REPRODUCTIVE RIGHTS AS HUMAN RIGHTS: THE COLOMBIAN CASE

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Introduction

Over the past 15–20 years, women in different parts of the world have taken up issues of reproductive health. Their concern has been to empower women to control their own fertility and sexuality with maximum choice and minimum health problems by providing information and alternative services, and by campaigning for women's right to make informed choices about their fertility, for improved services and for more appropriate technologies.[1]

The Convention on the Elimination of All Forms of Discrimination Against Women (the Women's Convention)[2] is the major international treaty that protects the right of women to make their own decisions about their fertility and sexuality. Under the Women's Convention, states are obliged to take all appropiate measures to eliminate all forms of discrimination against women, including those forms that result from the lack of reproductive health services and education. Under this Convention, policymakers, governments, and service providers have to see fertility regulation and reproductive health services as a way to empower women, and not as a means to limit population growth, save the environment, and speed economic development.

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1 WHO and International Women's Health Coalition, *Creating Common Ground*, Report of a meeting between women's health advocates and scientists, WHO/HRP/ITT/91 (Geneva, 1991), 6.

2 G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46 at 193, U.N. Doc. A/34/46 (1979).

Women's enjoyment and exercise of reproductive rights and fundamental freedoms will become a universal fact when women everywhere are allowed to make their own decisions about their fertility and sexuality. Women need appropriate information and services, but new reproductive health policies are also required. New policies should require family planning services to address other aspects of women's reproductive health, like pregnancy care, sexuality, and reproductive tract infections. These services will not succeed if they do not acknowledge that "choice" in the life of a woman is affected by many considerations. The choice of contraception is affected by personal circumstances such as her health, her sexual relationships, the stage she has reached in her reproductive life, her status in society, her risk of suffering violence, her possible exposure to infected partners, her prior experience with other contraceptive methods, and her access to education and information. For new policies to succeed, it is crucial to accept the fact that it will be some time before all women's and men's contraception needs are met and that all contraceptives have failure rates.[3] As a result, some women will always need safe abortions. It is also crucial to recognize that the need for education and information cannot be used as a smoke screen to shield the lack of or inadequate delivery of reproductive health and family planning services. Education and information, without services, and services without education and information, infringe on women's rights to the liberty and security of their person and to be free from all forms of discrimination due to their status as women. Until recently in Colombia, government institutions would proudly say that they were educating families about reproductive welfare, but they left the provision of reproductive health services, especially those dealing with contraception, in the hands of private non-governmental organizations (NGOs). Thus the government did not have to confront society, politicians, or the Catholic Church, to which about 95 percent of the national population nominally belongs.

Profamilia is the leading private, nonprofit family planning association, affiliated since 1965 with the International Planned Parenthood Federation. The Colombian Ministry of Public Health has offered family planning services since 1969 as part of its health program, but because of severe constraints on the health care budget, family planning services are not emphasized. Profamilia helps to fill the gap and currently provides more than 60 percent of all family planning services delivered in the country.[4] It runs 48 clinics located in all regions of Colombia, and directly

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3 Elise F. Jones and Jacqueline D. Forrest, "Contraceptive Failure Rates Based on the 1988 NSFG," *Family Planning Perspectives* 24 (1992): 12–19.

4 Digest, "Colombian Fertility Rates," *International Family Planning Perspectives* 18 (1992): 38, 39.

markets contraceptives in pharmacies and small shops throughout the country. The role of the association continues to be "To promote and defend the basic human right of family planning in Colombia and work toward achieving better sexual and reproductive health by offering information and other services."

This chapter addresses the recent developments of reproductive rights in Colombia and the new programmatic initiatives taken by Profamilia to empower women to assert their rights.

The Development of Reproductive Rights in Colombia

The Importance of the Women's Convention

The Convention provides that states parties shall take all appropiate measures to ensure for women "The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights" in all matters relating to marriage and family relations (Article 16). Therefore, the state must eliminate discrimination against women in the field of health care in order to ensure, "access to health care services, including those related to family planning" (Article 12). All states that are party of this Convention are obligated "to prevent discrimination against women on the grounds of marriage or maternity and... ensure their effective right to work" (Article 11(2)), and must prohibit dismissal on grounds of pregnancy or of maternity leave, introduce maternity leave with pay, and encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life. Consequently, the state must adopt measures to ensure that women have "[a]ccess to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning" (Article 10), and that "family education includes a proper understanding of maternity as a social function" (Article 5).[5]

The Committee on the Elimination of Discrimination Against Women, established under the Women's Convention to monitor the progress made in its implementation, issued General Recommendation No. 19 on Violence

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5 See generally Rebecca J. Cook, "International Protection of Women's Reproductive Rights," N.Y.U.J. Int'l L.& Pol. 24 (1992): 645; Rebecca J. Cook "International Human Rights and Women's Reproductive Health," *Studies in Family Planning* 24 (1993): 73; Lynn P. Freedman and Stephen L. Isaacs, "Human Rights and Reproductive Choice," *Studies in Family Planning* 24 (1993): 18.

Against Women.[6] This Recommendation explains that gender–based violence is "violence that is directed against a woman because she is a woman or that affects women disproportionately"[7] and it "impairs or nullifies the enjoyment by women of human rights and fundamental freedoms," including the right to be free from all forms of discrimination on account of their status as women.[8] The Committee found that violence against women in the form of coercion regarding fertility and reproduction places their health and lives at risk. It specifically explains that "compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the rights of women to choose the number and spacing of their children."[9]

The Committee specifically recommends that

> States' parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropiate services in regard to fertility control. [10]

The 1991 Colombian Constitution

It has been observed about Colombia's recent history that:

> After the Supreme Court cleared the way for the constitutional process to begin, women joined with other groups and sectors in heeding President Gaviria's invitation (which explicitly included "feminist and women's organizations") to present their proposals for constitutional reform....[Their] fundamental proposal was that the principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women be elevated to constitutional rank.[11]

Women wanted the new Constitution not only to incorporate the Convention's prohibitions on all forms of discrimination against women

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6 General Recommendation No. 19, U.N. Doc. CEDAW/C/1992/L.1/Add. 15 (1992); Arvonne Fraser and Miranda Kazantsis, CEDAW #11 (Minneapolis, MN: International Women's Rights Action Watch, 1992), 28–32.

7 CEDAW #11, note 6 at para. 6.

8 CEDAW #11, note 6 at para. 7.

9 CEDAW #11, note 6 at para. 22.

10 CEDAW #11, note 6 at para. 24(m).

11 Martha I. Morgan and Monica M. Alzate Buitrago, "Constitution Making in a Time of Cholera: Women and the 1991 Colombian Constitution," *Yale J. L. and Fem.* 4 (1992): 353-413, 375.

but also to adopt concepts like that found in Article 4(1) of the Women's Convention requiring states to take "temporary special measures aimed at accelerating *de facto* equality between men and women," and other mechanisms that would ensure equal opportunities and not just formal equality for women.[12]

Although not all of our concerns were addressed, the new Constitution has incorporated many principles and rights that will help women in the country and reinforce, nationally and beyond, the Convention on the Elimination of All Forms of Discrimination Against Women. Article 13 of the Constitution, for instance, establishes that all persons are born free and equal before the law, will receive the same protection and treatment from governmental authorities and will enjoy the same rights, liberties and opportunities without any discrimination due to sex, race, national origin, family origin, language, religion, or political or philosophical opinions. The state will promote the conditions necessary for equality to be real and effective, and will adopt measures in favor of previously disadvantaged groups to remedy residual discrimination.

The new Constitution specifically addresses in article 40 the concerns of women by establishing that public authorities will guarantee the adequate and effective participation of women at the decision-making levels of government and in its administration. Article 43 adds that women and men are to have equal rights and opportunities, and that women cannot be subjected to any form of discrimination.

Article 42 of the new Constitution defines the family as the fundamental unit of society, which can be constituted by natural or legal bonds, meaning by the free decision of a man and a woman to marry or by their responsible mutual will to constitute a family. This article also stipulates that family relations are based on both partners' equality of rights and duties, mutual respect among all its members, and rejection of any form of domestic violence. It includes the right of the couple freely and responsibly to decide the number of their children and the right to a civil divorce for religiously celebrated marriages.

The Constitutional Right of Petition

Article 86 of the new national Constitution provides that:

Every individual may claim legal protection to claim before the judges, at any time or place, through a preferential and summary proceeding, for himself/

12 For a comprehensive study of Colombian women's efforts to make a better constitution, see generally Morgan and Buitrago, "Time of Cholera," note 11 at 353.

herself or by whoever acts in his/her name, the immediate protection of his/her fundamental constitutional rights when the individual fears the latter may be jeopardized or threatened by the action or omission of any public authority.

The protection will consist of an order so that whoever solicits such protection may receive it by a judge enjoining others to act or refrain from acting.

The order, which will have to be implemented immediately, may be challenged before the competent judge, and in any case the latter may send it to the Constitutional Court for possible revision.

This action will be followed only when the affected party does not dispose of other means of judicial defense, except when the former is used as a temporary device to avoid irreversible harm. In no case can more than 10 days elapse between the request for protection and its resolution.

The law will establish the cases in which the order of protection should apply to individuals entrusted with providing a public service or whose conduct may affect seriously and directly the collective interest or in respect of whom the applicant may find himself/herself in a state of subordination or vulnerability.

Under the new Constitution, women have the following fundamental rights that will protect their decisions about fertility and sexuality: the rights to life, liberty, equality and security of the person; to the unrestricted development of identity; to found a family; to decide freely and responsibly the number of children; of access to education and information; to the enjoyment of a healthy environment; and to health care.[13] Sex-related discrimination in any field, such as the political, economic, social, educational, cultural, or civil, constitutes an impediment to the recognition, enjoyment, and exercise by women of human rights and fundamental freedoms. An important goal is the interconnection of individual, specific rights with the overall right to health and to reproductive health. This will eventually be achieved through the jurisprudence the Constitutional Court will develop once women start using their right to petition.

Crucial to the enforcement of women's rights is the "order of protection" available when a woman applicant "may find herself in a state of subordination or vulnerability."[14] A very important petition has been won by a woman victim of domestic violence. The Constitutional Court decided,

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13 Profamilia Servicios Legales Para Mujeres, *Amparo de mis derechos fundamentales. La acción de tutela* (Safeguard My Fundamental Rights: The Right to Petition) (Bogotá: Profamilia, 1993), 3.

14 See generally Decreto 2591 of 1991 and Decreto 306 of 1992.

when her case was appealed, that the right to petition could be accepted because the national Penal Code did not consider the inhumane and degrading treatment to which her husband had subjected her to be an offense.[15] In order to protect the petitioner's constitutional rights to life and personal integrity, the police and the Institute of Family Welfare were required to take immediate measures to protect the woman.[16]

New Laws and Policies on Women's Health

The new political will, the incorporation of new groups in the government,[17] and the networking of feminist groups that started during the constitutional process and fortunately continues today, can all account for the recent public health policy issued by the Ministry of Public Health.

Evidence of this new political will is found in the *Guidelines for an Integrated Policy for Colombian Women* presented by the government on 8 March 1992. These identified the following issues that need special attention:

- *Health:* Basic problems relate to early pregnancies, child survival, and safe motherhood. Other concerns are health and safety in the workplace, mental health, and reproductive health.

- *The generation and improvement of income and employment:* The major problems are persistent manifestations of labor discrimination based on sex, sub–contracting of female labor, low standards of female training, high numbers of women working in the informal economic sector, low wages, women's low coverage by social security provisions, unlawful treatment of domestic servants, and the concentration of poverty in female–headed households.

- *The rural sector:* Basic problems refer to the almost nonexistent female ownership of land, the lack of infrastructure relevant to women's need, difficulties that hamper women's access to agricultural credit and loans, destruction of the environment, illegal crops, and rural violence.

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15 Constitutional Court Decision T–529 Sept. 18/92.

16 María Cristina Calderón, "La tutela, garantía para la mujer maltratada" (The Right to Petition: A Guarantee for the Battered Woman) *Profamilia* 9(21) (1993):6.

17 The former guerrilla group, M–19, accepted peace offers and now forms part of the government. The current (summer, 1993) Minister or Secretary of Public Health is a member of M–19.

- *The family:* The main problems are the double workload faced by women, lack of housing and public services, and lack of title deeds.

- *Legislative and other measures:* These should address violence against women in the family, the lack of mechanisms to protect women, discrimination against women in specified areas, and the failure to implement existing laws. Specific mention is made of the Convention on the Elimination of All Forms of Discrimination Against Women (Law 51 of 1981) to stress the political will to enforce and implement the Convention by reform of Decree 1878 of 1990, which gave responsibility to the Ministry of Labor. The Decree emphasizes the need and the government's intention to popularize the Convention.

- *The Media:* The main problems are discriminatory concepts circulated by the mass media, and their sometimes astonishing lack of knowledge of women's legal rights.

- *Organization and participation of women in the public sphere:* Mass media campaigns have to be organized in order to stimulate and strengthen women's organizations in both the urban and rural sectors.

- *Recreation, culture, and sports:* Special efforts must be made to allow for a creative use of women's leisure time.

- *Family planning:* Official programs have to be strengthened in order to improve counseling and coverage of family planning services.

- *Research:* Attention must be given to improving women's issues and remedying the lack of information centers, and the poor indicators of the status of women in the country.

Resolution 1531, issued by the Ministry of Public Health on 6 March 1992 to celebrate the March 8 International Day of Women, warrants special attention. The Resolution is really a Bill of Rights concerning women and health issues, and sets the tone for forthcoming policy. The Resolution begins by empowering women. It enables women actively to participate in decision making on all issues in individual, community, and institutional spheres that affect their health, lives, bodies, and sexuality. The specific rights identified in the Resolution can be summarized as follows:

All women have the right:

- to a joyful maternity, meaning maternity that is desired, freely decided on, and without undue risk;

- to humanized medical treatment, including dignified and respectful care of their bodies, fears, intimacy, and privacy;
- to be treated by the health services as integral persons and not simply as biological reproducers;
- to integrated health services that respond to their specific needs based on age, activities, social class, race, and location;
- to an education that favors self–care and self–knowledge of a woman's body and benefits the self–esteem and empowerment of women;
- to information and counseling that guarantee the exercise of free, gratifying, and responsible sexuality not conditioned to pregnancy;
- to appropiate and sufficient information, counseling, and access concerning modern, safe contraception;
- to labor environments and living conditions that do not affect fertility or injure health;
- to non–rejection in employment settings or educational institutions because of pregnancy, responsabilities for children, or marital status;
- to have menstruation, pregnancy, birth, menopause, and old age treated as natural bodily events and not as illnesses;
- to have women's knowledge and cultural practices related to health that experience has shown to be sound, suitably considered, valued, and respected;
- to active, including protagonistic, participation in the health system at both community and government levels of decision–making;
- to access to public health services that take integral care of battered women and victims of all forms of violence.

Thus Resolution 1531 laid the foundation for the new governmental policy based on previous gender analysis, entitled, "Health for Women, Women for Health":

> To consider social discrimination against women as an element explaining the cause of illness is what has been called gender perspective in the creation of

> health policy. And in the same terms, a woman does not end with her biological aspects, her reproductive system or with her body regarded only as related systems and functions. Women are bearers of that which is feminine. That is, they conduct roles and functions that make them service providers and functional intermediaries of the health system.[18]

This new women's health policy is an important contribution to the struggle for the advancement of women. If fully implemented, it should reduce the existing disparity of advantage between men and women, improve the quality of life of women and respond integrally to women's health problems. For instance, the maternal mortality rate in Colombia, estimated at one death per thousand live births, can be significantly lowered through a substantial improvement in the quality of health services. Factors associated with maternal mortality are age, short intervals between pregnancies, a high number of children born to a woman, malnutrition, lack of medical care during pregnancy and birth, and above all, unwanted pregnancies ending in unsafe abortions. Maternal mortality due to unsafe abortion accounts for 23 percent of the total of pregnancy-related deaths, and is the second highest cause of death among women between 15 and 44 years of age, second only to deaths related directly to obstetrical causes.[19]

The women's health policy is also a valuable instrument to strengthen women's roles within the health system, since it

> proposes to contribute towards the reduction of women's existing disadvantages as against men as a way to improve the quality of life of women and to respond to women in a comprehensive fashion that meets their health concerns. It is an instrument that will strengthen female initiative in the health-care system through the participation of women as subjects of the decisions that affect their lives, bodies, sexuality and health.[20]

The new women's health policy has identified four main groups of women whose economic, psychological, or social living conditions are precarious and demand special attention: (1) women who are the sole heads of families; (2) women between 15 and 49 years of age (reproductive age); (3) working women; and (4) women of an advanced age (over 60 years). It has also established five sub-programs:

- support and self–care in women's health issues;

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18 *Salud para las mujeres, mujeres para la salud* (Health for Women, Women for Health) (Ministerio de Salud, Bogotá, Colombia, May, 1992),7.

19 *Salud para las mujeres*, ibid., note 18 at 17.

20 *Salud para las mujeres*, ibid., note 18 at 7.

- integrated services in reproductive health and sexuality;
- prevention of ill treatment of women and provision of services to women and minors who are victims of violence;
- mental health; and
- health and safety of working conditions.

The sub-program that focuses on integrated services in reproductive health and sexuality illustrates how the new governmental policy enhances and broadens the traditional concept of family planning as a health-care issue, as treated by the different UN international instruments. These instruments include the 1974 Plan of Action on Population, approved in the UN Bucharest Conference on Population, 1984 Plan for World Action on Population developed at the UN Mexico City Conference on Population, and the 1985 Forward Looking Strategies adopted at the UN Nairobi Conference on Women, which specify that "appropiate health facilities should be planned, designed, constructed and equipped to be readily accessible and acceptable. Services should be in harmony with the timing and patterns of women's work... and family planning services should be within easy reach of all women."

The Nairobi Forward Looking Strategies also stressed that contraceptive methods have to comply with norms of quality, efficacy, and safety, and that family planning programs with incentives can be neither coercive nor discriminatory and must respect human rights and individual and cultural values.[21]

The new reproductive health policy does not make a direct reference to family planning implementing the rights to decide freely and responsibly the number and spacing of children and to have access to the information, education and means that permit the exercise of these rights. Instead, it focuses on fertility control as strengthening the self-esteem of women and guaranteeing their rights over their bodies, sexuality, health, and lives. The Ministry of Public Health considers that all fertility control programs must also help to create a collective conscience that accepts the right to a full and responsible exercise of sexuality, and that demands exercise of the right to a desired and planned pregnancy without undue health risks. The Ministry also acknowledges the necessity to increase coverage of services to the

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21 See Rebecca J. Cook and Jeanne M. Haws, "The United Nations Convention on the Rights of Women: Opportunities for Family Planning Providers," *International Family Planning Perspectives* 12 (1986): 49–53.

population of reproductive age (men and women), and to work on the prevention of unwanted pregnancies.

In addressing the right of individuals and/or couples to free and responsible reproduction, the policy includes the need for programs and services that deal with infertility as well as with contraception. It then considers the prevention of unwanted pregnancies, mentioning special programs for adolescents and an integrated treatment of incomplete abortions. Prevention is compelled by the estimates that 19 percent of all children born alive between 1985 and 1990 were from unwanted pregnancies, and another 15 percent of mothers would have preferred to have had their child[ren] later in life.[22] Adolescent women between 15 and 19 years of age who are pregnant or are mothers constitute 16 percent in rural areas and 11.8 percent in urban areas.[23]

The program contemplates working with the community as an empowerment strategy for both men and women. It reaffirms the right to free and voluntary choice of contraceptive methods regardless of a person's marital status, and is strongly conscious of the fact that services must cover the population between fourteen and forty–nine, which of course includes adolescents.

Profamilia Programs to Empower Women

Despite wide–scale changes in constitutional and family law and in the status of women, public understanding of the implications and ramifications of these developments has not kept pace with the changing legal situation or the changing social environment. Notwithstanding women's progress regarding equal rights, their work in the home and in society is still undervalued. This has kept women from achieving authority within the family while assuming domestic and job responsabilities. Women in the middle and lower classes work to support the home and are obliged to handle domestic chores with little or no help from their spouses or companions. The woman who manages the home is also expected to fulfill a biological reproductive role (mother), to serve as a source of sexual satisfaction (wife or concubine), and to educate the children on the values, essence, and function of the social group.

Women are increasingly expected to compete with men in the production of goods and services. In recent decades there has been a notable

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22 *Salud para las mujeres*, note 18 at 13.

23 *Salud para las mujeres*, note 18 at 13.

increase in female participation in the labor market. In Latin America as a whole, the number of women in paid employment has grown 120 percent during the last thirty years. Colombia has one of the highest levels of women in the labor force among the Latin American countries. In 1985 the female labor participation rate reached 47 percent in the seven biggest cities, while the rate of global female participation was 31.6 percent.[24] The general labor situation of women has improved compared to that of men, but women's unemployment is higher than men's, the incorporation of women in the informal sector is still very high, and sexual discrimination remains in terms of salaries and job availability.

Unfortunately, and despite these changes in their participation in the labor force, women are still not expected to act independently of their fathers or husbands. The emphasis on male control and dominance of women creates situations that are sometimes no easier for the man than for the woman. As a result of the long tradition of female dependency and passivity, many Colombian women are ill-equipped psychologically and practically to take advantage of the opportunities and rights becoming available to them. A 1990 national study on violence against women[25] shows that, even though one in three of women has been assaulted, one out of five had been severely battered, and one out of ten had been forced to have sexual relations with her partner, only 11.2 percent of these victims went to the authorities. Of those battered, one-third did not look for any help nor talk to anyone. When asked why they did not go to the authorities, 31.3 percent answered that they thought they could solve the problem alone, 16.8 percent were afraid of retaliation, 14.1 percent thought the authorities would ridicule them, and 6.6 percent thought the battery would not happen again.

Profamilia has developed the following proactive strategies to redress the disadvantages that women suffer to their health, welfare and interests. In developing these strategies, Profamilia is well aware that

> The transformation of the life of woman is a complex process where expectations of life that reaffirm female autonomy, independence and initiative are mixed up with persistent traditional forms based on a culture that holds women to discriminatory habits which are harmful to her human condition, her life, her sexuality and her body.[26]

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24 Miguel Urrutia, *40 años de desarrollo: su impacto social* (40 Years of Development: Its Social Impact) (Bogotá: Biblioteca Banco Popular, 1990), 103.

25 "Encuesta de prevalencia, demografía y salud," *Profamilia and Demographic and Health Surveys* (Bogotá, 1990).

26 *Salud para las mujeres*, note 18 at 6.

The aim of these strategies is to reaffirm female autonomy and to eliminate the discriminatory habits.

Legal Service for Women

Traditional social norms in the country regard women as different from men, resulting, in the subordination of women in issues as delicate and private as rights to decide on contraceptive method. Women's problems are often made obvious to the staff working in Profamilia's clinics, for instance when a doctor or nurse notices bruises on a woman who has come in for contraceptive services. Upon questioning, she describes living in perpetual fear of a violent and abusive husband. Similarly, a patient urged to improve her diet complains that her husband's salary is too low to permit buying nutritional foods and that he has forbidden her to earn money of her own. A woman questioned about her general health may complain of permanent anxiety or fatigue, and reveal that she is fighting with her common-law partner for custody of a child or for child support. These daily dramas moved Profamilia to offer legal service in the family planning clinics to afford women information and services relevant to their reproductive health and rights.

Profamilia started the Legal Service for Women in 1987 and today has legal clinics in six family planning centers.[27] The purpose of the program is to educate women on their rights and offer them support in a society that proclaims legal equality while reinforcing women's inequality through custom, and to provide negotiation and legal services, including litigation.

Most recently, the Service has published a booklet on the constitutional right to petition.[28] If the new Constitutional right to petition is to become a major instrument to improve women's quality of life, women must know about that right and how it can be used to ensure the exercise of their rights. The Service has started to look for cases and to help women use the petition mechanism to seek redress for violations of their rights resulting from violence within the family, unequal sharing of household work, denial of reproductive rights, lack of sex education, and denial of other forms of equal opportunity.

The Legal Service for Women also aims to expand debate and raise consciousness in society about women's issues and reproductive rights. It

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27 María Isabel Plata, "Family Law and Family Planning in Colombia," *Int'l Family Planning Perspectives* 14 (1988): 109–111.

28 See note 13.

has done this by developing a series of publications[29] and videos[30] to generate discussion about women's human rights.

The Legal Service also provides negotiation and mediating services. In one instance, the Legal Service in Bogotá had to counsel a 34-year-old woman with three children who obtained a tubal ligation but did not request her common-law partner's permission, which by law is not required. When he found out, he locked her in a room and forbade her to leave unless he gave permission "to show her who was the master of the household." He also told her that he would obtain legal custody of the children because "a good mother would never decide not to have more children." The Legal Service sent him a letter listing the internationally and nationally recognized rights he had violated and the criminal charges he might face if the woman decided to go to court. At the legal clinic, the lawyer explained to him in person why his actions were both socially wrong and illegal, and why his threat of taking the children would fail legally. When he learned that the law would not only protect his partner but also punish him, he recognized his ignorance of the law but offered the justification that he was only doing "what other men do." Since no direct physical violence had been used, and the woman strongly felt that she wanted to continue living with him, the lawyer did not press the issue of separation. However, it was stressed that any act of psychological or physical violence on his part would give her all the legal and moral reasons required to end the common law marriage and keep her custody of the children.

Gender Training Workshops

Profamilia has held a series of workshops with its doctors and other health personnel at which gender issues were explored. These workshops have explained how the new national health policy for women proposes to reduce women's disadvantages in order to improve their quality of life and respond to their health concerns and have explored the implications for the work of Profamilia.[31] The analysis of men's and women's different perspec-

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29 See, e.g., notes 13, 16, 27; Profamilia Servicios Legales Para Mujeres, *La violencia y los derechos humanos de la mujer* (Violence and the Human Rights of Women) (Bogotá: Printex Impresores, 1992); María Isabel Plata and María Yanusova, *Los derechos humanos y la convención sobre la eliminación de todas las formas de discriminación contra la mujer 1979* (Human Rights and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women) (2nd ed., Bogotá: Printex Impresores, 1993), 193.

30 Erase una vez (Once Upon a Time) 1988; Cada día, cada instante (Every Day, Every Instant) 1989.

31 See María Cristina Calderón, *Talleres de género en 12 clínicas de Profamilia: Informe de actividades* (Gender Workshops in 12 Profamilia Clinics: Summary Report) (Bogotá: Profamilia, January 1993).

tives on the services provided, as well as men's and women's differing reproductive health needs, allow the service providers to review these services from the client's point of view, resulting in better service to their clients.

These workshops have also explored how epidemiological, statistical, and fertility surveys and quality-of-care studies can be used to hold governments and institutions accountable for individuals' access to health care and how these surveys can be interpreted and analyzed from a gender perspective. The traditional indicators in the field of family planning (rates of acceptance of services, for example) could be expanded by a gender perspective to measure informed choice and user satisfaction. It has been observed that:

> Access [to services] is not only a question of how distant her home is, or how much the transportation costs, or who will take care of the baby if she goes to the clinic. We have to ask what is the attitude of the husband, what is the attitude of the mother-in-law, what is the attitude of the neighbourhood, of the family, of the city, of the society at large with respect to that woman using that method? What are the sources of information?... Much more emphasis should be put on this field.[32]

Reproductive Health Services

Article 12(1) of the Women's Convention requires states parties to ensure individual's access to health care services, including those related to family planning. Article 12(1) of the International Covenant on Economic, Social, and Cultural Rights recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. These rights will remain only theoretical unless epidemiological or statistical studies are used to indicate where and how women suffer limited access to care. In the case of family planning programs, demographic and health surveys of countries or sub-regions, supply data on marriage and fertility, fertility preferences, contraceptive knowledge and use, and maternal and child health. Governments could be held accountable under the Women's Convention and the International Covenant on Economic, Social, and Cultural Rights for not meeting the so-called "unmet need for family planning." The concept of unmet need is derived from the proportion of women in marriage who use no contraceptive method but want no more children or who wish to space their next pregnancy, or whose most recent birth or pregnancy was mis-timed or unwanted.[33]

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32 Aníbal Faúndes, quoted in *Common Ground*, note 1 at 16.

33 *Digest*, note 4 at 39.

These surveys can also be used to indicate where rights to reproductive health might be in jeopardy and where reproductive health services might be provided to remedy or prevent alleged violations of this right. For example, based on the 1986 Demographic and Health Survey, Profamilia decided in 1987 to organize a media campaign on the Atlantic Coast of the country to promote the use of temporary contraceptive methods. The survey showed a high proportion of voluntary surgical sterilization and low usage of temporary family planning methods, giving the region the lowest resort to birth control in the country. Profamilia, with support from the Futures Group/Somarc and Johns Hopkins University, organized a mass media campaign to promote the use of temporary birth control, especially condoms. As a result of that campaign, sales of condoms by Profamilia increased by 60 percent.[34]

In order to guarantee rights to health, to free and informed choice, and to liberty and security to every woman who enters a health or family planning clinic, reproductive health services have to maximize options. Every woman must have the right to control not just her fertility but her sexuality, and for this purpose a variety of birth control methods and services related to her reproductive and sexual health must be provided. It has been observed that

> The extent to which clients' needs can be met depends fundamentally on health and family planning infrastructure, including, among others, supply and logistics systems, service delivery points, staff skills, regulations and management capacity ... the need to assess the skills, knowledge, attitudes, and practices of providers, including not simply medical skill and provision of technologies to clients, but also their ability to provide information and counselling.[35]

This requires that health personnel and clinic directors become familiar with gender issues and analysis. It is now known, for instance, that when a woman makes decisions concerning her fertility, all types of personal circumstances like her health, sex life, reproductive cycle, social status, previous experience with other birth control methods, access to information, level of empowerment, fears, contact with sexually transmitted diseases, and, for example, the legal status of abortion can become decisive factors. Health and family planning delivery systems must therefore be organized to support and endorse the right to health.

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34 Juan Carlos Negrette: Campaña promocional de métodos temporales en la Costa Atlántica" (Promotional Campaign of Temporary Methods in the Atlantic Coast) *Profamilia* 5(15) (1989): 14.

35 Aníbal Faúndes, quoted in *Common Ground*, note 1 at 35.

Conclusion

Women's rights can now be considered to belong in the category of fundamental legal rights that are based on international law. The conditions that block access to equal rights are in large part due to a lack of sincere political will to improve the social circumstances of women.

The new Colombian health policy "Health for Women, Women for Health" is an interesting official effort to incorporate women as active agents of public health policies and services in the country. The agency of women and women's groups can similarly become a useful instrument for other governments that are making serious efforts to comply with Article 12 of the Women's Convention but have had difficulty identifying the "appropiate measures to eliminate discrimination against women in the field of health care." New policies and strategies are greatly needed, since women in the twenty-first century will demand fertility control programs that strengthen their self-esteem and guarantee their rights over their bodies, sexuality, health, and lives.

The type of official policy that incorporates new interpretations of women's "health" and "family planning programs" and encompasses concepts like reproductive health has started to legitimize the work of women's health advocates.

But unless international legal instruments and women's human rights are applied by women's advocates in practical ways to empower women in every corner of the world, the prevailing imbalance of power between men and women which cuts across social life, the family, the school, the work-place, the church, politics, science, legal rights, and emotional life, will continue to have a harmful impact on the health of women.