies, see A.F. Bayefsky (ed.), *The UN Human Rights System in the 21st Century* (The Hague: Kluwer), pp. 63-136.

28. The UNHRC and the CEDAW Committee have incorporated the individual complaints system through an optional protocol. The Convention against Torture and the Racial Discrimination Convention have included in the body of the treaty the individual complaints system.

29. The CERD adopted in 1969, the CAT adopted in 1987, and the CEDAW Committee adopted in 2000, have a significantly lower amount of work in terms of individual complaints procedures.

30. The Inter-American human rights system was adopted in 1948, seven months before the United Nations Universal Declaration and a couple of years before the European Convention. However, it was the European Convention which first established a court in charge of monitoring the compliance with human rights obligations and the complaints procedure. It was adopted in 1950 and entered into force in 1953. The reasoning and interpretive methodologies adopted by the European Committee on Human Rights (ECHR) served as a model and were later followed by the Inter-American Committee on Human Rights and the United Nations Human Rights Committee (UNHRC).

31. H. J. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996), p. 641.

32. See Rules of Procedure of the IACHR, art. 31, Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/I.4 Rev.9 (2003), http://www.cidh .oas.org/basic.eng.htm (last visited July 14, 2003).

33. See American Convention on Human Rights, Nov. 22, 1969, art. 46, O.A.S.T.S. No. 36, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (entered into force July 18, 1978), available at www.oas.org/juridico/english/treaties/b-32.htm (last visited July 14, 2003) [hereinafter American Convention].

34. Even though the less strict rule of standing of the Inter-American system has enabled organizations to submit petitions on behalf of victims that are either incapable or afraid of filing the complaints themselves, it is undeniable that such a rule also raises some ethical concerns related to the accountability of organizations that do not require a client's consent to submit a petition.
35. See A. A. Mohamed, "Individual and NGO Participation in Human Rights Litigation Before the African Court of Human Rights and Peoples Rights: Lessons from the European and Inter-American Courts of Human Rights, *Journal of African Law* 43/2 (1999): 201-213.
36. See R. J. Wilson, "Researching the Jurisprudence of the Inter-American Commission on Human Rights: A Litigator's Perspective," *The American University Journal of International Law and Policy* 10/1 (1994).
37. Case 7920, Inter-Am. C.H.R., OEA/Ser.L/V/II.68, doc. 8 rev.1 (1986).
38. J. M. Pasqualucci, "Victim Reparations in the Inter-American Human Rights System: A Critical Assessment of Current Practice and Procedure," *Michigan Journal of International Law* 18/1 (1996): 1-58.
39. See Case 7920, note 37.
40. *Toonen* v. *Australia*, Case No. 488/1992, U.N. Hum Rts. Comm., 50th Sess., Annex, UN Doc. CCPR/C/50/D/488/1992 (1994).
41. *Faurisson* v. *France*, Case No. 550/1993, U.N. Hum Rts. Comm., 58th Sess., Annex, UN Doc. CCPR/C/58/D/550/1993 (1996).
42. *Chitat Ng* v. *Canada*, Case No. 469/1991, U.N. Hum Rts. Comm., 49th Sess., Annex, UN Doc. CCPR/C/49/D/469/1991 (1994).
43. We have decided not to include the jurisprudence related to sex discrimination due to space limitations. However those interested in such issues can refer to the following cases: At the IACHR: see Case 12.046, Inter-Am C.H.R., OEA/ser.L/V/II.117, doc. 1 rev. 1 (2003), available at www.iachr.org/annualrep/2002eng/Chile12046.htm (last visited July 12, 2003), and Case 11.625, Inter-Am C.H.R., OEA/ser.L/V/II.98, doc 6 rev. at 144 (1998), available at www.cidh.org/annualrep/97eng/Guatemala11625.htm (last visited July 12, 2003). At the UNECHR: see *Kjeldsen, Busk Madsen and Pedersen* v. *Denmark*, 23 Eur. Ct. H.R. (ser. A) (1976); *Rasmussen* v. *Denmark*, 87 Eur. Ct. H.R. (ser. A), para. 41 (1984); *Van Raalte* v. *The Netherlands*, 1997-I Eur. Ct. H.R.; and *Schuler-Zgraggen* v. *Switzerland*, 263 Eur. Ct. H.R. (ser. A)(1993). At the UNHRC: *Vos.* v. *The Netherlands* Case 218/1986, U.N. Hum. Rts. Comm., 34th Sess., Annex, CCPR/C/35/D/218/1986 (1989); *Pauger* v. *Austria* Case No. 716/1996, U.N. Hum. Rts. Comm., 65th Sess., Annex, CCPR/C/65/D/716/1996 (1999) and Case No. 415/1990, U.N. Hum. Rts. Comm, 44th Sess., Annex, CCPR/C/44/D/415/1990 (1992); *Pepels* v. *The Netherlands* Case No. 484/1991, U.N. Hum. Rts. Comm., 51st Sess., Annex, CCPR/C/51/D/484/1991 (1994); *Brooks* v. *The Netherlands* Case No. 172/1984, U.N. Hum. Rts. Comm., 29th Sess., Annex, CCPR/C/29/D/172/1984 (1987); *Zwaan-de-Vries* v. *The Netherlands* Case No. 182/1984, U.N. Hum. Rts. Comm., 29th Sess., Annex, CCPR/C/29/D/182/1984 (1987); *Araujo-Jongens* v. *The Netherlands* Case No. 418/1990, U.N. Hum. Rts. Comm., 49th Sess., Annex, CCPR/C/49/D/418/1990 (1993); *J.A.M.B.R.* v. *The Netherlands* Case No. 477/1991, U.N. Hum. Rts. Comm., 50th Sess., CCPR/C/50/D/477/1991 (1994); *Lovelace* v. *Canada* Case No. 24/1977, U.N. Hum. Rts.

Comm., 30th Sess., Annex, CCPR/C/13/D/24/1977 (1981); *Mauritian Women* v. *Mauritius* Case No. 35/1978, U.N. Hum. Rts. Comm, 12th Sess., Annex, CCPR/C/12/D/35/1978 (1981); *Sprenger* v. *The Netherlands* Case No. 395/1990, U.N. Hum. Rts. Comm., 44th Sess., CCPR/C/44/D/395/1990 (1992); *Ato del Avellanal* v. *Peru* Case No. 202/1986, U.N. Hum. Rts. Comm., 34th Sess., CCPR/C/34/D/202/1986 (1988); *V.O.* v. *Norway* Case No. 168/1984, U.N. Hum. Rts. Comm., 25th Sess., CCPR/C/25/D/168/1984 (1985); *S.H.B.* v. *Canada* Case No. 192/1985, U.N. Hum. Rts. Comm., 29th Sess., CCPR/C/29/D/192/1985; *Hendriks* v. *The Netherlands* Case No. 201/1985, U.N. Hum. Rts. Comm., 33rd Sess., CCPR/C/33/D/201/1985 (1988); *J.H.W.* v. *The Netherlands* Case No. 501/1992, U.N. Hum. Rts. Comm., 48th Sess., CCPR/C/48/D/501/1992 (1993); *Byrne* v. *Canada* Case No. 742/1997, U.N. Hum. Rts. Comm., 67th Sess., Annex, CCPR/C/65/D/742/1997 (1999); and *Toonen* v. *Australia*, note 40.

44. The cases on sexual violence in the European and Inter-American systems were important precedents for the development of cutting-edge jurisprudence at the international criminal tribunals of Yugoslavia and Rwanda. Even though the statutes that established the tribunals and their jurisdiction only included rape as a crime against humanity, an active role by the prosecutor and female judges resulted in a series of cases that advanced the concept of rape as torture (*ICTY, Prosecutor* v. *Delalic*, et al. Case No. IT-96-21-T, Judgment (16 Nov. 1998), para. 481-93; *Prosecutor* v. *Jean-Paul Akayesu*, ICTR-96-4-T, Judgment (Sept. 2, 1998), as genocide (Akayesu judgment at para. 507-10), and as a war crime (*ICTY, Prosecutor* v. *Anto Furundzija*, Case No. IT-95-17/I-T, Judgment, December 10, 1998, par. 172, 269-75). These achievements also played an important role in including a wide range of sex and gender crimes in the statute of the International Criminal Court. For an analysis of the process of incorporation of gender crimes in the International Criminal Court Statute, see B. Bedont and K. Hall-Martinez, "Ending Impunity for Gender Crimes under the International Criminal Court," *The Brown Journal of World Affairs* 6/1 (1999): 65-85, available at http://www.reproductiverights.org/pub_art_icc.html (last visited July 12, 2003).

45. In the European system, the court also found that rape committed by a public official may constitute torture in violation of the right to be free from inhuman and degrading treatment if it causes very serious and cruel suffering in accordance with international humanitarian law. The Court has thus held that rape of a detainee by a state official had to be considered an especially grave and abhorrent form of ill-treatment. See *Aydin* v. *Turkey*, 1997 VI Eur. Ct. H.R. Rep. The state may also be held liable for rapes committed by its soldiers if it fails to take adequate measures to prevent or punish the acts. See *Cyprus* v. *Turkey*, App. Nos. 6780/74 and 6950/74, 4 Eur. Ct. H.R. Rep. 482 (1982) (Commission report of July 1976).

46. See Case 10.257, Inter-Am.C.H.R. 125, OEA/Ser.L/V/II.81, doc. 6 rev.1 (1992), available at www.iachr.org/annualrep/91eng/ElSalvador10257.htm (last visited July 12, 2003); Case 10.911, Inter-Am.C.H.R. 188, OEA/Ser.L/V.85, doc. 9 rev. (1994) available at www.cidh.org/annualrep/93eng/elsalvador.10911.htm (last visited July 11, 2003); and Case 10.772, Inter-Am.C.H.R.181, OEA/Ser.L/V.85, doc. 9 rev. (1994), available

at www.cidh.org/annualrep/93eng/elsalvador.10772.htm (last visited 11 July 2003).

47. See Case 11.565, Inter-Am. C.H.R., OEA/Ser.L/V/II.111, doc. 20 rev. at 1097 (2001), available at www.cidh.org/annualrep/2000eng/ChapterIII/Merits/Mexico11.565.htm (last visited July 11, 2003).

48. See Case 10.970, Inter-Am. C.H.R., OEA/Ser.L/V/II.91, doc. 7 rev. at 157 (1996), available at www.cidh.org/annualrep/95eng/Peru10970.htm (last visited June 2, 2003); and Case 11.756, Inter-Am. C.H.R., OEA/Ser.L/V/II.102, doc. 6 rev. at 198 (1999), available at www.cidh.org/annualrep/98eng/Admissibility/Peru%2011756.htm (last visited July 11, 2003).

49. See id., p. 157.

50. See Case 7920, note 37.

51. See Case 12.051, Report No. 54/01, Inter-Am. C.H.R., OEA/Ser.L/V/II.111, doc. 20 rev. at 704 (2001), available at www.cidh.org/annualrep/2000eng/ChapterIII/Merits/Brazil12.051.htm (last visited July 11, 2003).

52. Petition No. 12.046, Inter-Am. C.H.R., OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2003), available at www.cidh.org/annualrep/2002eng/Chile12046.htm (last visited July 12, 2003).

53. See Case 2141, Inter-Am. C.H.R., OEA Ser. L/V/II.54, doc. 9 rev. 1, para. 30 (1981), available at www.cidh.org/annualrep/80.81eng/USA2141.htm (last visited July 12, 2003).

54. See id., para. 14. The Commission stated that "When dealing with the issue of abortion, there are two aspects of the Convention's elaboration of the right to life which stand out. First, the phrase 'in general.' It was recognized in the drafting sessions in San José that this phrase left open the possibility that states parties to a future Convention could include in their domestic legislation 'the most diverse cases of abortion.' (Conferencia Especializada Interamericana sobre Derechos Humanos, OEA/Ser.K/XVI/1.2, at 159.) Second, the last sentence focuses on arbitrary deprivations of life. In evaluating whether the performance of an abortion violates the standard of Article 4, one must thus consider the circumstances under which it was performed. Was it an 'arbitrary' act? An abortion which was performed without substantial cause based upon the law could be inconsistent with Article 4."

55. The ECHR found that abortion on request within the first 12 weeks, and between the 12th week until the 18th week with the prior authorization by a board constituted by two doctors, was within the discretion of the state. See *ECHR, H.* v. *Norway*, decision on admissibility of May 19, 1992, No. 17004/90, available at http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=714161648&Notice=0&Noticemode=&RelatedMode=0 (last visited July 14, 2003). See also *Paton* v. *United Kingdom*, App. No. 8416/78, 3 Eur. Ct. H.R. 408 (1980). The European Commission has stated that not every restriction on the termination of an unwanted pregnancy constitutes an interference with the right to respect for private life of the mother. Furthermore, the Commission held that this right could not be interpreted to mean that pregnancy and its termination are, as a principle, solely matters of the private life of the mother since when a woman is pregnant her private life

becomes closely connected to the fetal life. See *ECHR, Bruggemann and Scheuten* v. *Germany*, App. No. 6959/75, 3 Eur. H.R. Rep. 244, (1977) (Commission report).

56. See *Open Door and Dublin Well Woman v. Ireland*, 15 Eur. Ct. H.R. Rep. 244 (ser. A, No. 246) (1992) (Judgment).

57. The IACHR nevertheless noted that vaginal inspections could be performed in accordance with the Convention if all the conditions in the IACHR's four-part test were met. That is, that the lawfulness of a vaginal search or inspection in a particular case: 1) must be absolutely necessary to achieve the security objective in the particular case; 2) there must not exist an alternative option; 3) should be determined by judicial order; and 4) must be carried out by an appropriate health professional. See Case 10.506, Inter-Am C.H.R., OEA/Ser.L/V/II.95, doc. 7 rev. (1997) available at http://www.cidh.org/annualrep/96eng/Argentina11506.htm (last visited July 11, 2003).

58. See id., p. 50.

59. See Center for Reproductive Rights & DEMUS, *Women of the World 2000*, note 11; and Center for Reproductive Rights & DEMUS, *Women of the World*, note 16. These reports were published as part of the *Women of the World* series, which has covered regions such as Africa and East and Central Europe.

60. Center for Reproductive Rights and CLADEM, *Silence and Complicity: Violence Against Women in Peruvian Public Health Facilities* (New York: Center for Reproductive Rights, 1999). The MM case, which was initially handled by the Peruvian group Movimiento Manuela Ramos, was identified during the research for this report and proved to be a viable case for filing before the IACHR. See also, S. Tuesta and M. Sala (eds.), *Buscando Justicia* [Searching for Justice] (Lima: Movimiento Manuela Ramos, 2000).

61. See American Convention, note 33, art. 4. See also Convention of Belém do Pará, note 6, arts. 3–4.

62. See American Convention, note 33, art. 5. See also Convention of Belém do Pará, note 6, arts. 1,4,7.

63. See American Convention, note 33, art. 1.

64. See Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," Nov. 17, 1988, O.A.S.T.S. No. 69, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, O.A.S. Off. Rec. OEA/Ser.L.V/II.82 doc.6 rev.1, art.10, at 67 (1992) (entered into force Nov. 16, 1999) [hereinafter Protocol of San Salvador]; see also Convention of Belém do Pará, note 6, art. 2; CEDAW, note 26.

65. American Convention, note 33, art. 7; Civil and Political Rights Covenant, note 26; see also Universal Declaration on Human Rights, adopted Dec.10, 1948, G.A.Res.217A(III), at 71, art. 3, 12, U.N. Doc. A/810(1948).

66. See Convention of Belém do Pará, note 6, art. 3.

67. See American Convention, note 33, art. 11; Convention of Belém do Pará, note 6, art. 4; Universal Declaration, note 65, art. 12; Civil and Political Rights Covenant, note 26, art. 17.

68. See American Convention, note 33, art. 8.

69. See id., art. 25; Convention of Belém do Pará, note 6, art. 4.
70. Although Mestanza's case involves violations of the right to physical integrity, we decided to place it under the reproductive autonomy section because it also involves the violation of the right to reproductive autonomy, which is representative of the practices that were taking place in Peru at the time.
71. See CLADEM, *Nada Personal: Reporte de Derechos Humanos Sobre la Aplicación de la Anticoncepción Quirúrgica en el Perú 1997–1998* [Nothing Personal: Report on Human Rights in the Use of Surgical Sterilization in Peru] (Lima: CLADEM, 1999). In 1995, as he started his second term of office, Peruvian President Alberto Fujimori declared that women would henceforth be the "masters of their own destiny" and announced measures to "democratize" family planning services. That same year, Peru's Congress modified the National Population Law to include voluntary surgical sterilization as part of the options provided by the public health system. The legislation clearly mandated that sterilizations should be undertaken only as a result of an individual's free and informed choice, absent any pressures or rewards. However, in 1996 some local women's groups and human rights organizations began to raise concerns about abuses in the program, and in 1997, the first complaints reached the Ombudsman's office. At the same time, it became known that the government was exerting pressure on public health officials to reach certain regional numerical targets for sterilizations. Most starkly, it appeared that sterilizations were being forced upon poor women in rural areas.
72. See American Convention, note 33, art. 4; Convention of Belém do Pará, note 6, arts. 3, 4.
73. See American Convention, note 33, art. 5; Convention of Belém do Pará, note 6, arts. 1, 4, 7.
74. See Protocol of San Salvador, note 66, art. 10; Convention of Belém do Pará, note 6, art. 2; CEDAW, note 26, art. 12.
75. See American Convention, note 33, art. 7; Civil and Political Rights Covenant, note 26, art. 9; Universal Declaration, note 65, art. 3.
76. See Convention of Belém do Pará, note 6, art. 4.
77. See American Convention, note 33, art. 1.
78. See American Convention, note 33, art. 25; Convention of Belém do Pará, note 6, art. 4.
79. As part of the settlement, the Peruvian government has agreed to indemnify the victim's surviving husband and seven children and to conduct an in-depth investigation punishing those responsible for the violations of Peruvian and international legal standards. However, to date the Peruvian government has failed to implement the terms reached in the agreement.
80. The Center for Reproductive Rights & University of Toronto International Program on Reproductive and Sexual Health Law, *Bringing Rights to Bear*, note 26, p.146.
81. According to Article 136 of the Penal Code of the state of Baja California, rape is one of the permissible exceptions to the criminal law on abortion and Ramírez was therefore entitled to a legal abortion.
82. See American Convention, note 33, art. 11; Convention of Belém do

Pará, note 6, art. 4; Universal Declaration, note 65, art. 12; Civil and Political Rights Covenant, note 26, art. 17.

83. See American Convention, note 33, art. 7; Civil and Political Rights Covenant, note 26, art.9; Universal Declaration, note 65, art. 3.

84. He exaggerated and falsified the risks associated with abortion, yet neglected to mention the risks of carrying a pregnancy to term for an adolescent. The director of the hospital also told her that if Ramírez died, it would be her fault. See Grupo de Información en Reproducción Elegida (GIRE), *Paulina, en Nombre de la Ley* [Paulina, In the Name of the Law] (Coyoacán, México: Grupo de Información en Reproducción Elegida, 2000). Providing Ramírez with inaccurate information on the risks of abortion without giving her information on the risks of adolescent pregnancy endangered the minor's right to physical integrity.

85. See American Convention, note 33, art. 1.

86. See id., art. 8.

87. The Mexican government clearly violated its obligation to respect and guarantee Ramírez's right to health by refusing her right to an abortion and, furthermore, by forcing her to carry to term an unwanted pregnancy that disrupted her well-being and forced her to face the risks of an adolescent pregnancy, a circumstance which in itself threatens the life and health of a minor.

88. See American Convention, note 33, art. 11; Convention of Belém do Pará, note 6, art. 4; Universal Declaration, note 65, art. 12; Civil and Political Rights Covenant, note 26, art. 17.

89. Finally, the Mexican authorities violated Ramírez's fundamental right to freedom of belief and religion by imposing their personal religious convictions on Ramírez and thereby abandoning their role as public servants of a secular state that is bound to respect her right to make decisions about her own body in accordance with the law.

90. Alaide Foppa is a women's rights organization based in Baja California. It has worked as local counsel to Paulina since 1998. Epikeia is a human rights organization based in Mexico City.

91. Throughout the process, the co-petitioners in the case have worked closely with Mexican based NGOs in an effort to increase and further an understanding of the case's international advocacy strategy. The strategy has been advanced through the use of the media, including press, radio and television coverage, as well as participation in international conferences. See GIRE, *Paulina, in the Name of the Law*, note 84.

92. The Center for Reproductive Rights & Facultad de Derecho Universidad de los Andes, *Cuerpo y Derecho*, note 14, p. 447, n. 221.

93. In Peru, abortion is legal for therapeutic reasons. However, because Peru has failed to adopt clear regulations, women whose health is endangered by such pregnancies are left at the mercy of particular public officials. In this case, despite clear medical standards to the contrary, the hospital's director determined that Karen's case did not fit the therapeutic exception and refused to permit her to have the procedure.

94. The petition was filed by co-petitioning NGOs: CLADEM, DEMUS, and The Center for Reproductive Rights.

95. Due to the confidential nature of the strategy and given that these cases are at the initial stages in the process, we are unable to provide

more detailed information.

96. For example, the petitioners in the MM case wanted to highlight violations to the right to access nondiscriminatory, noncoercive and quality reproductive health services. MM's case was illustrative of the violations, including sexual violence, experienced by poor women in Peru when accessing health services. The Mestanza case also offered an opportunity to show how the Peruvian government was implementing a family planning policy in ways that violated women's human rights. The case offered a further opportunity to advocate for the elimination of demographic goals of the reproductive health and family planning program.

97. For a full description and analysis of concrete victim reparations under international law, see J.M. Pasqualucci, "Victim Reparations in the Inter-American System," note 38. See also Dinah Shelton, *Remedies in International Human Rights Law* (Oxford: Oxford University Press, 1999).

98. The Center's petitions have often incorporated general recommendations and jurisprudence from the United Nations Treaty Monitoring System and the European Court of Human Rights to support specific arguments.

99. In this regard, the Mestanza case and the reports on coercive sterilization in Peru, done by regional organizations such as CLADEM, as well as the Center's strategy efforts to publicize these violations, were key in bringing international awareness to the issue.

100. Center for Reproductive Rights & Facultad de Derecho Universidad de los Andes, *Cuerpo y Derecho*, note 14, p. 52.

101. *Toonen* v. *Australia*, note 40.

102. For example, *Toonen* v. *Australia*, note 40, was brought before the Human Rights Committee by Australian activists that sought to repeal domestic sodomy laws.

103. The lower federal court of the state of Cordoba issued an injunction ordering the Ministry of Health to abstain from implementing the National Reproductive Health Law No. 25.673 federally until a final decision is issued.