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TOWARDS EQUALITY FOR WOMEN

Progress in legislation since the adoption  
of the Convention on the Elimination  
of All Forms of Discrimination  
against Women

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ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN

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## ABSTRACT

Over the last ten years, the region has made substantial progress in regard to the adoption of legislation aimed at ensuring the integration of women into economic and social development. Particular attention has been paid to establishing equality for women as a constitutional right, eliminating discriminatory measures, creating and strengthening women's advocacy units at the national, provincial and municipal levels, passing special laws to deal with specific problems and drawing up national plans of action.

In this report, the author emphasizes the progress that has been made and proposes guidelines for further action. The different international and regional instruments that serve as a framework for action are reviewed, bearing in mind the fact that they are binding for States that have ratified them and/or participated in drafting them. An analysis is also made of the progress that has been achieved in regard to legislation, based on a broad definition of discrimination and a comprehensive approach to the legal system. Although this paper is organized according to the legal texts that govern rights, behaviours and procedures, the institutions that apply the laws, social standards and customs are also discussed, and an assessment is made of public awareness of the legislation in question.

The study clearly shows that there is global and regional consensus on the priority issues addressed, and above all, on the usefulness of the Convention on the Elimination of All Forms of Discrimination against Women as a binding legal instrument that provides sufficient grounds both for taking legal action and for amending legislation in order to facilitate, accelerate and orient the process of change. Consequently, it is recommended that greater use be made of the Convention in appealing directly to the different branches of government, particularly the courts in each country. Doing so can serve as a means for generating jurisprudence not only in regard to individual cases but also in order to effect a gradual change in national legal systems. This paper provides information and justification for following such a course of action.

It is also stressed that the Convention should be borne in mind in connection with state reform efforts, economic integration agreements and international cooperation programs. It can be a useful and timely instrument for achieving the goals sought.

## I. INTRODUCTION

From the signing of the United Nations Charter in 1945 and of the Universal Declaration of Human Rights in 1948, to the Fourth World Conference on Women (Beijing, 1995), the international community has been concerned with the different issues involved in the overall question of the equality of men and women (women's rights, discrimination against women). Thus, there can no longer be any discussion as to whether or not this question must be addressed as a prerequisite to progress.

It is often the case, however, that laws are still in force that hinder efforts to achieve equality for women. In other cases, only lip service is paid to this cause, but nothing is done to promote it effectively.

This is why, in an analysis of progress in passing legislation to combat discrimination against women, a comprehensive approach must be taken to the legal system as a whole. A purely formal study of legal texts might lead to the conclusion that no discriminatory laws remain, since most Constitutions establish equality for men and women, and most explicitly discriminatory legislation has been eliminated. However, the legal system is not made up only of laws recognizing rights and regulating behaviours and situations; it also includes the procedures and institutions that implement the law. Social standards, customs and public awareness are a fundamental component of this system as well.

Another crucial element in this analysis of the legislative progress is the conceptual framework within which discrimination is to be defined. How broad or how narrow this definition is will determine whether the study should include legal measures which may not be couched in discriminatory terms but which, because of what they do *not* say, may have a discriminatory effect when applied. Thus, if no law has been enacted to deal with certain specific problems, or if a right is recognized but no effective procedures or institutions have been set up to enforce it, the legal system is discriminatory. As far as the culture itself is concerned, there is discrimination when people are not aware of the rights of women, and this is particularly true in the case of the officials who are responsible for enforcing women's rights.

Amending existing legislation to eliminate discriminatory forms of speech is only the first step towards achieving gender equality in the legal system.

A review of the international and regional legal framework is therefore essential to an understanding of the progress that has been made in the legal systems of the region.

## **II. INTERNATIONAL LEGAL FRAMEWORK**

### **A. INTERNATIONAL INSTRUMENTS**

The United Nations Charter was the first legal instrument to clearly and unequivocally affirm the equality of all people and expressly refer to gender as a source of discrimination. Consequently, it has served as the basis for all subsequent international legal instruments relating to women, and marks the beginning of a significant change in political discourse. Topics that had always been viewed as private matters—the status of women as wives, housekeepers and mothers— began to be discussed in a global context. This gave rise to activities such as the compilation of legal texts pertaining to women's rights and research studies on the status of women throughout the world. These studies revealed that discrimination against women was prevalent throughout the world. In 1945, only 30 of the 51 original signatories of the United Nations Charter allowed women to vote. The United Nations served as a catalyst for the promotion of laws that would grant women equal rights with men. These efforts called for a new institutional structure, and in 1946, the Commission on the Status of Women was created. This Commission worked for the inclusion of provisions on the equality of women in the Universal Declaration of Human Rights, adopted in 1948.

The Commission on the Status of Women was created to draw up recommendations and prepare reports on the promotion of women's rights in the political, economic, civic, social and educational arenas, as well as on other urgent problems relating to women's rights. In 1987, its mandate was extended to include advocacy on issues of equality, development and peace; to monitor the enforcement of internationally agreed measures and to review progress at the national, subregional and regional levels. The Commission's mandate does not include investigation of individual complaints or the implementation of measures to ensure observance of women's rights.

The creation, in 1946, of the Commission on Human Rights and the Commission on the Status of Women, and the adoption, in 1948, of the Universal Declaration of Human Rights, laid the foundations for all future efforts to promote equal rights for women.

The process of identifying the rights of women necessarily began with studies on discriminatory practices that were already in place, both in law and in practice. The individual country reports produced as a result of this research provided the basis for developing the principles that were eventually incorporated into international law by means of treaties and conventions.

These instruments were drafted with the participation of other United Nations agencies, including the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), as well as intergovernmental organizations such as the Inter-American Commission of Women. At the national level, governments were urged to develop legislation and carry out programmes on civil and political rights of women, access to education and training, employment, violence against



women and others. From 1963 to 1975, many governments responded by adopting laws and implementing protection programmes.

As a result of this effort, in 1967 the General Assembly adopted the Declaration on the Elimination of Discrimination Against Women. Items such as policy making, attitude change, political commitment and institutionalization were placed on the agenda.

Although the Declaration was not a legally binding instrument, it represented an important step forward towards the establishment of a legal foundation for equal rights. Its practical effect was limited, however, since reports on implementation of the Declaration were voluntary and the level of response on the part of the countries was quite low.

The proclamation of 1975 as International Women's Year and the organization of the first World Conference of the International Women's Year, held in Mexico that same year, helped mobilize women throughout the world. It also helped expand relations between the United Nations and the non-governmental organizations (NGOs), and led to the dissemination of information on the issues of equality, development and peace, which were the main topics selected for discussion in subsequent years.

Beginning in 1976, public awareness of the role of women changed significantly.<sup>1</sup> Statistical studies sponsored and published by the United Nations showed that the granting of equal rights to women had a definite influence on the well-being of society. Disregard for women's rights was identified as both a cause and an effect of underdevelopment, and was found to be closely related to problems of poverty, overpopulation, illiteracy, malnutrition and poor health.

A significant step was taken in the legal sphere as a result of this search: in 1979, the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women. This text is indeed the Magna Charta of women's rights, and was the first legal instrument to define discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

It is particularly important to note that the Convention requires governments to eliminate discrimination against women not only in public life but in private life as well. At the same time, the Convention affirms the fundamental role played by education in the empowerment of women.<sup>2</sup>

In 1980, the World Conference of the United Nations Decade for Women: Equality, Development and Peace was held in Copenhagen, to reaffirm the importance of the Convention. This Conference adopted 48 recommendations, including appeals for more stringent measures to ensure respect for women's rights.

A major step forward was taken in 1985, with the holding of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace. This Conference, held in Nairobi, marked the end of the Decade for Women, and provided an opportunity to review achievements, overcome obstacles and adopt measures for attaining all the goals of the decade. The Conference produced a report

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<sup>1</sup> In this regard, see María Nieves Rico, "Development and gender equity: an uncompleted task", *Mujer y desarrollo series*, No. 13 (LC/L.767), Santiago, Chile, 1992, pp. 13 ff.

<sup>2</sup> See: *The United Nations and the Advancement of Women, 1945-1996* (United Nations Publication, Sales No. E.96.I), para. 167, in which the term "on empowering women" is used in reference to the role assigned to education in the Convention.

entitled “Nairobi Forward-looking Strategies for the Advancement of Women”, which stresses that given the fact that different countries are at different stages of development, they should be allowed to choose their priorities based on their own development policies and resources. Specific measures are recommended in key areas, including jobs, health, education, nutrition and legislation. The report of the Secretary-General to the Commission on the Status of Women at its 1990 session pointed out that no progress had been made in the priority areas identified in Nairobi and that for the average woman who was poor, development had been a dream.<sup>3</sup>

It should be noted that the aforementioned report did indicate that in the case of Latin America and the Caribbean, substantial progress had been made in the area of legislation. By the date of the report, more than three-fourths of the countries had ratified the Convention, and most of them had adopted legislation relating to its application, including the creation of offices, departments or divisions to improve the status of women by developing policies aimed at ensuring equal treatment.

In January 1995, another progress report on implementation of the Nairobi Strategies was presented. This report mentioned new opportunities that had opened up for the participation of women, who were recognized as agents of change and as a valuable resource without which development would be hampered. It was noted, however, that in many regions, the new economic scenario and the increasing participation of women in the work force had not improved their status.

Since 1986, the Organization’s efforts to improve the status of women have been directed towards strengthening the agencies that were created to support women. International conferences and meetings have provided a vehicle for addressing the topic in different areas of concern, such as human rights, children’s programmes, population and social development.

In 1990, the World Summit for Children established goals for promoting health, education and nutrition for women and their children. In 1992, the United Nations Conference on Environment and Development called on countries to integrate women into the solution of environmental problems and the promotion of sustainable development. At the seventeenth annual meeting to commemorate International Women’s Day, held by the United Nations on 8 March 1992, it was pointed out that although there was greater respect for human rights and freedom throughout the world, the advancement of women had proceeded at a slow pace and that, although most countries had adopted legal measures to establish equality, de facto discrimination still existed.

In 1993, the World Conference on Human Rights stated that the question of women’s rights was a central element of the human rights agenda, and stressed the importance of addressing the problem of violence against women. In 1993, the General Assembly adopted the Declaration on the Elimination of Violence Against Women, and appointed a Special Rapporteur to gather information and recommend measures to be taken at the national, regional and international levels to eliminate violence against women, as well as the causes of such violence.

In a preliminary report issued in November 1994, it is recommended that an optional protocol be added to the Convention, in order to allow individual victims of violence to lodge a complaint, once all local remedies had been exhausted.

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<sup>3</sup> *Ibid.*, para. 197.

In 1994, the International Conference on Population and Development adopted an agreement on the connection between population issues and the advancement of women through education, health and nutrition.

In 1995, the World Summit for Social Development recognized the role of women as a fundamental pillar in the eradication of poverty. This idea was ratified six months later at the Beijing Conference.

In the reports prepared for the United Nations Conference on Human Settlements (Habitat II), held in 1996, it was stressed that policies on housing and human settlements, in both rural and urban areas, should take into account the experience and the needs of women.

Without a doubt, the culmination of all these international efforts was the Beijing Conference (Fourth World Conference on Women) and the NO Forum on Women that was held parallel to it. A new concept of empowerment of women was adopted unanimously. This concept is set forth in the Beijing Declaration and the five-year Platform for Action, a programme of action to the year 2000 which identifies 12 critical areas that represent the main obstacles that have hindered the advancement of women since the Nairobi Conference. These critical areas are the following: women and poverty, unequal access to education and training, unequal access to health services, violence against women, effects on women of armed conflicts, inequalities in the exercise of power and decision making, inadequate mechanisms to promote the advancement of women, inadequate protection and promotion of the human rights of women, unequal access to the media, inequality in the management of resources to safeguard the environment, and persistent discrimination against girls and violation of their rights. Each of these areas is discussed in the Platform, and actions are proposed in connection with each one. A comparison with the Nairobi Strategies and with the regional programmes of action (for 1977 and for 1995-2001) shows that the proposals for action are repetitive, to a greater or lesser extent, and that they are all included in the framework of the Convention.

The importance of Beijing lies mainly in the fact that it shows that women have learned how to organize themselves at the level of governments, parliaments and NGOs, and that they are now know how to articulate their demands.

## **B. LEGAL NATURE OF THE INTERNATIONAL INSTRUMENTS**

### **a) *Charter of the United Nations***

As mentioned above, the Charter of the United Nations is the binding legal instrument that has served as the basis for all international legislation on issues affecting women.

### **b) *Convention on the Elimination of All Forms of Discrimination against Women***

This Convention is the main binding international legal instrument designed to ensure human rights for women. It embodies internationally accepted principles on the rights of women, and clearly establishes that they are applicable to women of all societies. It is the most complete legal framework in this area and as such, it is an adequate basis for achieving the objective of equality before the law in all countries.

Although the Convention was signed in 1980, it only entered into force in 1981, when 20 ratifications instruments had been received.

By March 1996, 152 of the 185 States Members of the United Nations had ratified the Convention; however, more than 40 States have entered reservations on eleven different articles. Most of the reservations refer to the role of the International Court of Justice in regard to the arbitration of disputes and to provisions on the elimination of discrimination in marriage and the family (art. 16).

The Convention is a human rights treaty and as such, it is aimed at the establishment of a common public order, the subjects of which are not the States themselves but the people who live in their territories. This special focus must be borne in mind in any study regarding the incorporation of internationally protected rights into national legislation and its enforceability in the national courts.

The Convention requires States that ratify it to respect and guarantee the right of women to exercise and enjoy human rights on an equal footing with men.

The obligation to respect these rights means that the State, acting through its different branches and officials, must not violate the rights that are recognized in the Convention. The obligation to guarantee these rights means that the State must take such action as may be necessary to ensure the enjoyment and exercise of these rights. It is not sufficient for the State to refrain from any behaviour that would violate these rights; rather, it is required to take positive action. From this standpoint, the first obligation of the State is to ensure that the international norms are observed within the territory under its jurisdiction. This may be accomplished by making adjustments in domestic legislation. The State must also create the necessary conditions for the exercise of human rights by removing all those obstacles that are not created by the laws in force but rather by the prevailing social structure and culture, and it must take special measures to provide equal opportunities for women. The Convention clearly establishes that is not enough merely to adopt new laws; governments must ensure that women are able to exercise the rights that have been established by law.

To gain a better understanding of the legal nature of the Convention, it is important to bear in mind that international human rights law is an ideological law, inasmuch as it is based on the assumption that the attributes deemed to be inherent to human dignity are superior values which must be recognized by the State as inviolable. Human rights law is a protective law, and the purpose of human rights treaties is to protect these rights for the good of all individuals who are under the jurisdiction of the States Parties.

International human rights laws supplement domestic laws, inasmuch as it is the Constitution itself which provides the basis for the affirmation and protection of human rights with respect to the State. International law has a role to play in this regard whenever it is found that in actual practice, domestic resources do not effectively protect the victims of human rights abuses. An offence against the higher values of human dignity affects all the people as a whole, no matter where the violation is committed.

Under the human rights conventions, the State assumes the duty of providing domestic resources to ensure the protection of human rights. This means that the substantive elements of international human rights law must be integrated into national law; however, when it comes to the application of protective measures, recourse to international remedies is available only if domestic measures fail or have been exhausted.

The situation has changed rapidly, however, and now the subjects of protection have more opportunities to resort to international institutions through complaint systems that have opened up new prospects in contemporary international law. At present, work is in progress

on the drafting of international procedural norms (an optional protocol) in order to provide for the right of individuals to seek redress.

In most countries of the region, human rights treaties have the same rank as the Constitution. Hence, the Convention has constitutional rank; even more important, however, is the fact that this status does not stem from the fact that equality of women and men is enshrined by the Convention but from the principle that the equality of all human beings is inherent to the human condition. The Convention and the ratifications thereto do not create equality for women, they merely recognize it.

This truth is fundamental to the actionability of the rights set forth in the Convention, i.e., the fact that lawsuits to enforce these rights may be brought before the courts of justice. In countries where human rights treaties have constitutional status, there should be no reason why the treaties could not be applied directly by the courts or by administrative officials (Venezuela, art. 50; Chile, art. 5; Argentina, art. 75, para. 2). Problems can arise, however, when certain clauses of the Convention cannot be applied under domestic law until special legislation is passed or special administrative measures are adopted. This might be the case, for example, with regard to the right to equal job opportunities (Convention art. 11); although special legislation is required to protect this right, a woman who has been denied this equal opportunity may claim it based on the Convention.

Thus, some constitutions (Venezuela, art. 50) specifically provide that in the area of human rights, the absence of specific legislation does not mean that the rights cannot be exercised. In this regard, whenever the Convention refers to the law, this should be interpreted in the most favourable sense, in order to allow for automatic application.

It is a doctrine of law that legislation enacted to ratify a human rights treaty provides sufficient legal grounds for a court to take such steps as may be necessary to effectively guarantee these rights. In principle, it is enough that the right be established even without legislation to regulate the application of the treaty in question, inasmuch as such regulations can be supplied in specific cases by a court decision.<sup>4</sup>

It is worth pointing out—and with respect to the Convention, this is very important—that there is no reason for not ensuring the observance of human rights through the development of jurisprudence based on judicial interpretation and application of the relevant treaties. The Convention contains several articles requiring States to take such legislative, administrative or other measures as may be necessary to enforce the rights that are recognized by the Convention. Hence, legislative measures are only one type of means that may be used to enforce the Convention, inasmuch as provision is made for other measures as well. Court decisions would clearly fall within this latter category; the Judiciary is just as much a part of the State as the Parliament and the Government; consequently, the courts are suitable vehicles for enforcing the Convention, particularly in light of the fact that on matters of human rights, the courts have the last word.<sup>5</sup>

**To summarize: The Convention is a treaty that recognizes certain rights which are inherent to all human beings, including the right to equality, and it should therefore be considered an integral part of the domestic law of the countries that have ratified it. It has constitutional rank in those countries that grant constitutional status to human rights treaties, and even in those countries whose Constitution does not**

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<sup>4</sup> Pedro Nikken, *Código de Derechos Humanos*, Caracas, Editorial Jurídica Venezolana, 1991, p. 52.

<sup>5</sup> *Ibid.*

**contain an explicit provision to this effect, the Convention still has constitutional status because equality is a right that is inherent to all human beings.**

**Consequently, the courts are in duty bound to process complaints that are brought in connection with the protection of the rights set forth in the Convention, given that conventions are automatically enforceable in those countries whose constitution expressly provides that the exercise of human rights is not contingent upon the existence of legislation dealing specifically with such rights.<sup>6</sup>**

Compliance with the Convention is monitored by the Committee on the Elimination of Discrimination Against Women, which began meeting in 1982. As stipulated in article 18, the main objective of the Committee is to consider reports sent by governments on legislative, judicial, administrative and other measures that have been taken to comply with the Convention. In addition, the Committee prepares reports on factors and difficulties that hinder full compliance with the obligations set forth in the Convention.

States are required to report on how they have implemented the Convention every four years. The recommendations made by the Committee and its interpretations of the Convention are not binding, but they do help influence governments.

The Committee's mandate, like that of the Commission on the Status of Women, excludes the investigation of individual cases of infringement of the rights it protects. Since 1996, the Commission on the Status of Women has been working on an optional protocol that would allow for individual complaints. Women can, of course, follow the procedures put in place by the Commission on Human Rights, but very few women's rights cases have been settled by that Commission.

### **C. RESOLUTIONS ADOPTED BY INTERNATIONAL FORA**

In legal doctrine, there are different views regarding the importance of resolutions adopted by international fora. One view is that a resolution which merely interprets a provision of the United Nations Charter should be considered binding, inasmuch as the resolution has the same legal status as the provision it interprets. This doctrinal position is very clear in regard to the Universal Declaration of Human Rights.

Another view is that since a resolution expressly states the desire of those who adopt it, any violation of the terms of that resolution constitutes a violation of the United Nations Charter, inasmuch as the resolution represents an international commitment undertaken by the States that voted for it.

A third position is that a vote of the General Assembly, along with other manifestations, can be taken to represent the practice that is required in order to create a rule under customary law, bearing in mind that it expresses the legal opinion and the objective behaviour of States.

In conclusion, it may be said that in and of themselves, resolutions do not automatically create obligations for States, but they do set forth criteria for determining their legal status and, in any event, they play an important role in providing guidance.

We realize that, as far as women's rights are concerned, resolutions such as the Nairobi Strategies, the Declaration on the Elimination of Violence Against Women, the Beijing

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<sup>6</sup> Nikken, *op. cit.*, p. 57, and *La protección internacional de los derechos humanos*, Instituto Interamericano de Derechos Humanos, Madrid, Editorial Cintas, S.A., 1987, pp. 272-308.

Platform for Action and the resolutions adopted by international conferences and meetings, including the World Summit for Children, the Earth Summit, the International Conference on Population and Development and the World Summit for Social Development, represent appeals that reiterate and expand on the provisions of the Convention. They provide guidelines for action, but above all, they draw attention to the fact that the provisions of the Convention have not yet been fulfilled. The Convention is more than adequate as a legal framework, but the process of implementing it has been hindered because far-reaching cultural changes would be required in order to do so; hence the need to reiterate the commitment of those States that have signed and ratified it.

### III. APPLICATION OF THE INTERNATIONAL LEGAL FRAMEWORK IN THE REGION

#### A. THE REGIONAL PROGRAMME OF ACTION AND ITS LEGAL STATUS

In 1975, when the World Plan of Action was adopted, the States Members of the United Nations decided to draw up regional guidelines in order to make allowances for differences among regions.

In 1977, the member countries of ECLAC adopted the Regional Plan of Action for the Integration of Women into Latin American Economic and Social Development, and created a permanent governmental forum, the Regional Conference on the Integration of Women into the Economic and social Development of Latin America and the Caribbean. Every three years, this Conference evaluates progress in the implementation of the Regional Plan of Action and considers future lines of action.

As stated in the introduction to this Plan of Action, its purpose is “to present a minimum action programme, within the framework of principles of justice, equality and respect for State sovereignty, aimed at promotion of equality of opportunity and responsibility for women in the common effort to overcome the obstacles which hinder the development of both men and women as individuals and as members of a society.”

A new regional programme for the period 1995-2001 was adopted at the Sixth Regional Conference. The relevant resolution indicates that the new action programme does not replace any of the existing instruments, but rather supplements them and takes into account the changes that have taken place in the region and their effect on the status of women.

What is the legal status of these plans? How are they related to the world plans?

These plans fulfill, at the regional level, the same role as the world plans. At the same time, they represent contributions to the world conferences, which in turn enrich the regional plans of action.<sup>7</sup>

Actually, as mentioned above, both the world and the regional plans represent appeals to States, reminding them of the need to comply with the treaties —particularly the Convention— that they have signed and ratified, and offering them guidelines for implementation.

**They provide legal organizational frameworks, inasmuch as they call on States members to meet, to evaluate situations and monitor progress, and to present proposals. They are not binding, however; rather, their importance stems from the fact**

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<sup>7</sup> Economic Commission for Latin America and the Caribbean (ECLAC), Regional Programme of Action for the Women of Latin America and the Caribbean, 1995-2001. Rationale of the Programme (LC/G.1855), Santiago, Chile, 1995.



**that they are the product of an agreement and that they provide a tool for monitoring progress, which in turn encourages countries to act.**

The purpose of the Regional Programme of Action for the Women of Latin America and the Caribbean, 1995-2001 is to expedite the achievement of gender equality and the complete integration of women into the development process, together with the full exercise of citizenship in the framework of sustainable development with social justice and democracy. Eight strategic areas are outlined for the achievement of this objective, as follows:

- Gender equity
- Economic and social development with gender perspective: women's equitable participation in the decisions, responsibilities and benefits of development
- Elimination of poverty among women
- Women's equitable participation in decision-making and in the exercise of power in public and private life
- Human rights, peace and violence
- Shared family responsibilities
- Recognition of cultural plurality in the region
- International support and cooperation

A diagnostic study of each area is included, indicating the obstacles encountered and progress made, as well as the strategic line of action, the strategic objective and the strategic actions that are to be pursued.

An analysis of the content of the Programme clearly shows that it is based on the Convention and other international agreements, with a few adjustments to take into account the situation within the region. Its strength lies in the fact that it reiterates at the regional level the provisions of the Convention, thus providing a tool for monitoring progress at the regional level.

## **B. LEGISLATIVE ADVANCES IN THE REGION**

### **1. Introduction**

The analysis of legislative advances follows the order of the strategy areas of the Regional Plan of Action. Since this report focuses on legal issues, the discussion deals with the relevant legal aspects of each area. Legislative advances are noted, bearing in mind those strategic objectives and actions which could be strengthened by enacting legislation or legal measures at different levels. This is why the report does not cover all the strategic objectives and actions set forth in the Regional Plan of Action.

It should also be noted that the strategic actions envisaged in the different areas sometimes overlap; this is reasonable, since they all contribute to the central objective of the Regional Plan of Action.<sup>8</sup>

For the above reasons, and in order to avoid repetition, only the most important and relevant actions envisaged in each area are discussed.

Five countries have been chosen for this study, namely: Argentina, Chile, Costa Rica, Mexico and Venezuela. These countries were chosen on the basis of the following criteria: availability of information, geographical representation, at least in some subregions of Latin America, and feasibility of discussing certain specific topics in greater detail.

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<sup>8</sup> See III.A, above.

## 2. Gender equity

In this area, the strategy line is to work for the adoption of a gender approach in development planning and in policies and decisions on social and economic matters, in order to overcome the inequities between men and women that are caused by the persistence of discriminatory cultural frameworks and economic and social practices. The actions envisaged are all aimed at creating awareness of the gender approach.

In regard to this strategy, progress has been made in regard to the ratification of the Convention and adoption of relevant constitutional amendments, as well as the approval of plans to promote equality.

Costa Rica ratified the Convention in 1984, and in 1990, it adopted the Act on Promotion of the Social Equality of Women (*Ley de Promoción de la igualdad social de la mujer*). However, the Costa Rican Constitution, adopted in 1949, uses the term “man” as synonymous with “human beings”; a constitutional amendment that would eliminate that discrimination is on the legislative agenda.

In 1974, before it ratified the Convention, Mexico amended article 4 of its Constitution in order to establish full equality of men and women before the law.

Argentina ratified the Convention in 1985, and its Constitution, adopted in 1853, recognizes the equality of all inhabitants before the law. This constitutional principle is the basis for establishing equality of men and women and recognizing this equality in the legal, political, economic, social, civil and cultural spheres.

Chile ratified the Convention in 1989, but its Constitution does not expressly establish the principle of equality of men and women. The main objective of the Plan on Equal Opportunities for Women, 1994-1999 (*Plan de igualdad de oportunidades para las mujeres, 1994-1999*) is to stress the need for this principle to be established explicitly and for gender discrimination to be expressly prohibited in regard to job opportunities and working conditions, as well as the need for a constitutional rule establishing the principle of equal pay for equal work. Both these amendments are currently under discussion in the Congress.<sup>9</sup>

Venezuela ratified the Convention in 1982, and during that same year, it passed a very significant amendment to the Civil Code, incorporating into the Code the principles set forth in the Convention. In 1993, the Equal Opportunities for Women Act (*Ley de igualdad de oportunidades para la mujer*) was passed; its purpose is to guarantee that women will be able fully to exercise their rights and to develop their personality and skills. The Venezuelan Constitution, adopted in 1961, enshrines the principle of the social and juridical equality of all Venezuelans without discrimination in regard to race, sex, religion or social situation.

The effort to ensure gender equity has led to the adoption, in several countries of the region, of “equality plans”; some of these are included in the “government plans”. Costa Rica, Chile, Argentina and Mexico have all adopted equality plans, under different names.

What is the legal significance of these plans? It might be said that **they are frameworks which provide guidelines for action and as such, they are binding on the different departments of public administration.**

In this regard, the Costa Rican Plan on Equal Opportunities for Women and Men, 1996-1998 (*Plan para la igualdad de oportunidades entre mujeres y hombres, 1996-1998*) is defined, in the Introduction, as a public policy tool for achieving gender equity which outlines

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<sup>9</sup> At its session of 8 April 1997, the Chamber of Deputies unanimously agreed to expressly establish the principle of equality of men and women.

in a harmonious and visible manner the measures to be taken by the public administration over the next three years. It also points out that, although a governmental plan of action is only binding on the different departments of public administration, collaboration with the other branches of the State, as well as with the organizations of civil society, will make it possible to extend and multiply its effect, and it will thus have a far-reaching impact on society and culture. The Plan, which was drawn up by the professional staff of the public institutions that will be responsible for implementing it, clearly establishes the specific responsibilities of each institution and includes a timetable for execution.

In Mexico, one of the priority objectives of the National Women's Programme, 1995-2000 (*Programa Nacional de la Mujer, 1995-2000*) is to promote the full and effective participation of women in the economic, social, political and cultural life of the country, with a view to establishing the conditions necessary for women to share in decision making and in the responsibilities and benefits of development on an equal footing with men. The strategies to be followed in order to achieve equality are set forth in the National Women's Programme 1995-2000, under the title "Alliance for Equality" (*Alianza para la igualdad*). The Introduction to this document states that the Government of the Republic is presenting the Programme in order to promote the formulation, organization, coordination and implementation of measures aimed at extending and increasing the participation of women in the development process on an equal footing with men.

In 1993, Argentina adopted its first Plan on Equal Opportunities for Women 1993-1994 (*Plan de igualdad de oportunidades para las mujeres, 1993-1994*). In it, the national Government set forth its policies for the 1993-1994 biennium and urged society as a whole to undertake to carry it out as a programme of its own. In 1994, the National Women's Council (*Consejo Nacional de la Mujer*) drew up a second Plan, for 1995-1999, as part of the Government's Five-Year Plan. As noted in the introduction, the Plan provides a frame of reference to guide the action of different agents and to join the efforts and resources of different spheres of society. It is to be implemented by the different ministries, in their respective areas of competence, with technical advice and coordination being provided by the National Women's Council (*Consejo Nacional de la Mujer*).

From the standpoint of its legal status, the document is described as a set of guidelines, and states that through the guidelines set forth in this national programme, the Government of the Republic will work to improve the status of women in society, bearing in mind its role as promoter and coordinator of initiatives aimed at achieving this purpose. However, article 2 of the decree establishing the programme (enacted in August 1996) stipulates that the different divisions of the federal government are required to carry out the Programme and that it is also obligatory for parastate entities.

Chile has adopted a Plan on Equal Opportunities for Women, 1994-1999 (*Plan de igualdad de oportunidades para las mujeres, 1994-1999*). The introduction to the Plan states that it is to be a part of the Government's programme, and that it is designed to be a tool for designing and implementing policies. It also contains regulations and proposals, i.e., it sets standards and places limits on the action of the Senate and of society, while establishing guidelines and incentives for action. It is a State initiative and represents a responsibility that the State undertakes.

**The fact that progress has been made in the area of equity to the point where documents setting forth frameworks for action have been drawn up and adopted, and the fact that they have been included in national government plans shows that the region is making significant gains towards the achievement of gender equity.**

### 3. Economic and social development with a gender perspective

This strategy line is aimed at achieving equitable participation of women in the decisions, responsibilities and benefits of development. The actions proposed fall under six strategic objectives, as follows:

**Objective 1:** To create or strengthen institutions, at the highest level, to formulate, coordinate and evaluate public policies aimed at achieving gender equity.

Almost all the countries have created women's bureaus, and there has been a trend towards greater conceptual depth and institutional strengthening.

In 1986, Costa Rica's General Directorate for Women and the Family (*Dirección General de Mujer y Familia*) was changed into the National Centre for the Development of Women and the Family (*Centro Nacional para el Desarrollo de la Mujer y la Familia*). Under the law creating it, this new body was assigned to serve as the main national body concerned with women's issues, and it was granted independent legal status and its own equity capital, although it was to operate under the Ministry of Culture, Youth and Sports. The equality plan for 1996-1998 calls for the Centre to be raised to a higher legal and administrative status. This Centre is responsible for coordinating the work of all governmental departments that carry out plans, programmes or projects relating to women. In 1990, other bodies were created to monitor enforcement of the promotion of women, including the Office of the Ombudsman (*Defensoría de los Habitantes*) and the Delegation for Women (*Delegación de la Mujer*). In May 1994, ministerial women's offices were set up in all ministries and autonomous institutions of the country. These offices, working in coordination with the Centre for Women and the Family, were responsible for operations carried out in the institutions to implement national women's policies designed by the Centre. The ministerial women's offices will need to be backed by special legislation pertaining to their institutional structure, in order not to disappear in future.

In March 1991, Argentina created the Coordinating Council on Public Policy for Women (*Consejo Coordinador de Políticas Públicas para la Mujer*), for purposes of implementing the Convention. In 1992, this agency was transformed by decree into the National Women's Council (*Consejo Nacional de la Mujer*). In 1993, the Cabinet of Women Presidential Advisors (*Gabinete de Consejeras Presidenciales*) was created; this group advises the President and discusses with his ministers positive measures for promoting equality. The Council has its own budget and has promoted the creation of departments of women's affairs (*Área Mujer*) in the provinces, as well as the creation of regional councils. Sixteen of 23 provinces have some type of women's agency operating at a suitable institutional level (Country Report for Beijing). Permanent women's offices have been created at the municipal level, thus extending the territorial coverage of women's programmes and making it possible to work at the local level and gain new experience in relations between the State and grassroots women's organizations and groups. The equal-opportunity plan for 1995-1999 stresses the need for the legal system to recognize the National Women's Council as a consultative and advisory body to the Executive Branch and the need for it to participate in governmental bodies dealing with social issues, as well as in the federal and regional councils. It also proposes the appointment of advisors on equality (both men and women) at a high administrative level of government.

In Chile, the National Women's Service (*Servicio Nacional de la Mujer - SERNAM*) was created by law in 1991. This technical agency is responsible for designing and coordinating governmental policies and actions dealing with women's issues, but it is not an

executive body. The Director of the Service (a woman) holds the rank of minister and participates in cabinet meetings on a regular basis. Each ministry has a representative on SERNAM, most of whom are high-ranking officials. At the local level, SERNAM, through its regional directorates, has established relations and entered into agreements with municipal governments; this has led to the setting up of women's offices which work for the inclusion of women's issues in municipal policies. According to the Country Report for Beijing, 37 such offices have been set up. SERNAM is empowered to submit projects, in coordination with other ministries, if necessary, and to sponsor bills under consideration by the Congress.

Mexico created the National Women's Commission (*Comisión Nacional de la Mujer*) in 1985 to coordinate activities and sectoral projects dealing with women's issues. In 1993, the National Coordinating Committee (*Comité Nacional Coordinador*) was set up to organize Mexico's participation at Beijing.

A decision of the Secretary of the Interior (*Secretario de Gobernación*) of 21 October 1996 provides for the establishment of a Consultative Council (*Consejo Consultivo*) and an Office of the Controller for Social Affairs (*Contraloría Social*) to oversee implementation of the National Women's Programme. The Office of the General Coordinator of the National Women's Programme (*Coordinación General del Programa Nacional de la Mujer*) was created to act as the federal executing agency; this office is now the Women's Office of the Mexican Government (*Oficina Gubernamental de la Mujer*). It operates under the Secretariat of the Interior, and is responsible for coordinating institutional activities aimed at implementing the National Women's Programme and other government programmes designed to achieve full development and equality for women.

In Venezuela, the first Women's Commission to advise the President (*Comisión Femenina asesora de la Presidencia*) was created in 1974. In 1979, a woman was appointed as Minister of State for the Participation of Women in Development (*Ministra de Estado para la Participación de la Mujer en el Desarrollo*). Between 1984 and 1989, certain administrative changes were made.<sup>10</sup> In 1993, the National Women's Institute (*Instituto Nacional de la Mujer*) was created under the Equal Opportunity Act (*Ley de igualdad de oportunidades*). This institute is an autonomous governmental agency which has legal standing in its own right, as well as its own equity capital and permanent bodies responsible for the design, execution, direction, coordination, supervision and evaluation of policies and matters pertaining to the status of women. Other important mechanisms have also been set up. In 1989, the Bicameral Commission on Women's Rights (*Comisión Bicameral para los Derechos de la Mujer*) was created for the primary objective of monitoring implementation of the Convention, and in 1990, the Women's Rights Area (*Área de Atención a los Derechos de la Mujer*) was set up under the Office of the Attorney General of the Republic (*Fiscalía General de la República*). At the state and municipal level, state women's councils, women's services centres and municipal women's shelters have been set up.

**While it is true that the lead agencies for women's affairs have been granted high-level institutional status in several countries, it should be obligatory for these agencies to exercise coordination and to implement the decisions taken as a result of such coordination.** Much remains to be done in the area of providing training for officials of these agencies, especially in connection with coordination of policies and actions of the

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<sup>10</sup> In 1987, the Ministry of Family Affairs (*Ministerio de la Familia*) was created and, within this ministry, the General Sectoral Directorate on the Promotion of Women (*Dirección General Sectorial de*

various sectors of public administration and with non-governmental agencies. All the countries of the region have been working on this. The Argentine equality plan, for example, proposes the inclusion of modules on gender-based planning and equality policies as part of the curriculum for the training of public officials. **The enactment of regulations on the hiring and promotion of officials would help increase interest in training.**

**Objective 2:** To include international principles and norms in national legislation, in order to ensure equitable participation of women in all spheres of society and to establish the mechanisms, institutions and services required to enforce them.

Five strategic actions are suggested to attain this objective, as follows:

- a) To bring national legislation at all levels in line with international and regional norms. Actually, this means bringing all legislation in line with the Convention and with the guidelines set forth in international declarations and agreements, bearing in mind that the only internationally binding legal text is the Convention. Stressing the need to bring legislation in line with international and regional norms is not a contradiction, but rather reinforces the law.

Some progress has been made in this area. Some countries have reviewed the rules contained in different codes and have enacted special legislation in the different areas that are of concern to women. These advances will be discussed in connection with the specific areas involved.

It should be noted, however, that Argentina's equality plan proposes further steps to be taken, i.e., that legislation be drafted which would define as offences certain discriminatory acts in different spheres of society, including jobs, wages, social programmes, professional training, sexual harassment and the way women are portrayed in the media. A similar proposal is included in Chile's equality plan.

The Argentine plan also proposes that positive measures be taken as a tool for guaranteeing equality, and the Constitution expressly empowers the National Congress to enact positive measures to eliminate de facto discrimination.

The Mexican National Women's Programme includes "the development of legislation and institutions" as a strategy to promote mechanisms for permanently revising codes, laws and regulations that may contain some form of discrimination based on gender.

The Venezuelan Equal Opportunities Act of 1993 creates the office of "ombudsman" for women's rights (*Defensoría nacional de los derechos de la mujer*), which is responsible for monitoring compliance with and awareness of the relevant laws, and for providing free legal assistance and representing women in the courts, in public agencies and before other representatives of public order.

In Chile, the equality plan proposes consideration of a bill to create the office of "ombudsman" (*Defensor del pueblo*). Among other duties, this office would be responsible for ensuring that women are granted equal opportunities and treatment.

- b) To disseminate information on women's rights and on ways and means for ensuring that they are exercised.

Costa Rica's equality plan expressly supports the creation of information centres on women's rights, to be set up by the National Women's Council as a means for increasing access to legal services.

In Venezuela, the National Legal Aid Network (*Red Nacional de Asistencia Jurídica*) was created in 1993 by the National Women's Council and the NGOs, in order to facilitate

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*Promoción de la Mujer*) was set up. In 1989, a woman was appointed as Minister for the Promotion of Women (*Ministra para la Promoción de la Mujer*).

the access of women to legal assistance. The regional women's councils, the women's shelters, the educational community and the NGOs are carrying out activities aimed at filling the so-called "legal illiteracy" gap.<sup>11</sup>

In Chile, the Women's Rights Information Centre (*Centro de Información de los Derechos de la Mujer - CIDEM*) was created in 1991, and during that the same year, the Centre set up offices in all 13 regions of the country. This programme provides individual services, carries out dissemination and sensitization activities through the media and by using posters and primers, and provides advisory services and training to municipal centres concerned with women's rights.

The equality plan also stresses the need to carry out a large-scale programme to disseminate information on the situation of women and the family.

**Almost every country has made efforts to disseminate information on women's rights and on the use of the media and of educational programmes and seminars to ensure the full enjoyment of those rights; such actions have also been included in national plans for the promotion of women. Nevertheless, better results could be achieved through regulations requiring that the topic be included in school curricula (just as civil rights are included, the subject of gender equity should also be included) and at other levels of education (particularly university faculties of education and law schools), and requiring the media to provide space for promoting gender equity.**

c) Sensitizing the parliament and public officials on the need for legal reforms.

Coordination with the legislative branch is included in the mandates of the agencies responsible for coordinating public policy on the advancement of women. The influence that the agencies can exercise at this level is directly related to the status they have been granted by the executive branch in the individual country concerned.

In Chile, an initiative known as "More women in parliament" ("*Más mujeres al parlamento*") was started in late 1992 with the support of SERNAM. This initiative was quite successful; there are now several women in the legislature who are more than willing to work to promote equal opportunities for men and women. A parliamentary group representing a cross-section of parliament, similar to one created to deal with children's issues, is now being set up.

In Venezuela, the Bicameral Commission on Women's Rights has been in operation since 1989.

d) Adoption of an optional protocol to the Convention in order to allow for individual petitions.<sup>12</sup>

e) Ratification and implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, adopted by the Organization of American States.

As of October 1996, only three countries of the region had not yet signed the Convention.<sup>13</sup>

**Objective 3:** To ensure equal employment opportunities and working conditions for women, including equal pay and access to production resources, to new technologies and to executive positions.

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<sup>11</sup> See the Venezuela Country Report.

<sup>12</sup> See IV.10 below, and II.B and C above.

<sup>13</sup> Information provided by the Inter-American Commission of Women of the Organization of American States.

Although considerable progress has been made in regard to the participation of women on the job market, structural problems remain, and women still face obstacles to their entering and staying in the market. Jobs for women are concentrated in a narrow range of lower-paying occupations, and women still have to deal with their household duties, precarious working conditions and discriminatory wages.

In recent years, a number of legal reforms have been enacted in the region to improve working conditions for women.

In Chile, on the initiative of SERNAM, a number of labour reforms have been passed (Act No. 19250 of 1993, which has been included in the Labour Code), including the following: parental leave for the birth of a child and for sickness of a child under one year old, and transfer of postnatal leave to the father in the event of death of the mother; safety and hygiene measures in seasonal work; establishment of maximum working hours and minimum wages for women working in private homes, regulation of rest time for women working in commerce, and derogation of the prohibition for women to perform certain jobs.

The equality plan proposes the adoption of standards such as the following: flexible working hours for women and men; tax exemptions for companies offering child-care facilities for their workers; optional postnatal leave for either the father or the mother after the period required to recover from childbirth, with the mother having the right to choose; efficient oversight of working conditions; regulation of work in homes; revision of classification of work-related illnesses to include those most frequently suffered by women; mechanisms for denouncing and punishing sexual harassment on the job, including the obligation of the employer to support investigation of such complaints; criteria for the application of the ILO Equal Remuneration Convention, and revision of standards relating to social benefits in order to eliminate discrimination and ensure social, health and old age benefits, and protection for workers in precarious and seasonal jobs.

The equality plan also proposes a constitutional amendment to expressly prohibit gender discrimination in regard to employment opportunities and working conditions and to include the principle of equal pay for equal work.

In 1986, Costa Rica amended article 94 of the Labour Code to extend maternity leave to four months (one month before and three after the birth of the child) for all women workers in the country. This regulation has hurt the private sector.<sup>14</sup>

The 1990 Act on the Promotion of Social Equality for Women prohibits employers from terminating pregnant women or nursing mothers except in cases of serious faults on the job, which must be proven to the labour inspection office. On balance, the experience with application of this rule has been positive; it should be noted, however, that both articles have been challenged on grounds of unconstitutionality. This challenge was rejected in 1994.

One of the objectives of the equality plan is to eliminate all aspects of the Labour Code that discriminate against women, particularly the articles relating to night work and unhealthy conditions, and to termination of pregnant women (with a view to keeping that matter separate from the matter of notifying the employer about pregnancy). The equality plan also supports a bill to reform regulations on rest, holidays, working hours and wages of women engaged in domestic service. Seven draft amendments to the Labour Code are currently on the legislative agenda.

Argentina, by means of the 1991 employment act, derogated the prohibition against night work and denounced ILO agreements 4 and 41. Article 5 of decree No. 993/91,

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<sup>14</sup> See the Country Report of Costa Rica for the Beijing Conference.



establishing the National Administrative Profession System (*Sistema Nacional de la Profesión Administrativa*), stipulates that representatives of public administration must guarantee non-discrimination against women, and requires that at least one woman be appointed to the 5-member committee responsible for selecting executive staff (*Comité de Selección para Cubrir Funciones Ejecutivas*).

In 1993, the basic legal regime of the public administration was reformed by decree No. 2385, which introduced the offence of "sexual harassment", prohibiting such behaviour and defining it as any action by an official who, in the course of his official duties, takes advantage of his rank in order to induce another staff member to accept his sexual advances, regardless of whether or not carnal contact occurs.

In the area of social security, important reforms were recently introduced. In 1994, the Integrated Retirement System (*Sistema Integrado de Jubilaciones*) was created; under this system, by the year 2001, the retirement age for women will be 65. Also in 1994 (Act No. 24341), housewives were granted the option of joining the retirement system in the lower category. They already had the right to join, but only in higher categories which required higher payments.

The equality plan states that its objective is to balance the participation of women on the job market. To this end, it envisages positive measures to be taken through public job-creation programmes; improvement of working conditions through better control and oversight mechanisms; dissemination of information regarding rights, and distribution of household responsibilities. In this connection, existing legislation may need to be adjusted or supplemented in order to ensure equal treatment and opportunities for women workers and workers who have family responsibilities.

With regard to domestic workers, the existing legislation will be amended in order to guarantee social benefits for them and monitor compliance with this requirement. Collective bargaining is envisaged as a means for monitoring compliance with antidiscriminatory regulations and promoting equity between men and women.

The plan also provides for implementation of complaint mechanisms and punishment of discriminatory behaviour and sexual harassment on the job.

Finally, the plan envisages actions to incorporate the issue of equality in discussions on regional integration, through a comparative review of labour legislation currently in force.

In Venezuela, a new labour law entered into force in December 1990 which establishes innovative rules regarding maternity benefits. The new law eliminates certain protective measures pertaining to women themselves, including the prohibition against night work, but it increases protection relating to maternity and the family, and thus, it extends the period of prohibition against termination of pregnant women to one year after childbirth. It also requires employers who have more than 20 workers (men or women) to maintain or try to set up a day-care centre during working hours.<sup>15</sup> The Supervisory Council on Integral Care for Workers' Children (*Consejo de Supervisión de Cuidado Integral de los Hijos de los Trabajadores*), created by decree No. 2506, was set up as a unit of the Ministry for Family Affairs; the civil society also participates in this Council.

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<sup>15</sup> According to country reports submitted by the countries of the region at the Beijing Conference, Venezuela has the most advanced legislation regarding access to day-care centres or nurseries for workers' children. In other countries, employers have this obligation when they have between 20 and 50 female workers; in Venezuela, the number is 20 workers, either male or female. See: Dianne Almeras, "Compartir las responsabilidades familiares: una tarea para el desarrollo, a

In Mexico, the Constitution, which dates back to 1917, establishes workers' rights, prohibits discrimination against women in hiring practices and establishes the right of women to receive equal pay for equal work (art. 5123). The Federal Labour Act (*Ley Federal del Trabajo*) protects equal wages, working conditions, the right to receive training, social security and maternity and nursing leave.

The National Women's Programme establishes, as a general guideline, the goal of guaranteeing respect for and protection of the rights of women workers, which means that standards must be drawn up to improve working conditions and training. It also proposes the establishment of mechanisms to ensure respect for the rights of women workers and their access to social benefits, monitoring of compliance with the Federal Labour Act in order to prevent discrimination by sex, age, marital status and pregnancy, as well as occupational segregation and disparities in remuneration and in promotion opportunities. In January 1997, the Federal Regulations on Safety, Hygiene and Environment in the Workplace (*Reglamento Federal de Seguridad, Higiene y Medio Ambiente en el Trabajo*) entered into force. Title V of this law provides protection for pregnant and nursing women in certain jobs and working situations. In 1991, an amendment to the Penal Code was adopted to establish the offence of sexual harassment, and penalties of 30 days minimum wage and eight months imprisonment for anyone who takes advantage of their position of power to seek sexual favours from women workers under their authority.

**Objective 4:** To guarantee access for girls and women to an education that will prepare them for the full exercise of their rights, including equitable participation in decision making and in family and domestic responsibilities.

**The country reports presented by the countries at Beijing all agree that discrimination in the educational system does not have to do with the access women and girls may have to the system but rather with the quality and type of education they receive.** Although there are some formal differences in educational programmes for men and women, there is a hidden gender bias in the messages that are implicit in the curricula and in the practices followed in transmitting knowledge. **Special training of educators and explicit standards on curricula and discriminatory behaviour in the transfer of knowledge are needed in order to counteract this discrimination.**

In Costa Rica, article 17 of the 1990 Act on Promotion of the Social Equality of Women prohibits any national educational institution from using course contents, methods or teaching tools that portray the roles of men and women in society in any way that does not promote equality or teach gender complementarity, or that put women in a subordinate position.

The State's preoccupation with ensuring that the educational system makes it possible to lay a sound foundation for equality is set out in a report on curriculum policy with a view to the twenty-first century. This report proposes the elimination of all elements that foster discrimination based on gender or any other type of discrimination.

The equality plan envisages the establishment of an interinstitutional commission to review the curriculum of the Faculty of Education and make it compatible with the principle of equality. The Faculty of Education is responsible for training primary and high school teachers.

Two bills are currently on the legislative agenda, i.e., Act No. 12088, which provides for the inclusion in the Costa Rican educational system of a course on "Theory of gender and

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paper presented at the Seventh Regional Conference on the Integration of Women into the Economic and Social Development of Latin America and the Caribbean, first draft, annex 2.

democratic values of Costa Rica", and Act No. 12715, on bases and guarantees for the development and on-going improvement of the national educational system.

In Argentina, in 1991, the National Programme on the Promotion of Equal Opportunities for Women in Education (*Programa Nacional de Promoción de la Igualdad de Oportunidades para la Mujer en el Área Educativa - PRIOM*) was created under an agreement between the National Women's Council and Ministry of Culture and Education. The purpose of this programme is to transform the knowledge taught at school and generate an educational experience that will encourage learning about relations between the genders, based on equity, solidarity and mutual respect; active and equitable participation of both sexes in civic life and in family and child-rearing responsibilities, and the integration of women into decision making.

In 1993, the Federal Education Act was passed. This law represents a significant advance<sup>16</sup> because it is a legal text that is drafted in non-sexist language and establishes criteria for a state educational policy that guarantees equal opportunities.

In 1994, the Ministry of Culture and Education agreed on a set of course guidelines as a platform to be used by the educational authorities of the country in producing their own curricula. The guidelines include the gender approach and equal opportunities across all disciplinary lines.

Under the equality plan, support would be provided to PRIOM and the gender dimension would be included in evaluations of the quality of education. Another objective of the plan is to help fill the educational needs of specific groups of women, especially those in lower income groups, pregnant women and teen mothers, illiterate girls, women in rural areas and women who wish to return to the labour market. Measures are suggested for effectively integrating all women into formal education.

In Chile, the equality plan promotes measures such as the inclusion of equal opportunities in the basic education act. It also calls for gender equity to be added as an explicit objective of the Programme on the Improvement of Quality and Equity in Education (*Programa de Mejoramiento de la Calidad y Equidad en la Educación - MECE*), and for wording aimed at guaranteeing equal opportunities should be included in the document on the fundamental objectives and minimum course guidelines for elementary and middle education.

The equality plan expressly deals with the need to eliminate all traces of sexism in curricula and teaching materials, as well as high-risk situations, such as pregnancy, which prevent girl students from pursuing their education on an equal footing with boys. To this end, the Ministry of Public Education recently issued circular No. 2476, which is aimed at keeping pregnant teenagers in the school system. However, there is still resistance and pressure to require pregnant girls to leave regular classes; **it is therefore essential that regulations be adopted to protect pregnant girls and establish penalties for any educational establishment that does not enable girls to stay in school and for teachers who by their behaviour pressure pregnant girls to drop out of school.** The equality plan also envisages the setting up of a system to allow girls to press charges and provides penalties for sexual harassment in school.

In Mexico, one of the priority challenges of the National Women's Programme is that of overcoming gaps in education and improving educational opportunities for women. This programme, in coordination with the Educational Development Programme 1995-2000

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<sup>16</sup> See the Argentina Country Report to the Beijing Conference.

establishes that special attention be paid to women at all levels and in all branches of the educational system, in order to help expand not only their options and alternatives but also their expectations with regard to the different roles they can play in all spheres of activity.

Among other things, it envisages reviewing, from the standpoint of gender, all educational plans, programmes, textbooks and other materials, and to propose specific contents for the subject of educational orientation within high school, with special emphasis being placed on non-traditional jobs for women.

The programme also proposes the inclusion of the gender approach in training and refresher courses for teachers and guidance counsellors at all levels and branches of the educational system.

**Objective 5:** To guarantee health care for women at all stages of life, respecting their ethnic and cultural identity, through access to adequate services.

The Costa Rican equality plan calls for the preparation and promotion of amendments to the General Health Act in order to include the concept of health, reproductive rights and sexual health, in line with the relevant resolution of the International Conference on Population and Development held in 1994. It recommends measures such as the adoption of standards in primary health care programmes of a mental health component, and of regulations to allow for state health insurance to automatically cover the children of teenage mothers. It also supports the bill on legal regulation of assisted fertilization procedures and the bill on HIV-AIDS. All these bills are currently on the legislative agenda.

The Argentine equality plan endorses the recommendations made in the Country Report for the Beijing Conference. In regard to the legal system, it calls for the enactment of a law creating a national programme for responsible reproduction, a national programme of mother and child care and a national programme on women and health that would take into account the special health needs of women at different stages of their life. In addition, it promotes the inclusion of this topic in curricula in the area of health at the undergraduate and postgraduate levels. The Chilean equality plan is quite similar to the Argentine one.

Argentina has put underway a Programme on Women and Health which is aimed at including the gender approach in the design and execution of national, provincial and municipal health policies, following a management model developed in coordination with the NGOs.

In Mexico, the national women's programmes includes the goal of guaranteeing that women have access to integral health care programmes, and provides for strict application of the official family planning services.<sup>17</sup>

In 1992, in an effort to prevent teenage pregnancies, Venezuela repealed a provision of the Medical Practice Act (*Ley de Ejercicio de la Medicina*) that required minors under 15 to be accompanied by a representative when going to the doctor.

In brief, it appears that most women's health problems are preventable;<sup>18</sup> hence, measures aimed at promotion and prevention are in order, rather than purely legal ones. **To ensure preventive behaviour, however, consideration should be given to the possibility of establishing regulations to facilitate fundamental controls (e.g., as a prerequisite to the fulfilment of certain procedures), without, of course, allowing such**

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<sup>17</sup> The General Health Act of 1984, which has been amended twice, assigns priority to family planning.

<sup>18</sup> Chile, Servicio Nacional de la Mujer (SERNAM), "Plan de igualdad de oportunidades para las mujeres, 1994-1999", p. 46.

**controls to hinder the integration of women into economic and social development.**

These regulations must, of course, take into account the special health risks that women face and their different needs which vary depending on their living conditions and on their life cycle. There is consensus on the need for preventive campaigns. All plans propose campaigns for the prevention of AIDS, breast and genital cancer, mistreatment and abuse of boys and girls, sexual and domestic violence, anorexia and bulimia, health care in pregnancy, childbirth and postpartum and other female pathologies, with different approaches according to age group and social sector of the women and girls concerned. **We feel that there is a strong enough need in society for such campaigns that it is worthwhile to establish standards, possibly by agreement with the media or by a state mandate to set aside a percentage of time or space for such campaigns.**

There is also agreement to the effect that the participation of women in decision-making positions in the health system would definitely bring about a new, gender-based approach to integral health care. In this regard, the Country Report presented by Argentina at the Beijing Conference recommends quotas of women to be included in nominations for positions in organizations and professional associations in the area of health, and in decision-making positions established under the by-laws of hospital administration boards. This is a measure that would certainly help achieve this objective.

**Objective 6:** To achieve equitable participation in the design and management of environmental policy

The equality plans of Costa Rica and Argentina both provide for action along these lines. Costa Rica calls for the review, dissemination and application of environmental legislation and regulations with a view to improving the living conditions of women and evaluating implementation of legislation and rules on selection of beneficiaries, in order to ensure that women and men have equal opportunities.

Argentina seeks to ensure equitable participation of women in the design and management of environmental policy. Women must move on from merely dealing with environmental problems to helping to build better quality of life. To this end, a "Quality of Life Programme" has been designed to bring women into the task of building a sustainable development model, promoting the participation of women in community matters and making society aware of the need to improve the quality of life.

The Mexican National Women's Programme assigns priority to strengthening the crucial role of women in the efficient use of the country's natural resources by training women and making good use of appropriate technologies that will help improve the quality of life for them and their families.

Venezuela has created organizations on women and the environment, including the Venezuelan Association on Women and the Environment (*Asociación Mujer y Ambiente de Venezuela - AMAVEN*) and the Study Group on Women and the Environment (*Grupo de Estudios Mujer y Ambiente - GEMA*).

The Chilean equality plan only refers indirectly to the question, in connection with the matter of women's participation in decision making.

#### 4. Elimination of poverty among women

This strategy line has to do with creating conditions for reducing and overcoming poverty in the context of a sustainable development process, and bearing in mind the level of development and social and cultural characteristics of each country.

The measures proposed in the Regional Plan of Action all refer to the factors that create poverty. Hence, one way to address the problem of the feminization of poverty is to intervene in the factors that cause it, such as education, health, jobs, access to the means of production, and in the existing family organization patterns that do not legitimate marriage as the fundamental model but which do perpetuate the subordination of women.

In line with this approach, Costa Rica has developed a programme focusing on women, called *Eje mujeres*, as part of the National Plan to Combat Poverty; the Chilean equality plan and the Mexican National Women's Programme also deal with this issue. In Costa Rica, the *Eje mujeres* programme is coordinated by the National Centre for the Development of Women and the Family. Chile has a National Council to Combat Poverty; although SERNAM has made a significant contribution to the study and definition of how poverty affects women, the Commission does not have a component specifically concerned with women and it is therefore up to SERNAM to work within the Commission on matters pertaining to the interests and rights of women.

Venezuela also has a plan for dealing with poverty which takes into account the problems of women in their capacity as mothers or heads of household.

In view of the situation described above, in studying the legal progress made in this area, one must consider the legislation that deals with the factors that lead to poverty. Nevertheless, there are certain problems that need to be considered as well, such as those of rural women, where poverty is clearly prevalent; the difficulty of gaining access to the means of production, particularly credit, and the problems of women heads of household, including those of pregnant teenagers.

With regard to rural women, the Country Report presented by Argentina at the Beijing Conference points out that peasant women have little, if any, access to production resources such as land, water, capital, technology, credit, technical assistance and training. There are no national institutions designed specifically to help rural women; however, the Secretariat of Agriculture, Livestock and Fisheries has begun to include a focus on women in rural development in a number of its programmes and projects.<sup>19</sup> In addition credit programmes for small-scale farmers include activities aimed at extending their benefits to women.

Argentina's equality plan calls for special attention to be given to rural women, and envisages providing training and technical assistance in connection with the production and marketing of products and improving their access to credit.

Costa Rica is in the process of discussing a bill, Act No. 12227, which would eliminate discrimination in agricultural work. In Venezuela, there is a foundation for the promotion of peasant women, and the Agricultural and Livestock Credit Institute has a special programme aimed exclusively at helping peasant women and their families.

Since 1972, Mexico has had industrial agricultural units for peasant women, and a number of government programmes have been carried out since that time. The National Women's Programme assigns priority to promoting efforts to update legislative and administrative mechanisms for giving women full access to economic resources, including ownership of land and other types of property, credit, natural resources and appropriate

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<sup>19</sup> See the Country Report of Argentina to the Beijing Conference.

technology. It also calls for flexible financing mechanisms and the setting up of guarantee funds for rural microindustries that would promote the participation of women in production.

Chile, Costa Rica, Mexico and Venezuela have identified a group of poor women who are particularly vulnerable to poverty, i.e., women heads of household. Evidently, situations such as those of women heads of household, unemployment and underemployment, income level not only have to do with gender discrimination, but also work together with factors relating to education and health to make women and their families particularly vulnerable to poverty. Moreover, when women have to act as heads of household, they are usually at a disadvantage, given the prevalence of irresponsible fathers and the lack of economic resources that results from separation and abandonment.

The *Eje mujeres* programme of Costa Rica's National Plan to Combat Poverty, Chile's equality plan and Venezuela's anti-poverty plan all outline measures to be taken in the areas of jobs, education, child care, health, housing and legal assistance. They also envisage facilitate the access of women heads of household to credit, subsidy and home improvement programmes.

Mexico's national plan for women calls for providing coverage for women in vulnerable groups, including heads of household, in plans and programmes for combatting poverty; within such plans, further action should be taken to provide education and training for these women. The plan also proposes that anti-poverty programmes should give priority to actions aimed at providing housing and basic services to poor women through appropriate credit mechanisms.

In general, if women are to be brought into production-oriented activities, the obstacles to their gaining access to training and to the banking system must be overcome. The barriers that prevent women from getting loans are both cultural and legal in nature; in establishing eligibility requirements, the agencies concerned do not take into account the implications of property laws regarding married couples, and the equity the woman has, as well as her legal capacity. In addition, there are no regulations regarding common-law marriage, particularly with regard to property rights.

**Consequently, it would be useful to develop legal standards for reviewing eligibility requirements for loan applicants and provisions relating to property rights in formal marriage and in common-law marriage, in order to ensure that they do not affect the legal capacity of women to apply for loans.**

In Venezuela, the 1982 Civil Code was amended to eliminate certain legal restrictions affecting women, and this has helped women gain access to property. The Country Report for the Beijing Conference notes that in 1992, women accounted for 50% of urban home sales, and in 1993 the figure was 42%. In the rural sector, almost 81% of the housing units assigned went to women heads of household between 1983 and 1993.

**It would also be useful to establish quotas for women in programmes aimed at opening up access to production resources and technical assistance and training. Such regulations should be based on an analysis of the situation of the female population in each country, with special attention being given to the rural areas.**

In this regard, it is worth noting that the Costa Rican Act on Promotion of the Social Equality of Women (1990) provides that housing granted to married couples through social development programmes should be registered in the names of both spouses and that housing granted to common-law couples should be registered in the name of the woman; however, the Constitutional Court has ruled that in common-law marriage, the property should also be registered in the names of both parties.

The Chilean equality plan refers to studies that show that women, especially poor women, receive a great deal of information from the media regarding existing services, ways to solve day-to-day problems and opportunities for development. **Measures should be taken, as a way to provide support for poor women, to establish a system for ensuring the dissemination of information that is useful to women in their daily lives.**

**In brief, a different type of legislation is needed in order to help poor women; positive measures such as including women in worker training programmes, providing child care and giving women access to credit and subsidy programmes would represent significant progress in this regard. It would be most useful to set up a system requiring the organization responsible for dealing with this issue in each country to coordinate the formulation of social policy and the monitoring of social action programmes.**

### **5. Women's equitable participation in decision making and in the exercise of power in public and private life**

The strategy line is aimed at ensuring equitable access of women to power structures and decision-making processes through mechanisms enabling them to play an active role in the development of integral democracy. The actions proposed fall under two strategic objectives, namely: (1) Through affirmative action, to promote and guarantee equitable access to the exercise of power at the legislative, judicial, executive, leadership and planning levels, and (2) To promote positive measures to ensure equitable participation and political representation of women in businesses, trade unions, political parties and other formal and informal areas of civil society.

The role of women in democracy may be studied in the light of two different legal concepts, i.e., parity democracy and active citizenship.

The term "parity democracy" refers to balance in the participation of men and women in decision-making bodies. Thus, decision-making bodies should be made up of no more than 60% and no less than 40% of either men or women.<sup>20</sup> Parity democracy is aimed enhancing democracy, inasmuch as there is no democracy where half the population is excluded from decision making.

At the Mar del Plata and Beijing meetings, the Latin American women's movement introduced the concept of "active citizenship". This is based on the idea that the relationship between gender and citizenship cannot be reduced to the presence or absence of "token" women. Thus, there are two aspects to active citizenship: there is the desire for everyone to play a part in decision making in all areas of social life and to exercise civic rights, either individually or collectively, and there is the desire to reach decision-making positions in political parties, mixed social organizations and the State.<sup>21</sup>

These two concepts are not mutually exclusive; on the contrary, they reinforce each other and reflect a growing maturity in society concerning the idea of equality.

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<sup>20</sup> Cristina Alberdi, "Paridad de la vida política: clave de la democracia", *Participación de la mujer en las decisiones políticas y económicas*, First Meeting of Women Ministers of Ibero-American Countries, Santiago, Chile, 1995.

<sup>21</sup> Line Bareiro, "Las recién llegadas. Mujer y participación política", *Estudios básicos de derechos humanos IV*, San José, Inter-American Institute of Human Rights, p. 246.



**In order to achieve parity democracy and active citizenship, it is essential to adopt temporary measures, such as quota systems, in order to ensure that women will be able, in the short term, to hold decision-making positions;<sup>22</sup> it must be stressed, however, that equality does not end there. Equality calls for a new outlook based on the equal exercise of rights and responsibilities.**

Some countries of the region have taken positive steps in this direction. Articles 5 and 6 of Costa Rica's Act on Promotion of the Social Equality of Women (1990) requires political parties to establish, in their bylaws, effective mechanisms for guaranteeing the participation of women in their leadership, as candidates to electoral positions and in government. This law also requires political parties to earmark a percentage of the state contribution they receive for promoting the participation of women in politics.

Since 1995, the National Centre for the Development of Women and the Family has been implementing the Programme on the Promotion of Active Citizenship of Women (*Promoción de la Ciudadanía Activa de las Mujeres - PROCAM*). The equality plan envisages measures to be taken in the context of this programme, including efforts to amend the Elections Code and the internal regulations of political parties with a view to increasing the participation of women in the Legislative Assembly. Activities will also be carried out in conjunction with the Executive Branch and the Judiciary to promote the participation of women in decision making and in the higher bodies of the court system.

In 1991, Argentina passed the Quota Act (*Ley de Cupo*), which is a positive measure aimed at ensuring equal access of women to elected office. This law adds to the National Elections Code a rule providing that in order for nomination lists to be official, at least 30% of the candidates to elected positions that have a chance of being elected must be women. The regulations to the law, passed by decree in 1993, extend its application to all positions subject to election in the national parliaments, the neighbourhood council and the Buenos Aires council. In addition, guidelines are established for the inclusion of women on lists in order to ensure that they have a chance of being elected.

These provisions represent a pioneering experience and have led to a significant increase in the participation of women in legislative bodies, thus making it more likely that new laws that are passed will reflect the principle of gender equity. There is a growing trend towards the appointment of women to higher-ranking positions in the centralized public administration.<sup>23</sup>

Nevertheless, the level of participation in decision-making is still low, in both the public and the private sectors. The equality plan proposes that the minimum quota established by the Quota Act should become part of the political culture at the national, provincial and municipal levels, that the political parties should amend their bylaws to include women in leadership positions and that the provinces should also enact laws to establish quotas for elected positions. With this in mind, a "political participation programme" has been put underway in order to increase the share of women holding elected office and/or of women in decision-making positions, and to carry out training projects for women leaders.

In addition, the "programme on women and the State" has been set up to promote positive measures and eliminate discriminatory practices in public administration, whether by way of legislative or administrative provisions.

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<sup>22</sup> In this connection, in 1994, the Parliamentary Union adopted a plan to correct existing imbalances in the participation of men and women in political life.

<sup>23</sup> Country Report of Argentina to the Beijing Conference.

Chilean legislation contains no gender discrimination in regard to positions of leadership in the economic and social spheres of society. Article 13 of the Constitution provides that women have the same right as men to be candidates for the elected offices of President of the Republic, deputy, senator and others. Nevertheless, there are few if any women in leadership positions in the different areas. In view of this situation, some public offices have taken steps to improve the status of women; thus, the Office of the Controller General of the Republic and the Civil Registry decided to improve the position of women staff members, and their efforts were successful.<sup>24</sup>

In 1992, SERNAM supported an initiative called "More women to Parliament". This strategy proved effective, and a group of parliamentarians is being set up to work, across gender lines, for equality.

The political parties have added positive clauses to their internal regulations; however, these only refer to leadership positions, not to candidacies for positions as elected representatives.

The equality plan also calls for amendments to be made to the Elections Act and to the systems for choosing candidates in order to ensure greater participation of women. It suggests that a study should be made of the effect of positive measures on parties, organizations and public and private institutions.

In Mexico, one of the primary objectives of the General Population Act is to promote the integral and effective participation of women in the economic, political, social and cultural processes, and to help create the necessary conditions so that women can play an active role in all decisions, responsibilities and benefits of development on an equal footing with men. The regulations to this law stipulate that all forms of abuse and discrimination against women, whether individual or collective, should be avoided, and that measures should be taken in order to ensure equal rights and opportunities for men and women.

The National Women's Programme assigned priority to efforts to strengthen the skills of women and promote their participation at all levels of decision making. To that end, it calls for a revision of secondary federal norms and local norms in order to ensure that they are consistent with the constitutional principle that men and women are equal before the law. It also calls for measures to promote the participation of women in leadership positions and in decision-making bodies in the executive branch and the judiciary, the legislature, businesses, trade unions, political parties and other organized areas of society. The Programme also suggests that mechanisms should be devised to encourage women to participate fully in political reforms and that an inter-party agreement should be reached to extend the participation of women in election reforms and in electoral bodies. Some steps have already been taken in this direction, e.g., the state elections law of the state of Sonora stipulates that no more than 80% of the candidates presented by political parties may be of the same sex; the governing party has agreed that its national and regional lists of candidates for federal, state and municipal elections, no more than 70% of the candidates will be of the same sex, and there is a proposal to amend the federal law in order to ensure that at least 30% of candidates for elected office will be women.

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<sup>24</sup> Country Report of Chile to the Beijing Conference.

## 6. Human rights, peace and violence

The strategy line is to guarantee the universal, inalienable, indivisible and integral nature of all human rights and ensure that they are respected and protected in a healthy atmosphere at all times and in all places. The measures proposed fall under three strategic objectives: (1) To consolidate full respect for the human rights of women, giving priority to the elimination of violence and of discrimination on account of sex, poverty and ethnic and racial differences; (2) To promote measures that will bring to light all kinds and forms of violence against women, in order to eliminate them; and (3) To create awareness among the media regarding the culture of violence and discriminatory image of women that they present.

Two significant steps were taken as a result of the World Conference on Human Rights, held in Vienna in 1993, i.e., the adoption by the General Assembly of the Declaration on the Elimination of Violence Against Women, and the decision to ask the United Nations Commission on Human Rights to appoint a Special Rapporteur to study violence against women. The Declaration orders States to promote policies to eliminate violence against women through laws, institutions and national plans and preventive measures. In 1994, the Organization of American States adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, and the Regional Programme of Action includes, among other measures, an appeal to States to ratify and implement the aforementioned Convention.

What is the situation in the countries of the region, as regards the human rights of women and, in particular, the question of violence?

Chile, Costa Rica, Argentina, Venezuela and Mexico have ratified the Inter-American Convention adopted by the Organization of American States.

In 1990, under the Act on Promotion of the Social Equality of Women, Costa Rica created the office of "ombudsman" for human rights (*Defensoría General de Derechos Humanos*); this office, which is under the Ministry of Justice and Grace, includes several specialized departments, including that of the "ombudsman" for women (*Defensoría de la Mujer*). The "ombudsman" for women has the following duties: to monitor compliance with the relevant declarations and conventions and all related laws, regulations and administrative provisions; to investigate ex officio or at the request of a party, any infringements of the rights of women and to propose penalties before the bodies concerned; to prevent the violation of women's rights and to work for the improvement of public and private services for women; to take part in trials when it considers that discrimination against women may have occurred and to defend the rights of women before the Public Administration; to promote on-going study of the causes of inequality and to work to ensure that there is no discrimination in public and private institutions and to work for the ratification of all international conventions that guarantee rights for women.

During the first two years of its work, the *Defensoría* received complaints concerning family violence, sexual violence, sexual harassment in the work place and in educational centres, and discrimination on the job. In 1993, the *Defensoría* became a part of the newly created Office of the Ombudsman (*Defensoría de los Habitantes*). It is responsible for protecting, extending and promoting the rights and interests of women in cases of violations, restrictions and discriminatory measures resulting from actions or omissions of the Public Administration. It has dealt with complaints in cases of violence, violation of labour rights of

pregnant women and nursing mothers and in relation to maternity leave, job discrimination with regard to promotions and examinations to fill vacancies, and corrupt officials.

The Country Report to the Beijing Conference explains that the *Defensoría de la Mujer* has been a significant tool for protecting, promoting and defending the human rights of women. However, it does not have the financial resources it needs to carry out its duties in a fully satisfactory manner.

In 1990, Costa Rica also created the Delegation for Women in the Ministry of the Interior (*Ministerio de Gobernación*) to provide free services in cases of physical, psychological and sexual abuse of women, and to receive and process complaints, provide legal, psychological and medical assistance, and refer women to shelters. In the case of complaints of sexual offences, the 1990 Act on Promotion of the Social Equality of Women grants the victim the right to be accompanied by a physician of her choice and amends article 152 of the Code of Penal Procedures to provide that, in the case of a complaint of sexual offence or abuse, the abuser can be ordered to leave the home and required to deposit a sum of money for his dependents' food and housing expenses. However, very few women are aware that they have this right and the courts are reluctant to apply these measures.<sup>25</sup>

The equality plan for 1996-1998 calls for the Code of Penal Procedures to be amended to include procedural mechanisms for protecting everyone's right to life, to physical integrity and to freedom, and for the Penal Code to be amended in reference to sexual offences, so as to stipulate that the juridical values to be protected are a person's physical integrity and liberty, without distinction as to sex, rather than "honour" and "reputation". Work was begun in this regard during 1996. A law against domestic violence was adopted in 1996; a bill on the creation of a general directorate for services and support to women who are victims of violence and a bill against sexual violence are currently under discussion.

In Argentina, 22 bills on domestic violence were drafted between 1988 and 1993, and in 1994, the Protection Against Family Violence Act was adopted. The regulations to this law were enacted by decree in 1996. The key element of this legal text is the creation of flexible and efficient mechanisms for enabling the different state agencies to intervene in situations of risk generated by family violence. The law defines family violence as physical or psychological abuse on the part of a member of the family group, and it should be noted that the family may be established by either formal marriage or common-law marriage.

The Country Report for the Beijing Conference points out that in cases of family violence against women, officials and judges hardly ever provide for punishment, but rather they present proposals for reconciliation, on the grounds that there is an ethical duty to preserve the family.

The Programme for the Prevention of and Assistance for Family Violence, of the Women's Council, Municipal Government of Buenos Aires, has been in operation since 1990. The shelter for abused women and their children was opened in 1993. Towards the end of the 1980s, police stations for women were created in order to offer greater security for victims of abuse.

In 1994, Chile adopted Act No. 19325, which deals with family violence. This is the first legal text that systematically addresses the problem of domestic violence. It defines family violence as any abuse that affects the physical or psychological health of any member of the family group or of a person who, although not related to the abuser, lives under the care of or is dependent on some member of the family. Hence, this provision covers the extended

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<sup>25</sup> Country Report of Costa Rica to the Beijing Conference.

family. The law established a rapid and effective procedure, which can be initiated by a complaint or an accusation. Anyone can present an accusation, i.e., legal action can be initiated by a member of the general public; this is similar to the case of Costa Rica, where measures are taken to protect victims.

The equality plan calls for substantial improvements to be made in services for victims and proposes different measures such as allowing for complaints to be presented at police stations, increasing the number of mobile police units and protecting the victim during the legal proceedings.

In Venezuela, in 1985, the Directorate for the Promotion of Women of the Ministry of Youth (now Ministry of the Family) created the Programme on Protection Against Family Abuse. Parallel to this, three women's shelters were set up to provide free legal assistance in cases of domestic violence.

A proposed amendment to the Penal Code is under discussion which would make changes in the section on "offences against persons", which is obsolete and not in tune with current trends towards equality and equity.<sup>26</sup> This amendment proposes the penalization of spousal abuse, the elimination of adultery as a criminal offence and the elimination of concern for "honour" as an attenuating circumstance. A 1992 bill against domestic and sexual violence is also under consideration which provides for criminal and civil penalties; education for peaceful conflict resolution, and the training of staff for services to victims.

In 1993, Venezuela created the position of Justice of the Peace. This official is responsible for settling—with common sense and regard for equity—family conflicts on matters such as child support, abusive discipline, violence, family abuse and neighbourhood disputes.

The National Women's Council has created the Venezuelan network on domestic violence and health, which brings together governmental agencies and non-governmental organizations.

In Mexico, at the national level there is no special law on violence against women; the legal mechanisms that provide for punishment in cases of violence are the ones established in the penal codes in reference to offences against life and physical integrity. In 1991, the Penal Code and the Code of Penal Procedures of the Federal District were amended to deal with sexual offences. In 1993, constitutional amendments were adopted which establish the obligation of the State to provide legal assistance to victims of sexual offences and the right of victims to receive reparation and emergency medical care. Since April 1996, the Assistance and Prevention of Family Violence Act has been in force for the Federal District; this represents the beginning of a process of change. This law provides for a social policy measure, i.e., the creation of a council to provide services and help prevent violence in Mexico City which is responsible for evaluating implementation of the law and establishing policies and actions aimed at changing attitudes so as to develop support for the law within the culture.

The National Women's Programme calls for the review and updating of codes, laws and regulations, with a view to lay down clearer definitions of sexual offences, to establish the offence of sexual harassment and to prevent and provide harsher penalties for the different forms of violence against women.

A proposal has been presented which envisages amendments in the civil, penal and procedural areas. In the area of civil law, it is suggested that the rights of persons to respect

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<sup>26</sup> Country Report of Venezuela to the Beijing Conference.

for their physical and emotional integrity should be established, the concept of family should be extended to include persons who live together in the same house, even if they are not legally married, and violence should be recognized as grounds for divorce and the loss of parental authority. With regard to procedures, the proposal calls for the court to be empowered to order that provisional measures be taken with immediate effect. Concerning penal law, it is proposed that family violence be defined as a criminal offence.

The National Women's Programme calls for a review and updating of the legal framework in order to provide for harsher penalties for staff of governmental institutions who, in the performance of their duties, commit acts of violence against women. It also envisages providing training in the area of human rights for public officials, police forces, medical personnel, social workers and teachers at all levels of education.<sup>27</sup>

To summarize: **In general terms, the problem of violence against women and family violence has been brought to light and discussed and analysed openly. Substantial gains have been made in regard to the punishment of abusers and efforts to obtain reparations, through special conventions, specific laws and shelters for victims. Nevertheless, the question is still on the table, since much remains to be done in the area of prevention, and the educational system and the media are invaluable tools in this regard.**<sup>28</sup> In this regard, the Chilean equality plan proposes that an effort should be made to change the way the media portray acts of violence and the victims of violence, since the media play a key role in maintaining and reproducing family violence. Should this actually be the case, then **it is important that an effort be made to sensitize the media and to develop regulations to orient and establish boundaries that would prevent or dilute the transmittal of violent content. In the world of today's media, where pictures are received by satellite, this would appear to be absolutely impossible. However, it is possible to mitigate the harmful impact of this situation through the regular and systematic transmittal of positive messages.**

## 7. Shared family responsibilities

The strategy line is to promote more equitable distribution of family responsibilities, to encourage public debate on making social roles more flexible, and promoting recognition of the different family structures that currently exist. The measures proposed are aimed at encouraging change in order to consolidate democratic family structures.

Family groups have changed; the traditional nuclear family has shrunk in size, the number of single-parent families —almost always headed by a woman— has increased, common-law marriages have increased, married women are holding jobs, women are becoming more aware of their right to personal fulfilment and men are more aware of their right to parenthood and to play a more active role in child rearing. All this has made it necessary to change the rules that have traditionally given rise to discrimination among family members as regards conjugal rights and duties, management of property and legal status of children, and even among different types of families.

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<sup>27</sup> This idea was included in the Assistance and Prevention of Family Violence Act of the Federal District.

<sup>28</sup> See Patricia Duarte, *Memorias del Encuentro Continental sobre Violencia Intrafamiliar*, No. 132. This report refers to advertising messages that portray violent means for settling disputes and discusses the need to change the existing concept of the woman as a victim and replace it with the image of a capable woman who has decision-making power within the family.

In Argentina, the Country Report for the Beijing Conference recommends that standards be developed that would expressly establish the principle of conjugal coparticipation, so as to ensure equal rights, duties and opportunities for both spouses during marriage. The equality plan does not go so far, and only refers to the matter of ensuring that family responsibilities are compatible with availability for such work.

However, some progress has been made since 1985. Indeed, Act No. 23264 stipulated that parental authority over children is to be exercised jointly during marriage; when the parents do not live together, parental authority is to be exercised by the person who has legal custody of the children. This same law establishes the equality of children born in or out of wedlock, under the principle of biological truth and responsible parenthood. Thus, when a minor is registered as "father unknown", the Civil Registrar is required to inform the Office of the Public Prosecutor for Minors, in order that the father may be located and asked to recognize the child. If he refuses, and if the mother agrees, he may be brought to trial.

In 1987, Act No. 23515, on civil marriage, introduced divorce *a vinculo matrimonii* and placed both spouses on an equal footing before the law by eliminating all prerogatives based on the husband's headship of the home. This law stipulates that both spouses must be faithful to each other, that they must both provide assistance and food and that they have the right to decide by mutual agreement on the location of the family residence.

Common-law marriage was recognized by Act No. 23226, even if one or both of the members of the couple has a previous marriage that has not been dissolved. This represents a major advance in recognizing social realities. A disabled member of the couple is entitled to receive a pension if he or she has remained in the union for the last five years, or two if the couple has duly recognized children, or if the principal is single, widowed, legally separated or divorced. In some cases, the pension is divided equally between the person cohabiting with the principal and the surviving spouse.

Chile is governed by family legislation that needs to be brought up to date as a matter of urgency. The rules for establishing relationship are extremely discriminatory, marriage is indissoluble, and the only way to end a marriage is by means of an annulment, which is usually obtained by fraudulent means.

To remedy this situation, a number of changes have been proposed over the last few years. Act No. 19335, for example, introduces the option of joint ownership of property, creates the institution of family patrimony and places the husband and wife on an equal footing as regards marital rights and duties. A bill is currently under consideration by the congress which would modify regulations regarding filiation in order to eliminate all differences between children born in and out of wedlock, to establish freedom to investigate paternity and maternity, and to make reforms in regard to the exercise of parental authority and custody rights. Bills have also been introduced on the creation of family courts, and there are two bills on divorce including the dissolution of marital ties, on child support and on inheritance rights of the surviving spouse.

The equality plan supports the bill on filiation and calls for discussion and study of divorce legislation; it also supports the bill aimed at changing property rights in marriage. It proposes that property rights in regard to common-law marriage be regulated by law, that mechanisms be created to guarantee payment of child support, that amendments to the joint ownership system be considered in order to place both spouses on an equal footing, and it supports the creation of family courts.

In 1982, Venezuela adopted a significant amendment to its Civil Code which provides that in marriage, the husband and wife have equal rights and duties. Consequently, it

establishes that both spouses are equal before the law in regard to decisions pertaining to conjugal life, the establishment of domicile, administration of property and exercise of parental authority. It also establishes equality among all children (whether born in or out of wedlock) and recognizes legal effects for common-law marriage.

Costa Rica's family legislation is very progressive. Recent landmark decisions are the passing of legislation on common-law marriage and the decision of the Executive Branch to pay special attention to families headed by women.

The equality plan for 1996-1998 proposes a three-pronged programme: to amend legislation that discriminated between different family groups and between members within the family group; to promote the sharing of family responsibilities by women and men, and to encourage the development of the family as a space for generating values and attitudes favouring equality between men and women. Very specific measures are proposed to supplement the important legal reforms that have already been passed. Some of the bills have already been enacted as law and others are on the legislative agenda. In 1995, legislation was passed to recognize common-law marriage, and the articles of the Family Code pertaining to recognition of children born out of wedlock and declaration of paternity and maternity were amended. The legislature is currently considering amendments to article 41, regarding property rights in marriage, in order to provide that joint property begins when the marital bond is established and not when it is dissolved, and to make joint property an unrenounceable right. The amendment of article 53 is also being considered in order to establish that the court can authorize the departure of either spouse not in cases of suits for divorce, but also for legal separation. An amendment to the Child Support Act is being considered which would establish a minimum percentage of the debtors resources and expedite national and international collection procedures.

Other proposals included in the equality plan that are under consideration deal with the promotion of a procedural law on family matters and of amendments to the Family Code in order to maintain joint responsibility for the support and development of the family and eliminate the separation of roles and responsibilities. In order to promote joint responsibility in family duties, amendments are being proposed to labour and social security legislation in order to allow both women and men, without distinction, to enjoy the privileges designed to facilitate child rearing (prenatal and postnatal leave, severance pay, etc.)

In Mexico, the National Women's Programme following a general policy of promoting a more equitable distribution of duties and responsibilities between men and women, both inside and outside the home, and assigns priority to promoting the on-going review of family legislation and administrative measures required to guarantee the full exercise of women's rights in the home and the family.

To summarize: **Although the redistribution of family responsibilities calls for attitude changes that must be promoted through the schools and the media, and must be supported by non-discriminatory social policies, there is no question that legislative changes are also extremely important. Indeed, behaviour can be changed through specific legislation that affects daily life, establishing and enforcing the sharing of responsibilities on an equal footing.**

**In addition, there is an urgent need to revise the concept of family in order to bring it in line with the social realities of the region, inasmuch as family legislation is lagging behind the changes that have taken place in society.**



## 8. Recognition of cultural plurality in the region

This strategic line is aimed at encouraging the visible and equitable participation of men and women of all ethnic and cultural groups, both in the region as a whole and in their own particular societies.

Culture plays a decisive role in the construction of gender identity and the assignment of roles according to sex, and the mass media are one of the main vehicles for the passing on of cultural values. In the region, the mass media portray women in a way that negates their cultural and ethnic diversity and the roles they are capable of assuming. Consequently, measures must be taken in order to help change this image.

The Costa Rican equality plan envisages a number of measures, including some legal ones, such as the signing of a Framework Agreement on Cooperation and Advisory Services between the National Centre for the Development of Women and the Family and the National Radio and Television System, and the creation of an interinstitutional commission to work with the media in assessing legislation on advertising and propose measures to project a non-discriminatory image of women. Campaigns are also planned to promote the contributions made by women in different areas, recognizing and creating appreciation for their cultural plurality.

The equality plans of Argentina and Chile follow this same policy. Chile is encouraging the national council on self-regulation of advertising to adopt standards to eliminate the reductionist and discriminatory image of women in advertising.

In Chile, SERNAM is implementing an important communications strategy, particularly through the campaign entitled "Let's make a new deal" ("*Hagamos un nuevo trato*"), which advocates mutual respect between men and women as individuals and as citizens.

In Mexico, the National Women's Programme, among other things, assigns priority to promoting the establishment of legislation and standards of conduct for the media with a view to eliminating the dissemination of reductionist portrayals of women in advertising.

**This is a particularly thorny question, since it has to do with freedom of expression and censorship. However, it is an area in which much can be done by combining sensitization campaigns with regulations specifying what constitutes discrimination and establishing penalties and legal proceedings for violations of the provisions of the Convention. This task would be facilitated by the creation of a mixed oversight agency (including representatives of the State and the media); such a measure would represent an important step towards compliance with the commitment to take action at the national and regional levels. The European Union has a committee on equal opportunities in the broadcasting and television sector.**

## 9. International support and cooperation

This strategy line seeks to ensure that international cooperation includes policies for promoting the gender approach in the execution of autonomous and integrated projects. It also proposes measures that are geared towards promoting, among international agencies, governments and civil society, the analysis and monitoring of cooperation policies that take gender into account.

Domestic legislation that would be binding on international cooperation agencies would be useful in ensuring that the gender approach is followed in cooperation policies and projects receiving international support.

## **IV. CONCLUSIONS AND PROPOSALS**

### **1. Qualitative changes in the struggle against discrimination**

There is no question that significant progress has been achieved since the date of ratification of the Convention. The question of equality has been recognized and there is no doubt in official circles that the granting of equal opportunities and the empowerment of women is a prerequisite to economic development and democracy.<sup>29</sup>

By comparison with previous decades, discussions on the issue during the 1990s are characterized by a new outlook, a change of perspective. Indeed, the debate focuses not so much on making short-term gains but on a long-term view; the concern is for seeing policies adopted, spaces created for development, and emphasis on education as the most effective means for achieving important changes. In brief, it must be stressed that the struggle against discrimination has changed in qualitative terms.

### **2. Global and regional consensus on priority issues**

At the regional level, the Regional Programme of Action for the Women of Latin America and the Caribbean, 1995-2001 incorporates, with due regard for the differences between countries, all the provisions of the Convention, as well as the objectives, strategies and action proposals set forth in the texts drawn up at international fora. Although the Programme of Action is not legally binding, it is a great step forward, since it reflects agreement on the application of strategies and actions on which global and regional consensus has already been expressed within the framework of the Convention.

The fact that these proposals have been reiterated at international fora is evidence of the consensus that exists on priority issues. In a way, this is tantamount to a monitoring of implementation of the Convention.

### **3. From legislative reform to changes in the legal system**

Substantial progress has also been made from the standpoint of legislation. The first step was the elimination of discriminatory terms. Most of the countries have already done this at all levels of the legal systems, i.e., in the constitution, codes, laws, regulations, bylaws of agencies, etc. Although some discriminatory legal texts are still on the books, they are fewer than before; the problem now is whether the measures establishing equality for women are actually being implemented. In many cases, changes in legislation need to be reinforced with administrative and other legal measures. Moreover, there are situations in which non-discriminatory norms are applied, but they are interpreted in a way that leads to distinctions being made; this is what is known as "indirect discrimination".

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<sup>29</sup> For views on women and development, see Magdalena León: "Mujer, género y desarrollo", *Estudios Básicos de Derechos Humanos IV*, San José, Inter-American Institute of Human Rights, 1996; and, María Nieves Rico, *op. cit.*

This means that it is not enough to amend the laws, but rather that it is necessary to reform the legal systems of the countries in order to incorporate equality into them. In addition to eliminating discriminatory terms, this will entail including norms to make up for obvious omissions or for omissions or exclusions that arise from the application of regulations. The principle of equality must be part of the focus in any interpretation of the law as a whole.

This also means that effective procedures must be put in place and responsible institutions must exist in order to ensure equality. Women, officials responsible for applying regulations and the population at large must all be fully aware of the rights of women.

#### **4. National equality plans**

Some countries have adopted national equality plans. These plans represent significant progress and reflect the countries' recognition of the importance of the question; although they include some very specific projects, they also contain proposals that are as general as the provisions set forth in the framework texts adopted at the international and regional levels.

It is obvious that international and regional proposals cannot be more specific, but when there is consensus on a wide range of issues, national plans would be more effective if instead of covering all the critical areas in orderly fashion, they would propose very specific measures that could actually be implemented within the time frame envisaged. It is time to move on from declarations to operations.

In this regard, the Chilean equality plan includes an excellent proposal for designing, in conjunction with the sectors concerned, annual action programmes that establish priorities for the measures to be implemented in the context of the plan and of sectoral priorities. The decree adopting the Mexican National Women's Programme is even more specific, as it stipulates that the Secretariat of the Interior (*Secretaría de Gobernación*) is to draw up annual plans to be taken into account in the yearly planning of public expenditures.

Plans of this type could gradually change theoretical frameworks and daily practices.

#### **5. Binding coordination mechanisms**

Almost all the countries of the region have created institutional mechanisms to address the issue of the full integration of women into development. Although these institutions have a different standing in the public administration of the different countries, and it would seem to be important to ensure that their voice is heard on the Councils of Ministers, it is even more important to create binding mechanisms for requiring the lead agency to coordinate efforts in this field, and to make compliance with its decisions binding.

It is also essential to establish rules regarding coordination between the State and the non-governmental agencies.

## **6. Creation of law through jurisprudence**

The creation of law through court decisions can be very useful in furthering the objectives of the Convention, which have been reiterated at the global, regional and national levels. Bringing cases before the courts in order to remedy infringements of the Convention would create jurisprudence in this area and be useful in exerting pressure on governments to take the necessary measures to enforce the Convention.

In this regard, in 1988, Argentina took a step forward with the adoption of Act No. 23592, which provides that victims of acts or omissions that constitute discrimination on account of sex may petition the judicial authorities to order that the act be ceased and that reparation be made for moral prejudice and material damage. However, since no regulations have been passed to deal expressly with this offence, the court is in duty bound to grant requests for the protection of the rights set forth in the Convention.<sup>30</sup>

Consequently, it would be useful to begin to bring complaints based on the Convention in order to produce legal, political and cultural changes.

## **7. A litigating institution**

The idea that the national offices responsible for implementing equality policies might help litigate discrimination cases has already been brought up in the European Commission, although only in terms of providing financial support. It would be most helpful to create an institution such as an office of attorney general for women which would not only consider individual cases but would also serve as a mechanism for initiating legal proceedings on behalf of the leading institution in this area. In other words, it would serve as a body that could initiate litigation for enforcement of the Convention, acting *ex officio* and not only at the request of individuals.

As has been mentioned above, some countries of the region have already created institutions to protect the rights of women, but they are mostly acting only when they receive a complain. What is needed is an institution that will act *ex officio* in order to begin establishing jurisprudence in the field of women's rights.

## **8. Positive action**

Another way to bring equality into the legal system is to emphasize positive actions aimed at speeding up the involvement of women in decision making and their access to jobs and to production resources, in order to achieve greater social and political balance in society.

The Convention, in article 4, stipulates that the adoption of special measures on the part of States in order to achieve *de facto* equality between men and women does not constitute discrimination and that, in any event, such measures are temporary.

This means that a statute that establishes differences may be justified if it is intended to create equality in practice, i.e., it is a necessary means for making the transition from equality of rights to equality in practice. In this regard, the jurisprudence of the European Court of Human Rights concerning the idea that "different treatment" constitutes discrimination holds that it is only discriminatory if it has no objective and reasonable

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<sup>30</sup> See II.B above.

justification, i.e., if it does not pursue a legitimate objective or if the means used are disproportionate to the objective sought.<sup>31</sup>

In the European countries, positive measures have been useful in helping to bring women into the decision-making process, getting them involved in the areas of policy design and execution, and giving them access to representative positions and to the Judiciary.

Only a few countries of the region have enacted laws that establish quotas, and that only within limited boundaries. This tool must be emphasized as a means for offsetting existing imbalances and incorporating the idea of minimum quotas in the civic culture so as to extend it to all spheres of public life, as well as in the private sector, if possible. It should be borne in mind, however, that the construction of equality does not stop there.

### 9. Updating the concept of family

In order to achieve changes in the legal system, it is essential to update the concept of what constitutes a family.

The family, whether it is viewed as an agent of socialization, a social institution or a private environment, has more and more become the critical focus of development and of the application of the concept of equal opportunity.<sup>32</sup>

Many thinkers see the family, as it has traditionally been conceived, as an obstacle for the implementation of equality of opportunity; therefore, given the role it plays in the socialization of men and women, it is here that changes need to be made. Moreover, the family is a legitimate target of social policy; it follows, therefore, that it is the ideal place for studying and implementing ideologies and policies.<sup>33</sup>

Undoubtedly, discriminatory or equalitarian behaviour is bound to start in the family. Most ideological trends agree that the family should be strengthened, and this is reflected clearly in the declarations and reports that were produced during the International Year of the Family, at international fora and in treaties that have been ratified in recent years, including the Convention on the Rights of the Child.

Nevertheless, the States of the region are operating with a view of the family that is losing its validity because it is no longer reflected in social reality.

The existing legislation has established a certain order for the family on the assumption that only one type of family exists. The stereotype is that of an ideal family that is monogamous, with two parents, patriarchal, stable, based on marriage, with the man being the main provider and the woman being responsible for child rearing, at least during the early years.

To operate on the basis of this concept not only shows ignorance of the real situation, but leads to the formulation of policies that exclude families that do not follow this pattern from the benefits of and access to resources. Moreover, the changes that have occurred in the composition, organization and operation of "families" are often reflected most dramatically in the "status" or "position" of the women in those families.

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<sup>31</sup> See: European Court of Human Rights, *Jurisprudencia 1984-1987*, Madrid, Cortes Generales, 1984.

<sup>32</sup> Ian Forbes, "Igualdad de oportunidades: crítica conservadora, radical y liberal," *Feminaria*, año VIII, No. 14, 1995.

<sup>33</sup> Ian Forbes, *op. cit.*, p. 7 ff

If truth is going to be faced, the term “family” simply cannot be used in the singular, and legislation must be amended to recognize and protect diversity.

Some studies carried out in Central America<sup>34</sup> show that in recent years a new type of family has emerged which is usually based on common-law marriage. The main feature of these new home structures is the fact that “kinship” goes beyond consanguinity and includes relationships based on solidarity.

To summarize: Family structures have changed, and this is where legislative efforts need to focus, so as to strengthen the new families that have come on the scene. Although there is consensus regarding the changes that have occurred in family structures, some sectors of society, especially in some countries, have not found it easy to accept the laws that regulate this reality, for so-called “moral” reasons. However, steps are being taken to protect families that exist in real life, independently of whether they are legally recognized, and establishing regulations to deal with those situations opens the way for establishing standards, within the framework of equality and democracy, for relationships and responsibilities to be developed within the new family structures.

Moreover, there is consensus to the effect that social policies should strengthen the family. What is needed is a redefinition of family to keep in step with the new realities and focus social policies on these new families.

## **10. Violence against women as a violation of human rights**

In the region, the legitimacy of violence against women has been broken, thanks to the fact that it is no longer an invisible and natural phenomenon.<sup>35</sup>

Several countries have passed special laws on family violence and sexual harassment. Special conventions have been ratified and an effort is being made, at the international level, to draft an optional protocol to the Convention in order to allow for complaints to be brought by individual victims of violence. Nevertheless, the truth about violence against women and the need to punish it will become much more evident if such violence is seen as a violation of the human rights of women.<sup>36</sup> This will entail not only redefining human rights, by recognizing that violations of human rights can originate not only in the State but also in the actions of individuals, and this has significant legal implications regarding the actionability of violence against women<sup>37</sup> and the obligation of the State to take preventive measures.<sup>38</sup>

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<sup>34</sup> See María Angélica Faune, “Transformaciones en las familias centroamericanas”, *Estudios básicos de derechos humanos IV*, San José, Inter-American Institute of Human Rights, 1996.

<sup>35</sup> Country Report of Argentina for the Beijing Conference.

<sup>36</sup> See United Nations General Assembly resolution 48/104, on the elimination of violence against women.

<sup>37</sup> See II.B.b) above.

<sup>38</sup> See Nieves Rico, “Violencia de género: un problema de derechos humanos,” *Mujer y desarrollo series*, N° 16 (LC/L.957), Economic Commission for Latin America and the Caribbean (ECLAC), 1996, p. 15.

### **11. The media as instruments of change**

The media could be used as a very effective tool for change in order to promote the social and cultural transformations that are needed to ensure that society actually practices the principle of equality.

Although proposing legal measures in this area is a very sensitive issue, inasmuch as it could restrict freedom of expression and entail censorship, if it is borne in mind that non-discrimination and the objective of equality are matters of social interest, it could be possible to promote and stress the need for self-regulation of the media. This could be supplemented by regulations reserving spaces for the State to disseminate these values.

### **12. State reform and equality**

The subject of state reform through decentralization and other modernization models is on the agenda of many of the countries of the region.

It is important to take advantage of state reform processes for the advancement of the cause of equal opportunities for men and women. It will be essential, in order to improve the state's ability to solve problems and resolve conflicts effectively, to eliminate gender inequalities,<sup>39</sup> inasmuch as women make up more or less half the population of the countries. Consequently, priority must be given to considering their problems in the design and implementation of policies in the different spheres of action of the public sector.

In this regard, in order to reach a more local level, municipal governments have a decisive role to play. This is expressly stated in Mexico's National Women's Programme, which includes strategies for encouraging the collaboration and active participation of state governments, local authorities and society as a whole, in a framework of respect for the sovereignty of states and municipal governments.<sup>40</sup>

### **13. Regional integration and equality**

Regional integration entails making adjustments in labour legislation in the countries concerned. This will open up an opportunity for incorporating the principle of equal opportunities for both male and female workers.

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<sup>39</sup> Chile, Servicio Nacional de la Mujer (SERNAM), *Plan de igualdad de oportunidades para las mujeres, 1994-1999*, Santiago, Chile, June 1995, p. 60.

<sup>40</sup> See Mexico, *Programa Nacional de la Mujer, Alianza para la Igualdad*, Mexico, D.F., 1995, p. 70.

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