



Protecting Women’s Rights: International Law and Advocacy

June 19, 2014 • San Francisco, California

Summary Report

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Introduction to the Human Rights Framework

Lisa Reinsberg, *International Justice Resource Center*

This introductory session provided an overview of the human rights framework and defined some of the common expressions used by human rights advocates. Speaker Lisa Reinsberg also explained the relevance of the human rights framework to women’s rights and outlined the five main topics – United Nations human rights mechanisms, the Inter-American human rights system, domestic violence as a human rights violation, discrimination against women, and sexual and reproductive rights – to be discussed during the training.

Human rights law is developed through international treaties and in customary international law. International human rights standards are often useful in advocacy, particularly when they provide stronger protections than national, state, or local laws, or where the language of human rights can be used to reframe or elevate a local issue.

Women’s human rights instruments include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”), and the Protocol to the African Charter on the Rights of Women in Africa (“Maputo Protocol”). In addition, all human rights treaties include provisions prohibiting discrimination.

Women’s human rights include the right to be free from discrimination, equal treatment, and freedom from violence. Under international human rights law, States must respect, protect, and fulfill these rights.

There are universal, regional, and national bodies tasked with monitoring and enforcing States’ implementation of human rights standards.

Universal bodies are those organized by or through the United Nations (UN). These include policy-making bodies like the Human Rights Council, treaty-based bodies that oversee specific human rights



treaties, independent experts called “special procedures” who monitor and report on conditions worldwide, and the Universal Periodic Review peer evaluation process.

Regional bodies include the Inter-American Commission on Human Rights, Inter-American Court of Human Rights, European Court of Human Rights, European Committee of Social Rights, African Commission on Human and Peoples’ Rights, and the African Court on Human and Peoples’ Rights.

With regard to women’s rights, some relevant bodies are the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee), Commission on the Status of Women, UN Special Rapporteur on Violence against Women, UN Working Group on Discrimination against Women in Law and in Practice, Inter-American Rapporteurship on the Rights of Women, and the Special Rapporteur on Rights of Women in Africa.

The functions of these bodies include: deciding individual complaints against States, reviewing States’ report on their compliance with international standards, issuing emergency protective orders, visiting countries to carry out fact-finding, interpreting human rights treaties, promoting human rights, and making policy recommendations to States.

The specific human rights obligations of the United States include those provided for in the treaties it has ratified, namely: the International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and two protocols to the Convention on the Rights of the Child. Two additional instruments, the Universal Declaration of Human Rights and the American Declaration on the Rights and Duties of Man, also inform human rights bodies’ review of the United States’ policies and practices. The United States’ compliance with these standards is overseen by various United Nations bodies and by the Inter-American Commission on Human Rights.

Considerations that advocates should weigh in deciding which body or bodies to engage with include: each body’s jurisdiction, the outcome sought, the timing and duration of the procedure, procedural requirements, and practical factors such as travel or language barriers. The processes, advantages and disadvantages of the different human rights bodies are discussed in greater detail, along with stories of litigation and other forms of advocacy, in the following sessions.



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United Nations Human Rights Mechanisms & Women's Rights

Connie de la Vega, *University of San Francisco School of Law*

Julianne Cartwright Traylor, *University of San Francisco School of Law*

Bridget Engle, *University of San Francisco School of Law*

Ejim Dike, *US Human Rights Network*

During this session, the four speakers introduced the UN human rights system, its various components – including the Commission on the Status of Women – and the many opportunities for engagement with these mechanisms. The speakers also described their experiences utilizing UN human rights protections in their own advocacy efforts.

The UN Human Rights Framework

Connie de la Vega, *University of San Francisco School of Law*

Connie de la Vega provided an overview of the UN human rights framework, focusing particularly on the Charter- and treaty-based bodies that form the core of the UN's human rights activities.

Human rights mechanisms at the UN generally fall within one of two categories: charter-based bodies and treaty-based bodies. Charter-based bodies are those established pursuant to the UN Charter, and include the Human Rights Council, its "special procedures," and the Universal Periodic Review. Treaty-based bodies are those that oversee States' implementation of a specific human rights treaty and thus have narrower mandates. One example of a treaty body is the Human Rights Committee, which oversees the implementation of the International Covenant on Civil and Political Rights (ICCPR).

The Office of the High Commissioner for Human Rights (OHCHR) coordinates human rights activities throughout the UN. The OHCHR provides support to the Human Rights Council and treaty, including by acting as a point of contact and source of information for non-governmental organizations that participate in the UN's activities.

Charter-Based Bodies at the United Nations

The Human Rights Council, formerly the Human Rights Commission, comprises 47 government delegates and reports directly to the UN General Assembly. The Council forms a core component of the UN's



human rights system. It created the Universal Periodic Review (UPR) procedure, through which UN Member States engage in a regular peer review of one another's human rights records. The Council oversees its own complaints procedure, which it uses to collect information concerning particularly serious or widespread abuses. The Council is also responsible for the work of the thematic and country-focused "special procedures," which are independent human rights monitors that may be referred to as Special Rapporteurs, Working Groups, or Independent Experts. Because the Council was established pursuant to the UN Charter, it is empowered to address human rights situations in any Member State of the UN.

Treaty-Based Bodies at the United Nations

Treaty bodies review States' reports on their implementation of the relevant convention, publish "General Comments" interpreting the convention's provisions, and – in some instances – may review individual complaints concerning alleged violations of the convention by those States that have specifically agreed to this procedure. The treaty bodies with jurisdiction to review the United States' human rights practices are the Human Rights Committee, the Committee on the Elimination of Racial Discrimination (CERD), the Committee against Torture (CAT), and the Committee on the Rights of the Child (CRC). The United States has not agreed to any treaty body complaints mechanism, and is therefore only reviewed through the State reporting process.

The UPR process monitors all UN member States every four years. Since the UPR is driven by the government delegates, it is less specific and more political than other procedures. One advantage of the UPR procedure, however, is that it is applicable to all States regardless of ratification of human rights treaties.

The complaints procedure, formerly referred to as the 1503 communications procedure, is also supervised by the Human Rights Council. It consists of several stages of review of "consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances." See UN Human Rights Council, Resolution 5/1, *Institution-building of the United Nations Human Rights Council*, A/HRC/RES/5/1, 18 June 2007, para. 85. Victims, other individuals, and groups may submit complaints to the Human Rights Council using this procedure. Designed to encourage State cooperation, the complaints procedure is confidential, but can often trigger a response by States. Moreover, the Human Rights Council sometimes creates new special procedures as a result of complaints it receives.

Individuals and organizations can also submit communications or reports asking a Special Rapporteur, Working Group, or Independent Expert to look into a problem, including while the special procedure mandate holder is carrying out a country visit. If the report attracts attention, then there is usually quick action by the State on it. These special procedures receive many complaints, however, so a response is not guaranteed.



Recommendations and observations by the UN human rights bodies are not considered directly binding on States, which can make human rights advocacy at the UN difficult. Nevertheless, success can be had through raising awareness and increasing pressure for reform, such as by “naming and shaming.” Indeed, UN recommendations have eventually been implemented in the U.S., making advocacy a worthwhile option for victims and advocates. The juvenile death penalty was cited as an example.

Specialized Agencies

In addition to the above Charter- and treaty-based bodies, the UN has created specialized agencies relevant to the promotion of human rights. These are the International Labour Organization (ILO), the Food and Agriculture Organization (FAO), the International Monetary Fund (IMF), and the Children’s Rights & Emergency Relief Organization (UNICEF), among others.

Commission on the Status of Women

Julianne Cartwright Traylor, University of San Francisco School of Law

Julianne Cartwright Traylor drew on her vast experience to explain the role that the Commission on the Status of Women plays in the recognition and protection of women’s human rights. In addition to introducing the Commission, Ms. Traylor provided a history of its mandate and described its importance as a venue for advocacy at the UN.

The Commission on the Status of Women (CSW) is the principal global inter-governmental body dedicated to the protection of women’s human rights. Established in 1946, the CSW prepares recommendations and reports to the Economic and Social Council (ECOSOC), one of the main UN organs. It holds a 10-day session annually in New York, in which States, representatives of UN entities, and civil society organizations participate in discussing specific themes related to women’s rights.

Following the Fourth World Conference on Women that took place in Beijing, China in 1995, the UN General Assembly expanded the CSW’s mandate to include a follow-up process to the Conference, in order to highlight areas of concern in the Beijing Platform for Action and to play a catalytic role in the incorporation of a gender perspective in all aspects of the UN’s work.

Notably, the CSW has the largest non-governmental organization (NGO) participation of any ECOSOC commission.



Engaging with the Commission on the Status of Women

Bridget Engle, *University of San Francisco School of Law*

Bridget Engle described her experience engaging with the CSW in 2014 and provided insights into the experience of preparing for and carrying out an issue-based advocacy strategy. She participated in the CSW as a member of the University of San Francisco School of Law's Frank C. Newman International Human Rights Law Clinic.

At the 58th session of the CSW, Ms. Engle presented a report calling on the international community to pay greater attention to the impact of poverty and extreme hunger on women worldwide. Specifically, she lobbied delegates to incorporate language into the Agreed Conclusions that recognized unpaid care work, urged States to consider ways to reduce and redistribute this work in order to promote gender equality, and included a gender perspective on poverty rates. An important lesson learned from the experience was that one's individual voice is not as important as the voice of a group as a whole.

Human Rights Advocacy in the United States

Ejim Dike, *US Human Rights Network*

Ejim Dike described the challenges of engaging in human rights advocacy around policies and practices in the United States, and the benefits of using a human rights frame.

The U.S. Human Rights Network (USHRN) is an organization that works to build a people-centered human rights movement and culture in the United States. A significant hurdle facing domestic human rights advocates is the notion of U.S. exceptionalism in the field of human rights. With regard to CEDAW, for example, organizations in the U.S. have engaged in renewed efforts to secure its ratification by the U.S. However, one of the commonly cited reasons for ratification by the U.S. is to allow the U.S. to help women in other countries, rather than to benefit women in the United States. The belief that human rights violations do not exist in the U.S. thus normalizes violations, making them invisible. The U.S. is home to human rights violations, and a lack of recognition or awareness of that fact makes promoting human rights more difficult.

The U.S. does not have a strong record on gender equality. And, human rights violations are experienced more often and more harshly by women of color. For example, one in seven women in the U.S. is living in poverty and the rate is worse for women of color. Violence against women is also more likely to impact Native American and black women.

Raising awareness of human rights is useful because the human rights framework can lend a sense of moral authority to an issue and make it seem more "human." Human rights protections often go further



than national protections, as well. For example, internationally, discrimination is evidenced by intent or effect, whereas in the U.S., intent is necessary to show discrimination. In the context of unpaid care work or paid leave, the disproportionate impact on women gives rise to an international human rights obligation to address these issues as gender discrimination.

The human rights framework also incorporates the concept of intersectionality, which recognizes that there are multiple dimensions to our identities and that different people experience discrimination differently. Any solution to a human rights problem should recognize the various dimensions of individual identity, and international law does this. Under U.S. law, however, individuals have to choose which one of their characteristics was the reason for discrimination against them.

The human rights framework also recognizes violence against women as a form of discrimination. Violence against women is a form of discrimination because it denies women equal access to other things, such as housing, work, and health. Homelessness of women, for example, is strongly linked to violence against women.

The USHRN encourages advocates to use international human rights mechanisms as part of their broader strategy. An example of such advocacy is the situation of domestic workers, who were not protected under U.S. labor laws. Domestic workers used the UN treaty body reporting process and other advocacy at the UN level to: reframe their working conditions as a matter of the human right to dignified work, to engage other countries whose nationals were among the domestic and agricultural workers in the U.S., and to connect with groups in other parts of the world who were working on similar issues. Together these groups then advocated for the adoption of an international convention on the rights of domestic workers, which was drafted by the International Labour Organization, to create a national organization of domestic workers, and to obtain local legislation on these issues. They effectively used the human rights framework to elevate the issue, as part of a larger strategy.

Ms. Dike then identified the human rights mechanisms available to U.S.-based advocates, and the schedule of upcoming UN reviews of the United States' human rights record. In 2014-2015, these include review by the Human Rights Committee, Committee on the Elimination of Racial Discrimination, Committee against Torture, and Universal Periodic Review. This condensed schedule of advocacy opportunities is unique and USHRN encourages interested organizations to get involved.

Questions

Following the session, questions were raised regarding the differences between Special Rapporteurs and Independent Experts and the obstacles to and benefits of U.S. ratification of CEDAW.

Regarding the difference between Special Rapporteurs and Independent Experts, the speakers explained that Special Rapporteurs generally get more resources and have broader mandates. Independent



Experts, on the other hand, are often a compromise for States that do not wish a Special Rapporteurship to be established.

There are many obstacles to U.S. ratification of CEDAW, including politics, concern about interference in people's private lives, and lack of knowledge about the treaty. When asked whether ratification of CEDAW should be a goal at all given the likelihood that the strength of ratification will be weakened with reservations, understandings, and declarations (RUDs) in spite of the enormous effort made to achieve its ratification, the speakers responded that at least ratification would open the issue of women's rights for discussion, and that reservations can be overcome. They agreed, however, that proponents needed to be careful about ratification at any cost.



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The Inter-American System & Women's Rights

Rosa Celorio, *Inter-American Commission on Human Rights*

Lisa Reinsberg, *International Justice Resource Center*

This session introduced the Inter-American Commission and Inter-American Court, their mandates, and the Inter-American standards and decisions relevant to women's rights.

Note: This session began with an animated video (<http://www.ijrcenter.org/advocacy-before-the-inter-american-human-rights-system/>) introducing the Inter-American human rights system.

The Inter-American System of Human Rights

Lisa Reinsberg provided an introduction to the Inter-American human rights system, including the steps needed to make a claim,

The Inter-American system of human rights is a States-driven system managed by the 35 member states of the Organization of American States (OAS). Its principle bodies are the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights. These entities have different functions, but each plays a role in ensuring States' compliance with the range of human rights protected by the American Declaration of the Rights and Duties of Man and the regional human rights treaties adopted by the OAS.

The Inter-American Commission processes complaints ("petitions"), holds public hearings, issues precautionary measures in emergency situations, and publishes reports and press releases. Through its rapporteurships, including the Rapporteurship on the rights of women, the Inter-American Commission focuses on issues of particular concern throughout the region. The Inter-American Court issues judgments, provisional measures, interpretations of judgments, decisions concerning State compliance, and advisory opinions. The system's largest area of work is in processing petitions.

One of the difficulties facing the Inter-American system is the diversity of language, cultures, and levels of development among its Member States. Even though the United States is one of the biggest funders and supporters of the Inter-American system, it does not fully participate in or comply with the procedures. Although the U.S. is subject to the Commission's jurisdiction, including with regard to the petition system, it has not ratified the regional human rights treaties and has not accepted the Court's jurisdiction. The system is primarily conceived of and driven by the Latin American states.



However, engagement with the Inter-American Commission can help raise awareness of specific problems – such as through thematic hearings, provide opportunities to engage in dialogue or negotiation with the government, push for reform in policy or practice, and make victims’ voices heard.

Presenting a Claim before the Inter-American Commission

In order to present a petition to the Inter-American Commission, the petitioner generally must: 1) describe facts that could, if true, constitute a colorable claim of violation of the American Declaration of the Rights and Duties of Man, 2) have exhausted the appropriate domestic remedies (unless ineffective, insufficient, or unavailable), 3) and submit the petition to the Inter-American Commission within six months of exhausting of domestic remedies (or within a reasonable time). Additionally, the same complaint must not have already been decided by an international adjudicatory body with similar jurisdiction.

The Inter-American System and Women’s Rights

Rosa Celorio explained the Inter-American system’s relevance to women’s rights and reviewed the major women’s rights cases decided by the Inter-American Commission and Inter-American Court.

The Inter-American Commission started hearing women’s rights cases around 1994. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará” is the most ratified treaty in the Inter-American system.

Women’s rights decisions by the Commission and Court can be split into two phases: foundational and developmental. In the first phase, which lasted from 1994 to 2006, the Commission issued decisions relating to domestic violence (*Maria da Penha Maia Fernandes v. Brazil*), openly discriminatory civil codes (*Morales de Sierra v. Guatemala*), and sexual violence as torture (*Martín de Mejía v. Peru*; *Ana, Beatriz and Celia González Pérez v. Mexico*).

In the second phase, lasting from 2006 to today, the Commission heard cases that involved States’ obligation to carry out due diligence and strict due diligence (*González et al. (“Cotton Field”) v. Mexico*), sexual violence (*Fernández Ortega et al. v. Mexico*, *Rosendo Cantú and Other v. Mexico*), and reproductive rights (*Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica*).

The importance of these cases, in addition to recognizing women’s rights as human beings, springs from their being a starting point for further discussion on women’s rights. The case of *Artavia Murillo and Others (“In Vitro Fertilization”) v. Costa Rica*, for example, is significant due in part to the Inter-American Court’s reasoning that the right to life is not an absolute right. The Court opened the door for further discussion about the precise scope of the right to life.



Implementation of Inter-American Commission Decisions

Regarding implementation of the Inter-American Commission's decisions and recommendations, it is important to remember that the time frame is long and is not the work of just one sector. It takes many actors to secure implementation.

Questions

Following the session, participants asked for more specifics about the processing of cases at the Inter-American Commission and the differences between the recommendations of the Inter-American Commission and the judgments of the Inter-American Court.

When the Inter-American Commission receives a petition, it first examines its admissibility. If a petition is admissible, the Commission tries to facilitate a settlement between the State and the petitioner. If it is not possible to reach a settlement, the Commission will proceed to analyze the case on the merits, and may request a hearing between the parties. At any point, the State and petitioner may reach an agreement on a settlement. After reaching a conclusion on the merits, the Commission might decide to publish the decision or submit the case to the Inter-American Court, depending on the response of the State to the Commission's recommendations, and taking into account the opinion of the victim and petitioner.

Regarding the differences between the judgments of the Inter-American Commission and Inter-American Court, the Commission's recommendations are not binding on the State in the same sense that the Court's decisions are. The Commission may monitor compliance, but it is equipped with no enforcement mechanism; instead, it may submit cases to the Court if the State fails to comply with its recommendations.



“Fireside Chat”: Violence against Women as a Human Rights Violation

Caroline Bettinger-López, *University of Miami School of Law*

Blaine Bookey, *Center for Gender & Refugee Studies*

This session consisted of a “question and answer” conversation between Caroline Bettinger-López (CBL), who acted as lead counsel in the case of *Jessica Lenahan (Gonzales) v. United States* before the Inter-American Commission, and Blaine Bookey (BB) from the Center for Gender & Refugee Studies.

Note: This session began with a brief video describing Jessica Lenahan’s fight for justice following the deaths of her three daughters (<https://www.youtube.com/watch?v=UvPtMCRl4J4&noredirect=1>).

BB: *Are there any facts about the case not depicted in the video that are important to know?*

CBL: The resilience of Jessica Lenahan’s family was a major factor in moving the case forward. Also, the deaths of Jessica’s daughters were never investigated, so it is unknown whether the police or the girls’ father killed them. This remains a major source of grief for Jessica and her family.

BB: *What would you consider to be the significance of the Supreme Court decision of *Castle Rock v. Gonzales*?*

CBL: The decision was one of many that were against women, like the case of *DeShaney v. Winnebago County Dept. of Social Services*, which required a state-created danger in order for an affirmative duty to intervene to arise in domestic violence situations. Another example is the case of *United States v. Morrison*, in which the Supreme Court held there was no private cause of action under the Violence against Women Act.

BB: *Were there any other arguments that could have been made to the Supreme Court in *Jessica Lenahan’s* case?*

CBL: Jessica’s attorneys considered making an equal protection argument, but they would have needed a showing of intent. There was also the option to raise a negligence claim under Colorado tort law, but they would have needed to show wilful and wanton behavior, that is, that the police intended for the girls to die. Both of these did not seem viable.



BB: *Can you compare U.S. law to international law on the issue of domestic violence?*

CBL: Under U.S. law, there is no duty to protect from private violence. Under international law, if the State knows or should know of a real and immediate risk to an identifiable individual and fails to take reasonable steps to prevent harm, there is a violation. International law provides greater protection to victims of domestic violence.

BB: *What were some of the key legal principles of the case?*

CBL: Affirmative obligations principles were critical to the case, as was violence against women as a form of discrimination. Jessica's attorneys also focused on her right to know the truth about the deaths of her daughters. The case reached the Supreme Court on a motion to dismiss, so Jessica never had the opportunity to find out the exact cause of her daughters' deaths.

BB: *What other "characters" are relevant to our understanding of the case?*

CBL: The individuals and organizations that submitted amici curiae briefs are relevant, as are the Inter-American Commission staff. Of course, Jessica and her family played an integral role as well.

BB: *What did the Inter-American Commission hold?*

CBL: The Inter-American Commission held that the United States violated Articles I (Right to Life, Liberty and Personal Security), II (Right to Equality before the Law), VII (Right to Protection for Mothers and Children), and XVIII (Right to a Fair Trial) of the American Declaration of the Rights and Duties of Man.

BB: *What are some of the contributions the case has made?*

CBL: The case has contributed to our understanding of due diligence in domestic violence situations. Due diligence consists of the duty to prevent, investigate, sanction, and offer reparations for human rights violations. The duty to act with due diligence extends to actions by private individuals.

The case also inspired eleven cities to incorporate new language in their restraining orders to make it clear that they must be enforced by police.

BB: *What is the status of the implementation of the Inter-American Commission's decision?*

CBL: Little has been done by the U.S., but that does not mean we were not successful. There always needs to be creative advocacy and condition-building. We need to "make the road by walking."



Questions

Following the session, a question was asked regarding conclusions that can be drawn about domestic violence in the U.S. and whether improvements have been made. Ms. Bettinger-López pointed out the recent news about Florida's "Stand Your Ground" laws. She described how the same law that led to George Zimmerman's acquittal following the shooting death of Trayvon Martin was unavailable to Marissa Alexander, a black woman who fired a warning shot at her abusive husband and received a 20-year prison sentence. She said that, while there have been some improvements, problems still exist and need to be addressed.



Gender Discrimination & Other Forms of Discrimination against Women

Krishanti Dharmaraj, *International Action Network for Gender Equity & Law*

The focus of this session was gender discrimination and other forms of discrimination against women, and the possibility for utilization of human rights treaties in public policy advocacy. Ms. Dharmaraj reflected on her experiences as an advocate to draw conclusions about the success of advocacy efforts and areas for further improvement.

Human dignity is like breathing. We do not pay attention to breathing when it is there. It is when it is not there that we pay attention. When we are discriminated against, our humanity is compromised.

Human rights law can be used in the U.S. to address discrimination. Discrimination creates a gap between the person and what it means to be fully human. Human rights protection is about constructing conditions in society for people to enjoy their full humanity. Bridging the gap that is discrimination is the goal.

Discrimination exists both structurally and behaviorally. Structural discrimination exists in law and policy. Examples of behavioral discrimination include stereotyping and discrimination within families, the community, and the State. We need different remedies for these different types of discrimination.

Ending discrimination requires us to be proactive. For example, who defines human rights? The answer is that it depends; the people in power define language. Thus, transformative change requires us to look at our role in privilege. Oppression and privilege go hand in hand, and solutions ought to recognize that.

Local adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was intended to be a solution to the problem of the U.S.'s failure to ratify the convention. San Francisco adopted a legally binding ordinance reflecting the principles of CEDAW. The program receives \$200,000 in annual funding and is equipped with a task force. It is charged with applying a gender analysis to all departments.

The ordinance has seen mixed success. It has been changed and watered down, and how it is used depends on who is in office. Nevertheless, the program has inspired other cities and the state of Hawaii to adopt laws of their own based on the principles of the Convention.



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Sexual and Reproductive Rights

Katrina Anderson, *Center for Reproductive Rights*

Lisa Davis, *CUNY School of Law*

During this session, the speakers provided an introduction to sexual and reproductive rights, and discussed the ways in which they incorporated human rights strategies into their advocacy for sexual and reproductive health and rights.

Reproductive Rights

Katrina Anderson, *Center for Reproductive Rights*

Katrina Anderson provided a breakdown of reproductive rights and the avenues for advocacy in the U.S. She went into detail about using human rights principles in the Center for Reproductive Rights' struggle to protect women's access to reproductive health care in the Rio Grande Valley of Texas.

Reproductive rights are actually a cluster of rights. They comprise the civil and political rights of life, liberty, and personal security. They also include the economic, social, and cultural rights of equality, non-discrimination, health, education, and access to information. Other rights in the cluster are the right to progress, the right to decide the number and spacing of children, marriage and family rights, and the right to privacy. Freedom from coercive, harmful practices and freedom from sexual or gender-based violence are also reproductive rights.

There are several international agreements that are relevant to any discussion of reproductive rights. They are the 1994 International Conference on Population and Development (ICPD) Programme of Action, the 1995 Beijing Declaration and Platform for Action, and the ICPD Beyond 2014 Global Report.

In addition, international treaties that are relevant to reproductive rights in the U.S. are the ICCPR, CERD, and CAT. Other relevant international treaties are CEDAW, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of Persons with Disabilities (CRPD).

Another international source of law and insight into women's rights is the Inter-American human rights system. The Inter-American Commission hears claims against the U.S. for violations of the American



Declaration on the Rights and Duties of Man, though the Inter-American Court lacks jurisdiction. The jurisprudence of both the Inter-American Commission and Court shed light on the meaning and scope of the provisions in the treaties of the Inter-American system.

The concluding observations and general recommendations of treaty-based bodies also elucidate the meaning and scope of rights contained in human rights treaties.

National laws can also be a source of reproductive rights. For example, the U.S. Constitution provides for equal protection under the law, privacy, and due process. The right to health is frequently provided for in state constitutions.

Governments have the responsibility to respect, protect, and fulfill their human rights obligations. Instances in which governments have violated their obligations to respect and protect to reproductive rights include denial of abortion access and the shackling of pregnant women. The obligation to fulfill, with respect to reproductive rights, includes ensuring access to affordable contraception, sex education, and support for young parents, among other things.

The Center for Reproductive Rights launched the “Nuestro Texas” campaign to help the women of the Rio Grande Valley in Southern Texas. Access to reproductive health care in the area was severely limited due to state funding cuts, violence in Mexico, and increased border control.

The Center for Reproductive Rights developed a tripartite approach to advocating for the women of the Rio Grande Valley. It documented the obstacles to accessing to health care, as well as mobilized people to act. The Center also engaged in advocacy at the state, national, and international levels. At the state and national levels, the Center made policy recommendations using human rights principles. Internationally, the Center supported using treaty-body review mechanisms, such as the Human Rights Committee’s review of implementation of the ICCPR in the United States.

On the whole, the Center for Reproductive Rights has found that using human rights adds a meaningful boost to their advocacy efforts.

Rights Relating to Sexual Orientation and Gender Identity

Lisa Davis, *CUNY School of Law*

Lisa Davis analyzed the case of *Atala Riffo and Daughters v. Chile*, a case heard by the Inter-American Commission and Inter-American Court, in her discussion of rights relating to sexual orientation and gender identity.

Atala Riffo and Daughters v. Chile is a case that progressed before the Inter-American Commission and Inter-American Court in the years from 2004 to 2012. The case challenged Karen Atala Riffo’s loss of



custody of her children because of her sexual orientation. The Inter-American Commission held in her favor and recommended reparations, including legislative and policy changes. The case was referred to the Inter-American Court after Chile failed to adopt the Inter-American Commission's recommendations.

Chile made four arguments to the Inter-American Court. First, it argued that the children would suffer social discrimination because of having two mothers. The Inter-American Court held that fear of discrimination is not a legitimate reason to take custody away from a parent. Next, Chile maintained that the children would suffer from confused gender roles if they were to be in their mother's custody. The Court said that evidence of harm was required and there was none. Third, Chile contended that in exercising her homosexuality she was putting her own interests before those of her children. The Court held that sexual orientation is not about self-interest but about one's identity. Finally, the State of Chile argued that the children had a right to a traditional family. The Court ruled that there is no closed concept of family, let alone a traditional one.

The Court ordered Chile to provide psychological treatment and monetary damages to Ms. Atala Riffo, publish the decision, and train public officials so as to foster a climate of tolerance.

The case of *Atala Riffo and Daughters v. Chile* is a significant one because it resulted in sexual orientation being found to be a protected class under the "other social condition" phrase of the American Convention.

Questions

Following the session, a question was asked about how to draw the line between favorable government involvement, such as in domestic violence situations, and unfavorable government involvement, such as with restrictions on access to abortion services. The speakers responded that State intervention can be problematic, and the best guidepost is to follow what women want. They also mentioned that often, healthcare providers are doing the best that they can in a system that is working against them. They emphasized the importance of working "from the ground up."