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**THE EFFICIENCY OF LEGISLATION ENACTED TO  
FACE HARMFUL ACTS AGAINST WOMEN  
IN LATIN AMERICA AND THE CARIBBEAN**

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\* *The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

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In 1958 Luisa Delia, who had reached only elementary education, a pleasant, bird loving dreamer, considered by all to be happily married, decided to leave her family home to search for a life that would correspond to her dreams of freedom. She was reported for abandoning her home and forced to give up her patrimonial rights resulting from marriage. She later returned humiliated, exhausted and ostracized by social, legal and economic punishment, inflicted upon her for having sought her own freedom. Her daughter, who achieved a secondary education, made the decision to become a single mother and was therefore dismissed from her job as a teacher. It was the seventies and she was involved in the labor union movement and as such was reinstated in the midst of discrimination, later completing studies in a specialized profession. One of Luisa Delia's granddaughters was married and, as a result of violence inflicted upon her, left her husband, who never suffered legal consequences. The other granddaughter reached the university despite her ever-absent father's opposition and chose to live as a single woman.

All of them have experienced violence, inflicted on them for one reason or another: the elder was judged and punished for wishing to be free; her daughter was punished because she was her mother's daughter; and the granddaughters were abused because of their mother and grandmother's past, their desire to study or the absence of masculine paternal control. They all have something in common: their bodies carry the marks of historical violence inflicted upon women in public and in private, of not being recognized as women in possession of rights, and also of the progress which allowed the granddaughters to make decisions which were impossible for Luisa Delia.

Their life stories, similar to those of other women with worse experiences, are a reflection of political and legal progress accomplished in Latin American and Caribbean countries. Three elements motivated the first legislative tools in this region: first, women who decided to break their silence and begin to bring about social and political change in order to have an independent life; secondly, the work of women's organizations who propelled political will in their countries and in the region; and thirdly, international instruments with which it was later possible to press the creation of mechanisms to effectively enforce women's rights toward a life free of violence.

This scenario in the region was preceded and accompanied by work carried out by women's groups, face to face with international instruments, specially after the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1993 UN Declaration on the Elimination of Violence against Women, the 1994 Interamerican Convention on the Prevention, the Punishment and Eradication of Violence against Women "Convention of Belem do Pará", the 1995 Beijing Declaration and Platform for Action, and the 1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

The 90's was a period of important and numerous adjustments in legislation in the region. Some of these developments came along with Constitutional reform. One such case is Argentina

which, carried forth a Constitutional reform in 1994 assigning constitutional hierarchy to human rights treaties, and ratified real equality in the exercise of political rights, donning the National Congress with the power to order positive action in order to guarantee equality for women and men. Another case is that of Uruguay which, by reforming the 1967 Political Constitution in 1997, ratified equality before the law and the right to housing, among others<sup>1</sup>. A third case was Colombia which underwent its Constitutional reform in 1991, making the country a Social State under Rule of Law ordering thus enforcement of the rights recognized therein, ordering the authorities to guarantee adequate and effective participation for women a decision-making levels in Public Administration, and ratifying equal rights and opportunities for women and men; it was a reform that paved the way toward constitutional questioning of discriminating regulations and generated constitutional ruling in favor of women's rights. Cuba also modified Chapter IV of its Constitution in 1992, ratifying equality.

On the other hand, when it comes to legislative reform in Latin America and the Caribbean, these processes have generally been carried out in six major areas: domestic violence, civil and political rights, social and political participation, regulation of rights and obligations within the family, creation of institutions in charge of generating policy for women, and most recently, other acts of violence against women in the context of armed conflict.

On domestic violence, since 1984 with San Vicente and Granadinas (Law on Domestic Violence and Marital Procedures), and later in 1989 with Puerto Rico and Jamaica (Law on Domestic Violence), until 2002<sup>2</sup> with Uruguay, the countries in this region developed legal instruments related to violence within the family nucleus from different perspectives. Some countries incorporated definitions for this kind of violence; like Guatemala which, in 1996 ratified it as a human rights violation. Other countries merely incorporated punitive measures for such acts, like Panama in 1995 or Paraguay in the year 2000, which established protective laws in cases of these acts. Each country covered a specific spectrum of family life: for example Mexico in its 1996 legislation –later to be modified– covered current and past relation; El Salvador with its 1996 legislation –modified in 2002 and 2004– covered the entire family group whether or not they share the same housing.

One of the motors for these reforms was, without a doubt, pressure put on by women's organizations for enforcement of the international instruments assumed by the Governments. However, some of these instruments suffered reforms in the same decade that reversed the

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<sup>1</sup> It is worth clarifying that before its reform, Uruguayan legislation protected women's rights, for example with Act 16.045 of 02/06/1989 forbidding discrimination of treatment or opportunities in the workplace for both genders.

<sup>2</sup>1992- Barbados - the Law on Protection Orders for Domestic Violence and the Law on Sexual Crimes are passed.

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attainment of women's rights. This was the case in Colombia, a country which –because of congestion in the judicial system and lack of political will– weakened the protective nature of its laws achieved in 1996 by removing judges capacity to rule security measures and handing it over to officials whose offices were not always accessible for victims.

In civil and political rights as well as social and political participation, the region has laws that specially recognize and protect some of these, like the right to suffrage and eligibility for public entities and posts. More recently, and by women's initiative, the countries in the region approved legal measures to guarantee women's access to public posts and corporations, ordering a minimum make-up of women in public posts and corporations for parties and/or Corporations. Argentina's Women's Quota Act along with its statutory decree 24,012, Colombia's Act 581 of 2000, and the Peruvian Acts 26859 for elections modified by Act #27387 of 2000, for regional elections of 2002, 28094 for political parties of 2003 which orders all candidate's lists for directive posts in the political party as well as for candidates up for election to contain a thirty per cent minimum of women or men for all candidates in Peru.

In relation to family obligations and rights, in Latin America and the Caribbean reforms have focused on recognizing equal rights and custody over children as well as free management of property for women. Property rights resulting from a partnership not made by marriage contract and laws to protect maternity in adolescence or adulthood have been regulated. The fact that most of these countries' civil legislations are not created internally but adapted from foreign codes means that, in some of them, certain concepts related to women's sexuality within marriage persist. On the other hand, progress has been made in gaining equality of custody for mother and father. A very important advance, having more to do with the protective nature of legislation towards family and childhood but is interpreted as a law which protects women, is legal sanction for fathers who do not fulfill their alimony obligations.

The process by which governments in the region acquired political commitments led to the establishment of mechanisms for promoting, protecting and diffusing women's rights by way of national councils, vice- ministries, institutions, agencies, national directorates, ministries and Federations. These institutions are responsible for policies, plans, programs, or projects geared toward which fulfill the government's commitment to eradicate violence towards women.

It is worth adding that, concerning sexual violence, since the 90's there have been characterizations of some sexual felonies with different legally protected rights. For example, in 1986 in Trinidad and Tobago the Law on Sexual Crimes was passed. In 1991, while Trinidad and Tobago passed its Law on Domestic Violence (later reformed in 1999), Bahamas and Belize passed their Law against Sexual Offenses and Domestic Violence. In 1995, Antigua and Bermuda pass their Law on Sexual Offenses, while the Law on Domestic Violence was passed in

1999. By 2005, Haiti passed its Décret modifiant le régime des Agressions Sexuelles et éliminant en la matière les Discriminations contre la Femme.

With respect to more recent progress, it is worth saying that the historical context placed important pressure for acts of violence against women in a private environment be openly revealed, but later women in Latin American countries prompted the development of bills that dealt with acts of violence against women simply because they were women and protected women from other expressions of violence. Some countries underwent new legislative reform in this direction with the purpose of protecting women and preventing, sanctioning and eradicating violence against women through legal instruments which recognize the fact that women are inflicted violence for the simple fact of being women. They progressed in protective measures, recognized acts related to femicide –also called feminicide–, enforced protection for women in specialized centers, and applied criminal law to conduct detrimental to women’s rights in everyday circumstances, specially the penalization of sexual conduct.

Progress in 2008:

By 2009, Act number 1257 of 2008 became enforceable in Colombia. Through it regulations on awareness, prevention and punishment for different forms of violence and discrimination against women were stipulated. The Penal Code, the Penal Processing Code, Act 294 of 1996 were reformed and other provisions were stipulated which made sexual harassment punishable for the first time, include femicide and assign the responsibility of attending women victims of violence to the social security system, among other regulations.

During 2008 in Argentina, Act 26.364 was passed. It addresses prevention and punishment for trafficking people and establishes provisions for legal assistance to victims. Likewise, in Brasil, Sao Paulo municipal Act 14673 orders the creation of shelter-houses to attend women in situations of domestic violence. In Guatemala the law against femicide and other forms of violence against women was passed. Mexico ruled the General Act for Women’s Access to a Life Free of Violence. In Paraguay, Agreement 156 on equal opportunities and treatment between workers was approved, along with the very significant Act 3458 of 2008 allowing the Convention on War Crimes and Crimes Against Humanity, while Uruguay regulated common law union with Act 18246 of 2008.

Legislation for women’s protection within the context of armed conflict has been weak if not inexistent. Legislations adhere to regulations within international humanitarian law for procedural purposes and to demand truth, justice and reparation for victims. Specially in the case of Colombia, the regulations mention victims but they completely lack a sense of respect for their experiences, suffering and right to truth, justice and reparation. The victim does not play an

important role in the law, rather the law acts as a validating mechanism for dialogue with one belligerent actor or another who participate in the conflict.

### **Effectiveness of these Measures**

Legislative reform, especially that which focuses on equality, was a key factor in raising women's educational level. Gloria Bonder explains in her article "Gender and Education", published in the *Iberian American Magazine on Education*<sup>3</sup>, that a phenomenon of expansion in formal education within the region shows a significant increase in women's as well as men's schooling for the period between 1980 and 1990. Moreover, legislative reform and implemented mechanisms have created a scenario in which women can report acts of violence against them, as well as allowing women to increase their levels of participation. Argentine representative for the Social Progress Party in the province of Santafé, Miriam Isabel Benitez, interviewed for this document, states: "In the course of my work I have observed that, no matter the limitations, legislation has created possibilities for the women of the region in terms of access to education, participation and presence in public corporations. In the case of Argentina, the Constitutional reform of 94 made headway in formally equaling women's rights and had consequences in reforming the exercise of parental authority, which went on to be shared by father and mother where before only the father possessed it and the mother was consulted only in specific aspects such as marriage of minors. A very positive legislation was the creation of the Women's Police Station, which is a space or office belonging to the Police with female personnel, exclusively dedicated to receiving claims of violence against women."<sup>4</sup>

It is precisely legislative progress in the region that has made differences in terms of women's well being evident. An indicator is the annual report on the gender gap published by the world economic forum which for this year, 2008<sup>5</sup>, placed Argentina and Cuba in the list of the best countries for women; two countries which, as explained above, implemented reform to strengthen equality for women and men.

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<sup>3</sup> Organization of Iberian American States for Education, Science and Culture. *Iberian American Magazine on Education*, September-December 1994. Author: Gloria Bonder: <http://www.rieoei.org/oeivirt/rie06a01.htm>

<sup>4</sup> Miriam Benitez Sáez is Representative for the province of Santafé and Professor at the Universidad de Rosario in Argentina. In her practice as a politician she has been known for her efforts in attaining measures that protect women's rights –like to controversial Size Act which was originally intended to obligate clothing manufacturers established in the province of Santafé to produce clothing for all sizes according to measurements approved by the IRAM rules, which analyze anthropometric sizing– as well as protective measures for women victims of violence.

<sup>5</sup> World Economic Forum "The Global Gender Gap Report 2008. Authors Ricardo Hausmann, Laura D. Tyson, Saadia Zahidi, World Economic Forum. <http://www.weforum.org/en/Communities/Women%20Leaders%20and%20Gender%20Parity/GenderGapNetwork/index.htm>

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Some of the consequences of these legislative modifications, especially in punitive terms, tends to be an increase in claims, inclusiveness in judicial information systems, and recognition that violent acts are violations of human rights. These are important tools when working directly with women on self-identification as bearers of rights and victims, as well as on strengthening their independence as they limit the acts of violence inflicted upon them.

With the laws on domestic violence great progress was made in recognizing violence perpetrated private, to the point where currently more women recognize that they can count on protective resources and can report acts against them.

Legislative progress has been a tool, serving to strengthen women as bearers of rights, and a tool for change as they have been useful for transformation of women in reference to how women see themselves and how they exercise their citizenship and independence. Moreover, political recognition of legislative tools for eliminating violence towards women as acts against them simply because they are women widens the positive scenario for revealing acts of violence inflicted on women in their everyday lives. Legislation has also allowed government institutions and mechanisms for generating public policy related to women's issues to become stronger. An example of entities which exist today in every country, designing policies, plans and programs for women is the Family Police Station.

One of the significantly effective tools for concretion of women's rights is the interpretative activity carried out by Constitutional Courts at all levels. Respectively, the Colombian Constitutional Court has brought forth important breakthroughs in protection for victims of violence, even in the context of armed conflict. It was a Court ruling which forbade investigation of a victim's past and intimate life in the process of criminal investigation on sexual violence. Likewise, it is the Court which has acknowledged women's situation as vulnerable, a situation which is exacerbated in the context of armed conflict.

### **Obstacles for the Effectiveness of these Measures**

Numerous difficulties confront women concerning legislation to protect them from violent acts. These obstacles can be seen when dealing with victims in the context of armed conflict.

The approach of some legislations, whether in civil or criminal law and specifically that which is responsible for protection within the family nucleus, is not structured on acknowledgement of women human rights but on traditional family structure, which preserves unfair relationships of subordination and oppression between family members. Even after implementation of regulations that punish domestic violence, the struggle to make violence inflicted on women in

private contexts public has been undermined by the approach mentioned above, which allows for the creation of tools like conciliation that does not take into account the disadvantage in conditions generally experienced by women victims of violence and ends up tending to tolerate violent acts in order to preserve family unity.

Some countries do not have adequate information systems which would allow follow-up suitable for women's cases. There is a problem of impunity in investigations and sanctions for violent acts against women, cases that have gone without punishment, filed away, technical difficulties in the investigation and violations of victims' rights. Even when laws include a minimum percentage of women's participation in public corporations and administrative entities, some regulations do not guarantee alternating lists and even lack guarantees of including women's point of view on those corporations' agendas.

There is a lack of human talent and material resources that would permit protective measures for victims ordered by competent authorities. One of the most significant barriers is the attitude of people in charge of attending women in public service institutions and personnel in the judicial system. There is an issue of re-victimization and discrimination due to race, ethnic group, and a permanent subjective re-evaluation of victims on behalf of the personnel responsible for attending them or guaranteeing their rights in the course of their legal process.

There are also geographic barriers that force women to remain in situations of violence and that create a greater risk for them when they try to gain access to protective mechanisms or to report acts against them.

According to the report given by the Women's Rights Reporter at the Inter-American Commission for Human Rights, published January 20<sup>th</sup> 2007:

123. Although IACHR recognizes the States' efforts towards the adoption of a legal and political framework to tackle violence against women, which includes a range of recourses and judicial instances for protection, there is a dichotomy between its formal availability and its suitability to remedy such acts of violence. IACHR was able to confirm that legal response to cases of violence against women is considerably poor and fails to meet the seriousness and impact of the problem.

124. There is, in a number of cases, a pattern of systematic impunity as to legal prosecution and proceedings in connection with cases of violence against women due to the fact that a large majority of these cases go on without investigation, sanction and effective reparation. Impunity of these violations of rights perpetuates social acceptance of the phenomenon of violence against women, women's feeling and perception

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of insecurity, as well as a persistent distrust of women towards the administration of justice system. Such deficiencies translate into a number still negligible of oral trials and guilty verdicts that fail to correspond with the prevalence of the problem<sup>[167]</sup>. That challenge and its consequences were uniformly identified by representatives of the States, the justice administration, the civil society, the academic sector, and by women from the various ethnical and racial groups who participated in the implementation of this project, and have been confirmed through the information received by AICHR by applying the interamerican system's mechanisms.

125. Likewise, IACHR was able to confirm that violence and discrimination against women are still accepted facts in societies across the American continent, which reflects in the response of the justice administration officers towards women victims of violence and the way cases are handled. There is also a tendency to see cases of violence against women as household conflicts that must be resolved without the State's intervention.”<sup>6</sup>

### **Regarding situations of armed conflict**

The armed conflict is a scenario where violence against women is exacerbated. Women are subjected to violence manifested in all expressions: Discrimination on the grounds of ethnic group or race, physical, psychological, sexual violence, disappearances, tortures, sexual and labor slavery, forced prostitution and displacement. Latin America and the Caribbean regulations for the protection of women within the armed conflict are ineffective. In a study by the Latin America and the Caribbean Committee for the Defense of Women's Rights published in March, 2007, involving monitoring on sexual violence in armed conflict in Colombia, El Salvador, Guatemala, Honduras, Nicaragua and Peru, sexual violence in armed conflict was found to be a systematic practice, a war strategy, and an expression of deeply rooted cultural patterns exerted by all actors involved, most of them State agents. This study highlights the importance of advancing in processes of truth, justice and repair to end the perpetualness of violence committed in this connection.

The report concludes that the Latin American setting lacks proper political conditions to protect both men and women, and this lack of protection was mostly evidenced in the cases of conflicts

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<sup>6</sup> Acces to Justice for Women Victims of Violence in the Americas, Chapter II. OEA/Ser.L/V/II. Doc. 68. January 20, 2007. <http://www.cidh.oas.org/women/Acceso07/cap2.htm>

in the countries studied, and significantly affected women due to their conditions of oppression and subordination.

It also examines the form in which conflicts changed male and female roles, since women had to take on the responsibility for the families, became combatants or social actors for peace and development. According to this report, post-conflict conditions in the countries undergoing this stage did not serve as a tool to transform women's conditions, but actually facilitate increase of other forms of violence such as femicide<sup>7</sup>.

Generally speaking, although there have been international advances aimed at protecting civil population in armed conflict situations and sexual crime is specifically condemned, protection of civil population is not a priority for governments, and women are seen as war instruments and booties.

### **Recommendation:**

One of the challenges the legislation is faced to is facilitating the mechanisms for society to advance in recognizing women as subjects of rights and admitting that women are victimized on the sole basis of being women, which implies that violence against women continues throughout their entire lives and takes place in the different settings in which their lives unfold. Thus, the law must serve to disclose and evidence the expressions of such tolerated and legitimated violence in order to continue on its way to erradicating such practice.

Women's redress may only take place in a democratic scenario, so it is important to strengthen the internal mechanisms of justice and debate of each of the countries and elements that structure the exercise of democracy inside each State, for example, by encouraging participation opportunities, by introducing measures to allow crime victims to play a leading role, and by developing measures to streamline the realization of rights, for instance, protection measures.

It is critical to bolster focus on legislations which view women as the subject of rights and on the tools for women to exercise their autonomy, e.g., considering victims to have a leading role in legal proceedings.

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<sup>7</sup> Latin America and the Caribbean Committee for the Defense of Women's Rights, CLADEM. Monitoring of Sexual Violence in Armed Conflict in Colombia, El Salvador, Guatemala, Honduras, Nicaragua and Peru. March, 2007  
<http://www.cladem.org/espanol/regionales/Violenciadegenero/Docs/CLADEM%20Estudio%20Conflicto%20Armado.asp>

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Whilst protection measures are developed, such as Casa de Albergue (Shelter House), laws must focus on the restitution of rights so that acts of violence may transcend prevention or attention measures.

Laws should include a communicative component to facilitate the diffusion of communicational pieces promoting respect for women and the exercise of their citizenship.

Mechanisms such as conciliations that facilitate access to impunity should be dismantled on the grounds of not being developed allowing for the real oppressive situations experienced by the victim.

To break educational and female work stereotypes, the States can set up strategies to force governments to promote women's entrance to secondary middle and advanced education in the areas of basic and applied sciences, e.g., scholarships or the reinforcing of courses in those areas.

Implementation of special measures in order to protect the civil population and the women amidst armed conflict. An example is the designation of prevention and protection of rights offices in areas where armed actors are present, which shall have sufficient guarantees to perform their duties.

It is evident that legislative advances and their effectiveness are based on women's work who have, in an articulated manner, exerted pressure for the creation of international mechanisms and the adoption of measures within the internal legislation for the fulfillment of the States' commitments. To this effect, I consider it relevant to reinforce monitoring strategies on the fulfillment of the States' obligations and to empower women's organizational work for social and political participation of women.

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