

## **Mainstreaming a Gender Perspective into the Programs and Policies of Ministries of Justice or Offices of Attorneys General**

### **Recommendations to the Fourth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA IV)**

#### **I. Status of Women in the Justice System**

1. Although democratic systems have made a comeback in the region and important advances have been made toward the consolidation of peace, democracy, and development, these efforts have been affected by an economic and social decline in the countries of the region. As a result, this has led to a considerable increase in crime and a generalized feeling of insecurity, distrust, and impunity. The mainstreaming and institutionalization of a gender perspective in the justice system is an essential step toward recovering a feeling of trust and security in it and combating its impunity. This mainstreaming entails an analysis of women within the justice system as users, as administrators and actors in the legal field, as victims and as offenders.
2. Different factors stand in the way to women's access to justice in the region. Economic issues are critical when women decide to bring a case to court and, in many cases, they become an insuperable obstacle to justice being served. When economic factors are related to the feminization of poverty, they greatly affect the access women may have to the justice system. This obstacle, which cuts across different social sectors, is worsened by the patriarchal structure and results in exclusion, discrimination, and violence against women. This is reflected in current laws and their interpretation and application by those responsible for the administration of justice and even in the androcentric myths that govern their everyday social conduct. Some state policies have approached the problem in a piecemeal fashion, but none of them has taken a cross-sectional approach to the justice system as a whole.
3. To describe the status of women in the justice sector, it is important to enumerate the principal problems affecting women as users, actors in the legal field, victims, and offenders:

#### *Women Users*

Inequalities in the justice system place women in a position of legal inequality. This is reflected in inaccessibility to the system and in their lack of trust in it. The system's response may be found in tiresome, expensive, complicated, and sexist procedures, which means that women seldom have recourse to the system and, when they do, it is with great skepticism, owing to a lack of information and poor legal training at the grassroots level.

#### *Women Actors in the Legal Field*

The status of women active in the legal field may clearly be seen in the level of the positions they hold in the justice system. Only two women are serving as ministers of justice or attorneys general in the Americas. In the case of some of the highest courts of the region, the share of judgeships held by women is 0% and in others, only 20%, with the exception of Honduras, which has nine women on a high court bench of 15. Men continue to have the monopoly of power, even though in many countries women are serving as lower court judges. Furthermore, there are still no permanent judicial training programs that mainstream a gender perspective.

### *Women Victims of Crime*

A fundamental objective of any policy in a democratic justice system is to introduce substantive and procedural rules to guarantee the effective implementation of human rights; effective judicial protection; and prompt, effective access to justice. In this context, the problem of crime has centered on the criminal and has masked neglect for the victim and the victim's social setting. As people have become more aware of the complexity of life in society, victimology is coming into its own as an independent area with a comprehensive and interdisciplinary approach to the treatment of victims. These include crime against persons, violence and physical aggression, kidnapping, forced prostitution, sexual abuse, domestic violence, disappearances, child exploitation, trafficking in women for sexual and labor exploitation, and survivors of homicide victims. In many countries prosecutors and police officers fail to fulfill their legal and administrative obligations regarding victims. Victims continue to be treated without respect and are not given information about procedures. Often, their interests are not taken into account when essential decisions are made. Criminal procedure per se does not include an intrinsic system for sanctions in those cases in which victims' rights are not recognized and the legal protection afforded those rights is insufficient or inexistent. In some countries, although the rights of victims are still unrecognized, it is possible to resort to independent institutions, such as human rights defenders, for the enforcement of existing laws on the protection of victims.

The Declaration on Fundamental Principles of Justice ( ) on crime victims and the abuse of power, contains a section on the rights of the victims in both cases, which has acquired new significance as a consequence of recent advances made in international criminal law. The Rome Statute of the International Criminal Court (A/CONF.183/9) includes special provisions on victims and witnesses. The rules of procedure for victims and witnesses, which set forth the principles and guidelines on the rights of victims of [serious] breaches of human rights and international humanitarian law to obtain reparation (E/CN.4/1997/104) warrant a careful review by the international legal community. This situation takes into account the important role the state plays as the guardian of security and well-being of the nation, which is the basis for the formulation and adoption of policies by governments to reduce victimization. Thus, it is essential that:

- The security of victims not be subject exclusively to the existence or nonexistence of laws on protection or to inaction by the state, but rather to the real possibility of receiving protection. Added to this is the lack of information to victims about their rights and the threats they receive;
- Effective access to justice not be hampered by the failure of public officials, such as doctors, police officers, and those in the legal field, to fulfill their legal obligations. This is exacerbated by the shortage of free services, the lack of resources facilitating access to justice, the lack of infrastructure and specialized personnel, and the existence of rules and procedures that restrict opportunities for easy access to judicial protection
- The period of time required for judicial procedures not exceed the time established by law;
- Access to restitution and reparation for damages be facilitated. Although covered in the laws of many countries, they are very difficult to obtain since legal provisions are not complied with; the process requires time, money, and additional judicial procedures; and there are no administrative procedures to guarantee reparation to women victims, which makes the situation even more serious;

- Programs be established to provide care and rehabilitation services for female victims of violence;
- Programs operated by both the government and civil society be strengthened to provide legal and psychological care and, in some cases, crisis intervention, mediation services, medical care, hotline information, and shelters are currently insufficient to meet victims' needs;
- Legislation be passed aimed at protecting crime victims. In the case of crimes in which women represent the majority of victims, sexism is evident and is manifested through gynopia (the inability to perceive what is feminine). Furthermore, in cases of domestic, sexual, emotional, or patrimonial violence, a woman who has suffered an injury is victimized twice over. The justice system's response is directly reflected in the low number of cases filed with judicial authorities and thus in the impunity of those responsible for committing the crimes. Nevertheless, victims are not the only targets of discrimination in the justice system in a patriarchal society.

### *Women Offenders*

In the case of the population deprived of liberty, disregard for and violation of human rights in prisons is nothing new. Nor is it new to point out that violence in prisons is institutionalized; it is executed by those with power and endured by those in a subordinate position, particularly prisoners. What is new and stands out in the research carried out by regional institutions () in women's prisons is the discrimination and inequality suffered by women prisoners in contrast to men experiencing the same detention conditions. Even though women prisoners share with men many of the inadequacies of the penitentiary system, a gender focus demonstrates that women have particular characteristics inherent to their gender and, as a result, they experience detention very differently from men and suffer consequences that do not apply to men, such as separation from their spouses or companions; the anguish of leaving their children with third parties or of not knowing their whereabouts; the burden of maintaining their families; their dual role as fathers and mothers even in prison; curtailment of affection and sexuality; discrimination against their right to an education, work, vocational training, and health. Some fundamental aspects are the following:

- That the discrimination that exists outside of prison is reproduced and heightened in female penal institutions where women are discriminated against for their gender and denied or thwarted in the enjoyment and exercise of the rights inherent to every human being;
- That in the case of women prisoners, discrimination becomes evident from the moment a woman is summoned by the justice system and detained. She is subjected to mistreatment to the point of being obliged in some cases to engage in undesired sexual acts--a flagrant sexual violation--in addition to a series of arbitrary measures taken during the judicial process culminating in a trial regarding which she sometimes has not even had occasion to speak with the individual supposedly appointed by the public defender's office to represent her. This is a mockery of her right to legitimate defense;
- That discrimination continues to be practiced by those who administer justice, who perhaps without being aware of it and as consequence of their own socialization, contribute to women remaining in prison for longer periods than men and longer sentences for women than men for the same crimes (e.g. drug trafficking). Thus, women receive a twofold punishment, not only for their criminal conduct but also for having failed to play their socially predetermined roles. Consequently, for the justice system the same act has a different significance if committed by a man or a woman. Thus, offenses do not have the same meaning for men and women, women are denied prison releases and other

benefits accorded to men, women are punished with higher fines and are ignored where pardons are concerned. These behaviors reflect how institutionalized the structural and political component of law is with regard to attitudes, prejudices, stereotypes, beliefs, perceptions, and expectations of the patriarchal society pertaining to women;

- That once women are imprisoned, those in charge of administering justice—officials of the prison system—are not exempt from the same structural component and maintain a permanent gender-discrimination policy. Those enacting laws, administering justice, and responsible for law enforcement do not want to accept differences between men and women, and thus the equal rights precept, embodied in constitutions and international human rights instruments, should respond to these differences;
- That criminology does not recognize the specificity of women and tries to compare behaviors that are not equivalent either in their motives or their modus operandi, let alone in the personality of the authors, who have different psychological structures reflecting the diversity and specificity of human behavior. In this sense, there is a vacuum in the criminological analysis that, by ignoring differences, allows an incorrect and biased application of justice to the detriment of women;
- That the psychological, physical, and moral consequences of detention for men and women are proof of these differences, which are ignored and cannot be analyzed by maintaining identical criteria since they come from very different realities, stemming from different personalities, immersed in an environment that affects them differently and is much more adverse to women;
- That in penal institutions the violation of the following rights of women is a common denominator: (a) the right to an education, free from prejudices and stereotypes and other obstacles to the enjoyment thereof; (b) the right to jobs obtained for them by the state, that are sufficient to meet their needs and those of their families; (c) the right to vocational or technical training free from stereotypes, which will allow them to learn a skill and thus improve their economical situation; (d) the right to health, to specialized medical treatment of illnesses and diseases common to women, to disease prevention, which includes sexual and reproductive health and emotional well-being; (e) the right to enjoy sexuality and intimacy, without having to prove their civil status or the duration of a de facto relationship; and without the obligation of using a specific birth control method that is detrimental to their health; (f) the right to respect for their sexual options, without the imposition of sanctions as if it were a crime, to the point of denial of their benefits unless they amend their conduct; (g) the right to protection of their families, to see their children, to maintain emotional ties with them, to preserve the family structure, to know with whom the children are staying, to have the state assume responsibility for them so they will not become street children; (h) the right to judicial and procedural guarantees that will respect their physical, psychological, and moral integrity and comply with established legal precepts; and (i) the prohibition of any cruel or degrading treatment, such as search warrants, isolation in unhealthful cells, in which they may even be kept with their children as if the latter had to make amends for the conduct of their mothers, prison overcrowding which women share with the children, and the exposure of children to penitentiary surroundings that are in no way beneficial;
- That women, who are in the majority heads of household, commit crimes as a consequence of pressing social circumstances and that the direct purpose of their offenses is to obtain money to meet basic family needs. The tipification of crimes committed by women has changed from crimes against property to crimes

related to the sale of and trafficking in drugs. And that women, because of their poor economic situation and their lack of education and legal knowledge, are easy prey for those who exploit and compromise them but go unpunished.

## II. Actions

Governments, as the principal public entities in charge of formulating public policy with a gender perspective, have taken steps to recognize and respect the human rights of women in the region. Nevertheless, inadequate budgets, decentralization, and the lack of political power to apply the policies in a voluntary and mandatory fashion make it difficult for national mechanisms to pursue strategies for mainstreaming a gender perspective in all government ministries. It is therefore essential to strengthen this process by mainstreaming a gender perspective on a regional level, with the support of international and regional organizations and of civil society.

The final goal is to achieve gender equity and equality. Mainstreaming a gender perspective into the programs and policies of the ministries of justice and offices of the attorneys general is necessary in order to design and apply policies that take into account the experiences and needs of women in general in the administration of justice, whether as victims, offenders, users, or administrators or personnel in the justice system. To this end, many governmental and nongovernmental organizations are working to mainstream a gender perspective on the national and international levels into the justice system.

Since its inception in 1928, the **Inter-American Commission of Women (CIM)** has been actively involved as an intergovernmental forum for the defense of civil and political rights of women in the Americas to achieve the equal participation of women and men in all the spheres of society and for women and men to enjoy the benefits of development on an equal footing. To support the efforts of the member states and of the OAS organs and agencies in the systematic mainstreaming of a gender perspective into their programs, policies, and strategies, the CIM coordinated the Meeting of Ministers or of the Highest-Ranking Authorities Responsible for the Advancement of Women in the Member States. They met in April 2000 and prepared and approved the Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality, which was then adopted by the OAS General Assembly at its thirtieth regular session. In the light of the Program's objectives, the CIM has developed projects and formulated various recommendations to improve the status of women in the justice system.

The **United Nations Latin American Institute for Crime Prevention and the Treatment of Offenders (ILANUD)** through the work of the **Women, Justice and Gender Program**, considers gender equity as an essential factor in the promotion of social justice, democracy, and sustainable social and economic development. Gender equity and development are defined as key, crosscutting topics that cover all areas of work of the Women, Justice and Gender Program. The Program seeks to ensure that women's human rights are respected in the justice system. To do so, the Program consists of the following areas of work: (1) research: in this area, research of various types has been conducted on the status of women as victims, users, offenders, actors in the legal field, and administrators in the justice system in the region. This research has enabled some states of the region to establish policies, measures, and laws to mainstream a gender perspective; (2) training: directed at women as victims, users, offenders, actors in the legal field, and administrators in the justice system to mainstream a gender perspective across the different spheres, as well as to disseminate information on the rights of women in the justice system; (3) development of teaching materials: as for training, the Program has

developed materials for victims, users, offenders, actors in the legal field, and administrators in the justice system on state obligations and the rights and responsibilities of women within the system; (4) technical assistance: this is offered to intergovernmental, governmental, and nongovernmental organizations, for policy-making or the passing of legislation or for international conventions, legislation, and regulations to ensure the full observance of women's human rights in the justice system. An important part of the Program's activities is its role as technical secretariat to the Meeting of Women Magistrates of the Americas and the Caribbean.

The **Inter-American Institute for Human Rights (IIDH)** has been working, through its **Administration of Justice Program**, on the introduction of human rights laws, practices, and values in the justice systems of Latin American countries, on the premise that it is in this area that the effective enjoyment of human rights is defined and, through it, the culmination of the democratic rule of law, so sought after by our countries. As part of its strategy of a crosscutting approach to a gender perspective in institutional practice, the promotion and protection of women's human rights is part of the Institute's work in the training dispensed in this area and in the inter-American academic activities carried out by the Institute. Regarding women's human rights advocacy issues, the Institute also has a *Specialized Program on Women's Human Rights*. Its working strategy is based on the premise that social beliefs and practices with regard to human rights can have an impact on the social behaviors of men and women and contribute to the full exercise of human rights on terms of equality and equity. As part of its action, this Program has stepped up its efforts to strengthen international human rights instruments, fostering and giving advice for the adoption (currently, the ratification) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), an instrument that guarantees redress of the failure of states to comply with the commitments they made upon signing the Convention. On the other hand, to create international jurisprudence on specific violations of women rights for reasons of gender, the Institute has conducted training courses for nongovernmental women's organizations on the use of the inter-American human rights system. The Institute's work as a whole helps to ensure better safeguards for women in the justice system as well as the international protection of women's rights in the case of discrimination for reasons of gender.

**The Meeting of Women Magistrates of the Americas and the Caribbean**, representing the highest courts of the region, brings together the most important female justices of supreme courts, constitutional courts, and judicial councils in the Americas. The work of this body has been essential to guaranteeing the speedy mainstreaming of a gender perspective into the justice system. Some of its most important resolutions have demonstrated the need to: (i) urge the states of the region to promote the effective application of the CEDAW Convention and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, as a legal framework for all programming actions; (ii) urge the states of the region to withdraw their reservations to both conventions, to sign, ratify, and implement the Optional Protocol to the CEDAW Convention, and to adapt and adopt national laws to ensure the full mainstreaming of a gender perspective into their public policies, particularly in the administration of justice, in order to correct inequalities and guarantee the full enjoyment of women's human rights; (iii) recognize the need to accelerate, intensify, and consolidate the advances made to date in overcoming the obstacles represented by the persistence of political and cultural practices that fail to take a gender perspective into account and thus increase inequality and discrimination of all types, in particular gender-related discrimination; (iv) promote the mainstreaming and institutionalization of a gender perspective in the administration of justice and in the judicial training curricula developed by judicial training centers and schools, as well as to create an awareness of the status of women as users, victims, offenders, and administrators and

actors in the justice system, through the execution of an action plan for Latin America and the Caribbean, "For Justice of the Gender 2001-2005"; (v) incorporate the topic of gender perspective in regional meetings held to define policies in the administration of justice; and (vi) urge the Justice Studies Center of the Americas to mainstream a gender perspective into the administration of justice in judicial reform courses and seminars. As a result of the active involvement of the participants in the Meeting of Female Magistrates of the Americas and the Caribbean, similar resolutions were proposed in various judicial entities in the region.

The **Fourth Ibero-American Summit of Presidents of Supreme Courts and Tribunals of Justice** decided to promote the mainstreaming and institutionalization of a gender perspective into the administration of justice and the judicial training curricula developed by the judicial training centers and schools, as well as to create an awareness of the status of women as users, victims, offenders, and administrators and actors in the justice system through execution of the plan "For Justice of the Gender 2001-2005," drawn up by the First Meeting of Women Magistrates of Supreme Courts and Tribunals of Justice, held in San José, Costa Rica, on December 4, 5 and 6, 2000. The Summit also agreed to include on the agendas for upcoming meetings the topic of mainstreaming of a gender perspective into the administration of justice and to present a progress report on the "For Justice of the Gender" plan. Moreover, the latest meeting of the presidents of supreme courts of justice of Central America and the Caribbean, held in 2001, decided to: (i) incorporate and institutionalize a gender perspective into the administration of justice as a key element for its execution and in the judicial training curricula developed by the judicial training centers and schools; (ii) request the inclusion of the topic of a crosscutting gender perspective in the administration of justice in future meetings of supreme courts of Central America and the Caribbean; (iii) include a gender perspective as an essential element to be taken into account in its execution; (iv) arrange to have every national delegation present a diagnosis of discrimination for reasons of gender in the courts of Central America and the Caribbean and recommend measures for its eradication.

The **International Association of Women Judges**, with over 4,000 members in 85 countries, and its public service adjunct, the International Women Judges Foundation (IAWJ-IWJF), believe that women judges can be catalysts for social change through the exercise of informed and unified leadership. The IWJF's mandate is to provide women judges with the resources and training they need to exercise that leadership. To that end, the IAWJ-IWJF has designed an innovative training program entitled, "Towards a Jurisprudence of Equality: Women, Women Judges and Human Rights Law." This pioneering program prepares judges to apply the terms of international and regional human rights conventions in resolving domestic cases that allege discrimination and violence against women. Between 1997 and 2001, highly interactive "Jurisprudence of Equality" training sessions were conducted for more than 500 members of legal-judicial systems in Argentina, Brazil, Chile, and Ecuador. The program soon will be launched in Central America.

The **Center for Justice and International Law (CEJIL)** is a nongovernmental nonprofit organization for the defense and promotion of human rights in the Americas. It has consultative status with the Organization of American States (OAS) and the United Nations (UN), and observer status with the African Human Rights Commission. Its principal objective is to ensure the full implementation of international human rights norms in the member states of the OAS through the effective use of the inter-American system and other international human rights mechanisms. In this context, CEJIL litigates cases showing systematic patterns of violation of human rights in the various countries and seeks to clarify the violations, apply legal sanctions on their perpetrators, compensate victims for the damages they suffered, and prevent future violations.

In recent years, CEJIL, along with other national and regional organizations, has brought cases before the Inter-American Commission involving violations of women's rights and systematic discrimination against women because of their status as women. The decisions taken by magistrates and judges indicate that, in interpreting and enforcing the law, they lack a clear understanding of gender discrimination. Gender perspective must be borne in mind and incorporated at all levels of court proceedings. The cases of MZ (Bolivia) and Alba Lucia (Colombia), in which the judges stated that it was impossible for a woman to have been raped for three consecutive hours, found it difficult to consider an act a rape when the woman was taller than the man, or asked questions and made comments on whether or not the victim was a virgin, point to the absence of gender analysis and to ignorance of the international obligations assumed by their own states in conventions on this matter.

Another important obstacle to the administration of justice is that most courts consist of men, which makes it difficult to consider as a relevant issue that women are the victims and have been subject to discrimination because of their status. This is also the case with regard to understanding the historical-cultural subordination of women and other life experiences common to women's circumstances.

There is still a need to fulfill in a consistent fashion the obligations contained in international instruments that will ensure the effective protection of women's rights. The wealth of international and inter-American instruments has been accompanied by, and at times favored, the adoption of laws to prevent violence against women locally and the aforementioned cases have paved the way for the protection and defense of women's rights throughout the Hemisphere. However, this has not been reflected in the full and effective implementation of the rights embodied in the Convention of Belém do Pará within each of the states. With a heightened awareness, it may even be assumed that the content of the laws per se does not entail real protection if the national and regional justice systems fail to incorporate the gender perspective into their analysis.

Until such time as justice systems in every regard and through all their personnel exclude from their analysis the victim's behavior and subordination to stereotypes and discriminatory cultural patterns, the road to achieving universalization of international human rights law will be a long one.

The **Inter-American Commission on Human Rights** (IACHR) is a principal organ of the Organization of American States (OAS), consisting of seven members elected in their personal capacity by the General Assembly of the Organization. The mandate of the Commission is to promote the observance of human rights in the Americas in accordance with the parameters set forth in the American Convention on Human Rights. Pursuant to this mandate, the IACHR may establish offices of special rapporteurs to fulfill its functions, and in 1994 set up the office of the rapporteur on women's human rights. The current special rapporteur, appointed in 2000, is Marta Altolaguirre, who is also vice president of the Commission. According to the mandate of the office of the rapporteur, its functions are to protect and promote broader respect for women's human rights in the Americas. It analyzes in particular the extent to which the laws and practices of OAS member states fulfill the obligations of equality under law and nondiscrimination under the applicable instruments. These instruments include, in particular, the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará). Among other activities, in 1998 the Commission published the *Report on the Status of Women in the Americas*, prepared by the special rapporteur for women (which is available on the Web page [www.cidh.org](http://www.cidh.org)), and in February 2002 made its first *in loco* visit.

**American University, Washington College of Law, The Women and International Law Program.** The Women and International Law Program at American University, Washington College of Law, supports and promotes the work of women's rights advocates and legal scholars to integrate fully women's human rights into legal education, practice, and doctrine around the world. Since its inception in 1994, the Women and International Law Program has brought together the academic and advocacy communities to develop new conceptual and practical understandings of international and comparative law that integrate a gender perspective and address the reality of women's lives. Through its various projects, the Women and International Law Program works to create legitimacy for gender analysis of law, contribute to a growing body of scholarship on women's human rights, and develop and promote strategies that accomplish reforms of the law and legal institutions that further women's rights. The Women and International Law Program's activities include sponsoring conferences, symposia, and workshops on international women's rights issues, developing and publishing legal scholarship on gender and the law, and implementing the Gender and Legal Education Project in Latin America.

The Gender and Legal Education Project in Latin America is a collaborative international effort among women's rights scholars, advocates, and law school professors to integrate gender into legal education at Latin American law schools through curriculum development, the creation of new legal scholarship, and the development of innovative pedagogical methods. Law schools play an integral role in promoting women's legal rights by shaping legal thinking, affecting and training future lawyers and policymakers, and creating authoritative structures for legitimizing legal strategies to combat discrimination against women. The Gender and Legal Education Project recognizes that, in order to eliminate gender bias in the laws, in legal institutions, and in the judiciary, women's human rights and gender issues must be incorporated into the law school curriculum.

The Gender and Legal Education Project has supported and legitimated the work of Latin American women's advocates and scholars to write and teach from a gender perspective through awarding fellowships, establishing networks, sponsoring workshops and conferences, and developing teaching and curricular materials. The project has resulted in an increased number of professors throughout Latin America who teach law from a gender perspective; the development and publication of *Género y Derecho*, the first legal textbook on gender and the law in Latin America; and an increased awareness among Latin American legal educators of the importance of incorporating women's rights into the curricula. It also has created an informal network of advocates and scholars working on issues of women's rights. The Women and International Law Program continues to work with its partners in Latin America to build on the achievements of the Gender and Legal Education Project and sustain efforts to promote the full integration of gender into legal education in Latin American countries.

### **III. RECOMMENDATIONS**

*While many recommendations and priority areas of work have been identified by the aforementioned participating organizations, it is important to underscore those issues that are most important and are crosscutting in nature:*

#### **1. GENERAL**

- Mainstream a gender perspective: To ensure that all needs and experiences of both men and women are taken into account, a gender perspective must be

- incorporated across the board into all policies and programs of the justice system.
- Urge the countries of the region to sign, ratify, and implement the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and to adapt and adopt national laws to ensure the full mainstreaming of a gender perspective into their public policies, particularly in the administration of justice, in order to correct inequalities and guarantee the full enjoyment of women's human rights.
  - Compile data on the justice system disaggregated by sex and age: It is essential to strengthen and expand existing national and regional systems for data collection by sex, age, and disabilities. These data, obtained from judicial, penitentiary, justice service users, and victims registries, among others, are necessary to: (a) analyze and assess the status of women in the justice sector; (b) identify those areas that are of special concern and require priority intervention for the execution of programs to promote gender equity and equality; (c) evaluate and measure the results of the programs and actions carried out; (d) define indicators for the progress made in promoting gender equality and equity and the obstacles that persist.
  - Institutionalize gender-training programs for personnel of the ministries of justice and offices of the attorneys general.
  - Urge other entities in the justice system to institutionalize a gender-training program.
  - Review domestic legislation to bring it into line with international obligations regarding women's human rights.
  - Create a database on women's human rights in the administration of justice and seek out ways to disseminate it.
  - Investigate women's access to justice so as to establish proposals to guarantee this right.
  - Ensure that resources are available in the general budgets of justice systems to carry out these recommendations and other measures to guarantee gender equity in the administration of justice.
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  - Urge international cooperation and multilateral financial organizations in the region to support the Regional Plan of Action to be adopted and include the topic of gender equity and equality in the justice system in their cooperation and funding plans.

## **2. AGREEMENTS ON LEGAL AND JUDICIAL COOPERATION IN THE AMERICAS**

- Promote the promulgation of legal and judicial cooperation agreements in the following areas: alimony and child support; child custody, rearing, and education; child pornography; international adoption; international trafficking in women and children for sexual and labor exploitation; international trafficking in organs; victims' rights; and other related areas. Globalization and accessible transportation have changed social behavior and allowed legal norms in the region to be evaded. It has become increasingly common for fathers to avoid alimony and child support responsibilities by migrating to other countries of the region. Likewise, many children are transported against the will of one of their parents to evade court decisions on child custody, rearing, and education. The sale of children from developing countries to developed countries has become widespread. Countries cannot ward off this situation without proper legislation to prevent such abuses. The same is true for international trafficking in women and children for sexual and labor exploitation and for trafficking in organs.

Regulations are needed to help eradicate such crimes in the region. The right of victims to be protected, counseled, and rehabilitated is essential if justice is to be ensured in any society.

- Update the Code of International Private Law (Bustamante Code of 1928). The principal convention in the region to settle conflicts of law and jurisdiction. It is necessary to update this instrument by mainstreaming a gender perspective and principles of equality of all human beings, in order to avoid discrimination against women.
- Evaluate the legal norms of the inter-American system with a view to mainstreaming a gender perspective into each of them. The body of OAS legal instruments must be carefully reviewed from the point of view of gender equity so as to standardize its legal instruments as much as possible.
- Assess the impact of the effective application of legal and judicial cooperation treaties from a gender perspective. To that end, states should incorporate it in their reports.

### **3. EXTRADITION AND MUTUAL LEGAL ASSISTANCE**

- Include as a priority in the Regional Data Exchange Network (REMJA IV), the necessary information to prevent impunity for crimes in which women and children are the primary victims, such as trafficking in women and children, forced prostitution, sex crimes, and gender violence.

### **4. CYBER-CRIME**

- Assign priority to implementing legislation, with a gender perspective, on cyber-crimes in which women are the primary victims, such as international trafficking in women and children for sexual and labor exploitation, child prostitution, pedophilia networks, and child pornography.
- Provide training on the mainstreaming of a gender perspective into the cyber-crime area.
- Assign priority to public awareness on the need to prevent and eradicate cyber-crime of a sexual nature, with an emphasis on users of the educational components of the legal and justice systems.
- Develop model legislation on cyber-crime of a sexual nature.
- Incorporate a gender perspective in the draft questionnaires prepared by the Department of Legal Cooperation and Information (REMJA IV), which would make it possible to evaluate the degree of implementation of these recommendations by the states.

### **5. ACCESS TO JUSTICE**

#### **a. ALTERNATIVE CONFLICT RESOLUTION METHODS AND OTHER MECHANISMS**

- Conduct research, from a gender perspective, on the impact of alternative conflict resolution methods and other mechanisms, such as legal clinics, advocacy groups, and grassroots legal education, in order to guarantee that women have access to justice.
- Disseminate the results of this research.
- Appoint a commission that, on the basis of the research, will draw up recommendations for the OAS member states on a gender perspective in the alternative conflict resolution methods and other mechanisms.
- Mainstream a gender perspective into educational curricula in order to encourage the use of dialogue, negotiation, mediation, and other appropriate mechanisms

for dealing with conflict, intended to strengthen harmonious relations and the development of a culture of peace and human rights.

**b. PENITENTIARY POLICIES**

- Consider the diverse conditions of the prison population with regard to gender, age, ethnic group, and disabilities to ensure that prisoners are afforded the human rights they are entitled to.
- Mainstream a gender perspective into means of punishment other than imprisonment and into the Cooperation and Data Exchange Network.
- Focus on the comprehensive health needs of women deprived of liberty from a gender perspective.
- Provide training to prison staff on the human rights of women deprived of liberty.
- Record acts of violence against women perpetrated by prison staff and implement mechanisms for filing claims and for the prevention and punishment of violence against women deprived of liberty.
- Give priority to the family ties of women deprived of liberty through contacts with their minor children and incorporate a gender perspective into programs allowing prisoners to serve their sentences in their countries of origin.
- Mainstream a gender perspective into criminology studies.

**6. REGIONAL STRATEGIES TO IMPLEMENT INTERNATIONAL HUMANITARIAN LAW**

- Urge countries of the region to sign and ratify the Rome Statute of the International Criminal Court.
- Promote the criminalization of acts against international humanitarian law, without losing sight of those specifically affecting women.
- Establish reporting mechanisms that will lessen the fear and shame that discourage women from filing complaints with authorities concerning sexual crimes.
- Develop a regional international humanitarian law instrument that will mainstream a gender perspective.
- Request States Parties to provide complete and detailed information on the status of women and the measures taken to guarantee gender equity in armed conflicts within their territories.
- Include a gender perspective in peace and historical truth processes.

**7. INTERNATIONAL COOPERATION AGAINST CORRUPTION AND REPATRIATION OF ILLEGAL FUNDS**

- Promote mechanisms for the repatriation of illegal funds resulting from the international trafficking in women and children for sexual and labor exploitation.
- Establish a fund with the repatriated resources for reparation to victims.

## **APPENDIX I**

### **I. Foundations of the Regional System**

1. The American Declaration of the Rights and Duties of Man (Bogotá, Colombia, March 30-May 2, 1948), Article 2 of which states that: "All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor."
2. The American Convention of Human Rights of 1969 of the Organization of American States, Article 1 of which provides that: "States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." Furthermore, Article 3 of the Protocol to this Convention in the area of Economic, Social and Cultural Rights (Protocol of San Salvador) states that: "The State Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition."
3. The Twenty Fifth Assembly of Delegates of the Inter-American Commission of Women of the Organization of American States, held in 1990, adopted the Declaration on the Elimination of Violence against Women. This document was the basis for the adoption, in 1994 by the OAS General Assembly, of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women. This Convention establishes, in its Article 7, the following duties of the states: "d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property; f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies."
4. The Organization of American States has repeatedly stated that: "Gender equality means that women and men enjoy the same status and have equal opportunities to realize their full human rights and their potential to contribute to political, economic, social, and cultural development and benefit from the results. "Gender equality is therefore the impartial valuing by society of both the similarities and the differences between women and men and the varying roles that they play." (Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality, section II. Conceptual Framework).
5. The OAS General Assembly, in its resolution AG/RES 1771 (XXXI-O/01), "Promotion of the International Criminal Court," adopted in June 2001, urged the member states that had not yet done so to consider ratification of or, as appropriate, accession to the Rome Statute of the International Criminal Court.
6. The development model for the region adopted by the Heads of State and Government at the Summits of the Americas has, as its simultaneous objectives, growth and equity, emphasizing concepts such as quality of life and human development, which become a global part of the economic and social factors. Access to justice, effective judicial protection, and the relationship of the justice system with the citizenry had traditionally been omitted from the factors defining

development and quality of life. Nevertheless, the political commitments made during the Summits offer a stronger guarantee of the so-called social and economic rights. Even though they do not yet ensure minimum standards, they constitute significant progress by preventing arbitrary discrimination against effective access to state benefits and services.

7. During the Summit of the Americas held in Quebec City, Canada (April 2001), the Heads of State and Government decided to "integrate a gender perspective into the programs, actions and agendas of national and international events, to ensure that women's experiences and gender equality are an integral dimension of the design, implementation and evaluation of government and inter-American policies and programs in all spheres." (Initiative 15, Plan of Action.)

## **II. Foundations of the Universal System**

1. The United Nations Universal Declaration of Human Rights of December 10, 1948, asserts that it applies unconditionally to all human beings "without distinction of any kind, such as race, colour, sex, language . . . or other status."() Additionally, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights of the United Nations have become important international instruments for the effective implementation of these rights.()
2. The United Nations International Covenant on Economic, Social and Cultural Rights, of December 16, 1966, provides, in its Article 2, that states are obliged to "guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
3. On the other hand, the International Covenant on Civil and Political Rights of 1966 establishes, in its Article 2, that each state undertakes to "respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
4. The United Nations Convention on the Elimination of All Forms of Discrimination against Women of December 18, 1979, highlights the protection of all persons against certain coercive actions taken by the state that persist in all regions of the world.() In its Article 2.c, it refers to the commitments of the States Parties to "establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination." Furthermore, in its Article 6, it establishes that states shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.
5. The Optional Protocol to the United Nations Convention on the Elimination of All Forms of Discrimination against Women, of December 10, 1999, establishes that communications to the CEDAW committee "may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent."
6. In addition, intergovernmental, regional, and world conferences, particularly the Second United Nations World Conference on Human Rights: Vienna Declaration and Plan of Action (); the United Nations International Conference on Population

and Development: Plan of Action () (1994), and the Fourth World Conference on Women: Beijing Declaration and Platform for Action 1995 (), have contributed significantly to strengthening the incorporation of women's human rights into the principal United Nations human rights instruments and mechanisms ().

7. The Beijing Platform for Action establishes three fundamental principles for the equality of women: (i) empowerment of women; (ii) promotion of women's human rights; and (iii) promotion of women's equality. As part of all these efforts, the United Nations Economic and Social Council (ECOSOC) has defined the mainstreaming of a gender perspective as "the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated."()
8. The Rome Statute of the International Criminal Court, of July 17, 1998, establishes the following definition of "gender" in its Article 7: "For the purpose of this Statute, it is understood that the term 'gender' refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above." In addition, a gender perspective is mainstreamed into the criminalization of offenses under the jurisdiction of the Court, including such criminal conduct as sexual slavery and forced pregnancy. On the other hand, Article 36 of the Statute establishes the importance of appointing personnel to the Court on the basis of gender equity, stating that States Parties should have "a fair representation of female and male judges." Furthermore, "States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children." Lastly, in Article 43, the Rome Statute establishes the Victims and Witnesses Unit and indicates that it should include staff "with expertise in trauma, including trauma related to crimes of sexual violence."