



Division for the Advancement of Women



***"Violence against women: Good practices in
combating and eliminating violence against women"***

Expert Group Meeting

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**Successful legal strategies for addressing VAW and
recommendations to governments**

Issues brief prepared by:

Center for Reproductive Rights

As per your request please find a summary of legal strategies that have been successfully used to address various forms of violence against women and considerations for future work based on the Center for Reproductive Rights' experiences and work in collaboration with women's rights groups. Further details and citations will be provided upon request. Additional information may be found on the Center's website at www.reproductiverights.org.

Legal strategies

1. Documentation of violations of reproductive rights

In collaboration with local women's rights organizations, the Center for Reproductive Rights has conducted *fact-finding missions* to document violations of women's reproductive rights in a number of countries including Peru, Nepal, Slovakia and Mali. In doing so women's rights groups have been able to highlight the human rights violations resulting from practices such as the abuse of women by service providers in public health facilities, imprisonment of women for abortion related offences, coercive sterilization of women on the basis of race and lack of access to health services during pregnancy and childbirth.

The reports on Peru, Nepal and Slovakia were successfully used to hold these respective governments accountable for the violations that had occurred. In each instance, the *initial fact-finding report became a critical basis for follow-up strategies* which were developed in collaboration with the national level groups in each country.

- The fact-finding report in Peru eventually became the basis for litigation at the Inter-American Court of Human Rights; the Peruvian government agreed to compensate the petitioner in the case for the pain and suffering suffered on account of the abuse, initiate sanctions against the errant service provider and institute appropriate reforms in the public health system to prevent further incidents of abuse.
- The findings of the report on Nepal lent critical support to abortion law reform efforts in the country and became the basis for a global campaign for the release of women imprisoned for abortion; only two out of the more than 50 women in prison during the time of the study are in prison today.
- The report on Slovakia resulted in two lawsuits by victims of coercive sterilization and law reform with respect to informed consent during sterilization procedures and access to medical records. The new law includes strong provisions on informed consent that make it more difficult for violence in the form of coercive sterilization to take place.

2. National, regional and international litigation

In collaboration with human rights groups, the Center has successfully used litigation to address various forms of violence against women by securing, among other things,

remedies for individual petitioners and commitments from governments to introduce *institutional reform* to prevent further abuses.

In *Mamérita Mestanza v. Peru*, a case involving a mother of five children, Maria Mestanza, who died after undergoing a forced sterilization procedure in a Peruvian public health care facility, the government agreed to settle, and to recognize violations of Mestanza's right to life, physical integrity and humane treatment, to equal protection under the law, and to freedom from gender-based violence. In August 2003, the government signed a settlement under which they accepted responsibility for her death and agreed to pay damages to Mestanza's family, modify discriminatory legislation and policies, punish those responsible for Mestanza's death, and introduce measures to protect women's rights to informed consent to sterilization procedures. CLADEM, DEMUS, Association for Human Rights [APRODEH] and CEJIL were also involved in this case.

The Center for Reproductive Rights has launched a global litigation strategy in partnership with leading human rights experts and organizations in Africa, Asia, Europe, and Latin America to combat gender-based discrimination and violence through the protection and promotion of women's reproductive rights. The aforementioned case offers strong example of the scope and potential of this strategy. We are currently working with groups in, for example, Brazil, Ireland, and India on cases involving issues such as maternal death, unsafe abortion and child-marriage. We are providing assistance in a variety of ways including through the submission of amicus briefs and preparation of legal arguments based on international and comparative law.

3. Law reform and legislative advocacy

Law reform and legislative advocacy have been used successfully by women's groups in many parts of the world to criminalize various forms of violence against women. Some recent examples include:

- Nepal: In 2002, after several years of advocacy by women's rights groups, the government amended the National Civil Code. Key amendments include the decriminalization of abortion on several grounds, an increase in the legal age at marriage and increased penalties for perpetrators of rape.
- Turkey: In 2004, the Turkish Penal Code was reformed and as a result of advocacy by women's rights groups offers stronger legal protections for women and girls' rights to equality and physical integrity. More specifically, it provides more progressive definitions and higher sentences for sexual crimes; criminalizes marital rape and specifies measures to prevent sentence reductions for perpetrators of honor killings and rape.

- Bulgaria: In 2005, the National Assembly of Bulgaria adopted the Law on Protection against Domestic Violence. The law is one of the first of its kind in the region to include Order for Protection provisions.

Women's groups in several countries including Bolivia, Lithuania, the Philippines and Thailand have been advocating for comprehensive reproductive health legislation to address the harmful impact on women's health and lives due to lack of access to reproductive health services and the absence of laws that ensure women the right to control their fertility and protect their bodily integrity. Likewise, women's right groups have been making increasing demands for establishing access to emergency contraception, especially for survivors of rape.

4. Submission of shadow letters to UN Treaty Monitoring Bodies (TMBs)

Over the last few years, major TMBs such as the Human Rights Committee (HRC) and the Committee on the Elimination of Discrimination Against Women (CEDAW) have become more responsive to reports of reproductive rights violations ensuing from the failure of governments to comply with their treaty obligations. The Center has adopted a focused strategy which involves the submission of "shadow-letters" that present specific information about violations of reproductive rights resulting in gender-based discrimination and violence. Very often, these letters are drafted in collaboration with local women's groups. Many of them have resulted in strong concluding observations that have subsequently been used in national level advocacy, for example in Nepal. The Center recently submitted a shadow letter to the HRC in collaboration with the Federation of Women Lawyers – Kenya (Fida-Kenya) which described, among other things, how restrictive abortion laws, widespread domestic and sexual violence, and the continued practice of female genital mutilation (FGM) infringe upon the rights of women and girls in Kenya. The HRC has issued a concluding observation calling upon the Kenyan government to address all of the aforementioned issues.

5. Filing of individual complaints to UN Treaty Monitoring Bodies (TMBs)

Optional protocols to major human rights treaties have established additional recourse for victims of human rights violations who are unable to secure appropriate remedies from national courts. TMBs such as the HRC and CEDAW are being pursued by women who have experienced gender-based violence in a variety of different circumstances. The following are examples of recent cases presented before CEDAW and the HRC:

- On 26 January 2005, the Committee on the Elimination of Discrimination against Women assessed a claim brought by a Hungarian woman and victim of domestic violence. After consideration of her claim, the

Committee agreed with the woman that Hungary had failed to live up to its obligations to provide the woman with the required degree of protection under the CEDAW. To remedy the situation, it recommended that the Hungarian Government take immediate and effective measures to secure the protection of the woman and her children by providing her with appropriate child support and legal aid as well as reparations for physical and mental harm she suffered. It also recommended that the Government take the necessary steps to protect Hungarian women in general against domestic violence. For example, it suggested that the Government enact legislation, provide training on the requirements of CEDAW for all judges, lawyers, and law enforcement officials, ensure prompt investigations of allegations of domestic violence and most importantly, provide women with access to the judicial system, as well as rehabilitation services. It remains to be seen whether the Hungarian Government will actually act on their obligations under international law.

- The Center for Reproductive Rights has brought the first ever individual complaint involving access to abortion before the HRC. *Karen Llontoy v. Peru* involves the case of a seventeen-year old Peruvian woman who was pregnant with a fetus that had a fatal anomaly (anencephaly) and was denied a therapeutic abortion by Peruvian health officials, despite Peruvian law's exception for pregnancy termination for health reasons. The young woman was compelled to carry the fetus to term and was then forced to feed the deformed baby for a couple days until his inevitable death. The Center, Counseling Center for the Defense of Women's Rights (DEMUS), and Committee for the Defense of Women's Rights (CLADEM) filed a complaint with the HRC in 2002 the failure of state officials to protect Llontoy's right to be free from inhumane and degrading treatment, among others. The Committee has not yet ruled on admissibility

Considerations for further action

Key considerations for further action for governments may include the following:

- In consultation with women's rights groups, enact and rigorously enforce legislation that defines and criminalizes violence against women, prescribes penalties for perpetrators of violence and establishes mechanisms for redress. Allocate appropriate funding to ensure the successful implementation of such legislation and create an oversight mechanism to ensure that funds are properly utilized.

- Ensure the proper implementation of laws that have already been introduced and legal provisions contained in broader criminal and civil codes that may offer some relief in such cases. Impose sanctions against law enforcement officials that fail to uphold such laws. Establish complaint mechanisms for reporting errant law enforcement officials and ensure the confidentiality of those filing reports.
- Sensitize and strengthen the capacity of existing law enforcement mechanisms and courts to handle cases involving violence against women. Improve investigation procedures and address gender bias within the judiciary and in law enforcement.
- Remove burdensome evidentiary and procedural requirements for reporting and prosecuting crimes involving violence against women.
- Establish family courts and women friendly police stations or cells nationwide to strengthen responses to violence against women and to make the justice system accessible for women. Where such mechanisms exist, examine their performance. Identify and address barriers to access and improve the quality of services. Make legal aid and counseling widely available.
- Launch programs to sensitize and train health care providers to recognize indications of physical and sexual violence against women once they enter the health system. Strengthen health systems to respond to the needs of survivors of violence including the need for counseling, support, and emergency contraception and voluntary testing for HIV/AIDS and other STIs for survivors of rape.
- Launch major public education campaigns to promote awareness of the law and to discourage gender-based violence. Work closely with civil society, employers in the public and private sectors, educational institutions and communities to monitor violence against women and to develop strategies to address violence against women in different its forms, at various levels and in both the private and public spheres.