

**SECURING JUSTICE FOR WOMEN WORKERS IN LATIN AMERICA:  
THE ROLE OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM**

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With the world divided into many economic regions and trade areas, regional human rights mechanisms are increasingly being looked to as an important means for addressing the systemic gender discrimination facing the world's women.<sup>2</sup> This paper considers the role of the Organization of American States' (OAS) Inter-American human rights mechanism in securing gender justice for Latin American women workers.<sup>3</sup> The Inter-American system along with the European human rights system are the most developed regional mechanisms, although the recently expanded African human rights system is also an important new model<sup>4</sup>

International and regional law has arrived over the last 30 years at a new understanding of the inter-relationship between labour, gender and human rights. This focus has also expanded to include measures to take into account both the positive and negative impact of trade and investment on women's rights.<sup>5</sup> International and regional instruments such as the *Convention on the Elimination of Discrimination Against Women (CEDAW)*, the *Beijing Declaration and Platform for Action (BDFA)* and the *Convention on the Prevention, Sanction and Elimination of Violence Against Women (Convention Belém do Pará)* have directed the world and its regions to the need

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<sup>1</sup> The Author gratefully acknowledges the invaluable research assistance and advice of Victoria Shen, a law student with Cavalluzzo Hayes Shilton McIntyre & Cornish.

<sup>2</sup> Mary Cornish, Fay Faraday and Veena Verma, "Securing Gender Justice - The Challenges Facing International Labour Law, *Globalization and the Future of Labour Law*, ed. by John D.R. Craig and S. Michael Lynk, Cambridge University Press, 2006, 377 at 387-388.

<sup>3</sup> While the OAS includes women in Canada and the United States, this paper deals with its human rights role in relation to Latin American women.

<sup>4</sup> Mark Freeman and Gibran Van Ert, *International Human Rights Law*, Irwin Law Inc. 2004.

<sup>5</sup> Mary Cornish, "Building Gender Equality into the Global Trading System" Working Discussion Paper prepared to guide the World Bank Seminar on June 2, 2005 in Washington "Equitable Development and the MDGs - Addressing Equity Challenges in the Trade and Labor Agendas".

for comprehensive actions to address the multi-layered dynamics of sex discrimination in order to build sustainable equality<sup>6</sup>. Such standards now operate from the understanding that a) women's rights are human rights; b) that labour rights are human rights; and c) that equality at work is a basic human entitlement. While the extent and scope of both international and regional gender equality standards reflects considerable progress, efforts to secure gender justice have been systematically undermined by the refusal, inability or lack of capacity of governments and institutions to implement the standards and the widespread inability of women to exercise these rights in their day to day lives.<sup>7</sup>

The OAS through its member States and its General Assembly and Summits working under the guidance of its Inter-American human rights institutions has been moving in the last number of years to mainstream gender issues across the entire OAS agenda and to develop an agenda which promotes the creation of the ILO standard of Decent Work for those who are disadvantaged by reason of their sex or their racial, ethnic or indigenous status, or their disability.<sup>8</sup> State parties through the Summit Declaration agreed that "sustained economic growth, with equity and social inclusion is an indispensable condition to create jobs, fight extreme poverty and overcome inequality in the Hemisphere."<sup>9</sup> Yet at the same time, gender inequalities remain entrenched throughout Latin America and its workplaces. As this paper shows, the Inter-American human rights system is playing an important role in addressing these inequalities but still faces many considerable challenges.

Part I of this paper will set the context for the discussion of the Inter-American system by reviewing the current trends and patterns which characterize the systemic gender discrimination facing women workers in Latin America. Part II describes briefly some of the challenges facing a human rights system in securing gender justice given these patterns of discrimination. Part III will review the relevant gender equality promoting provisions of the Inter-American system found in OAS instruments; Part IV will review the structure, mandate and activities of the OAS institutions which are mandated to address gender equality issues and promote and enforce its gender equality standards among member States, namely the Inter-American Commission on Women ("CIM"), the Inter-American Commission on Human Rights ("IACHR"), and the Inter-American Court of Human Rights ("Inter-American Court"). It will also review their relationship to the OAS General Assembly and its Summits of the Americas. Part V reviews some lessons learned and some issues to consider in assessing the effectiveness of the regional Inter-American system in promoting and securing gender justice for women workers in this era of globalization. This includes a discussion of the important role of regional mechanisms; the complementarity of regional and international human rights mechanisms; the importance of coordination between regional and international mechanisms; the need for universality; the important equality role of the state; the need to ensure compliance with standards; the role of civil society and inter-institutional collaboration; the need to

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<sup>6</sup> Cornish, Faraday and Verma, 2006, *supra* and Mary Cornish and Fay Faraday, "Securing Justice for Women's Work", "Asegurando Justicia Para El Trabajo De Las Mujeres", presented to the International Meeting of Lawyers and Trade Unionists "In Defence of Social Security and State Enterprise", convened by the Latin American Association of Labour Lawyers, ALAL and the National Association of Democratic Lawyers of Mexico (ANAD), July, 2005 [www.cavalluzzo.com](http://www.cavalluzzo.com).

<sup>7</sup> Cornish, Faraday and Verma, 2006, *supra* and Cornish and Faraday, 2005 *supra*.

<sup>8</sup> "Program for Gender Equity in the Americas Enjoys Full OAS Support, Press Release, Organization of American States, May 16, 2005, [http://www.oas.org/OASpage/press\\_releases](http://www.oas.org/OASpage/press_releases)".

<sup>9</sup> The Fourth Summit of the Americas Declaration of Mar Del Plata dated November 5, 2005

promote a gender equality culture; the impact of trade mechanisms; the use of on-site and country visits and reports and the need for adequate system funding.

## **Part I      Women's Labour Market Inequality in Latin America**

Human rights mechanisms exist to provide protection against discrimination for citizens and migrants who face systemic inequality and prejudice in their daily lives. The first step in reviewing the effectiveness of such mechanisms is to understand the patterns of such discrimination and prejudice.<sup>10</sup> A recent study has painted a picture of women's labour force participation in Latin America which shows both progress towards equality coexisting with profound, ongoing and systemic gender inequalities in every country's labour markets.

Latin American women are entering the labour market in ever increasing numbers with women now making up 40 percent of the economically active population in urban areas.<sup>11</sup> With 33 million women joining the labour force between 1990 and 2004, this boom in female participation has been attributed to a number of factors, including better schooling, declining fertility rates, higher male unemployment and repeated economic crises requiring more contributors to the family income.<sup>12</sup> Women have had more employment opportunities than men over this period as a result of the growth in the services sector and the decline in the manufacturing sector. Yet even with these opportunities, women's employment continues to be characterized by discrimination, low pay, informality and lack of social protection. Latin American women, like their counterparts worldwide, experience a high degree of labour market discrimination both in gaining access to work as well as in the conditions of that work and their ability to keep it.

Governments reporting to the 2005 Beijing +10 UN Commission on the Status of Women from Latin America as well as the Caribbean along with Africa and parts of Asia detailed the various negative impacts of globalization, trade liberalization and privatization on women including: increased poverty, particularly in rural areas, decreased social protection and basic services, increased violence against women, and decreased participation of women in political decision-making.<sup>13</sup> The systemic gender discrimination facing women in Latin America stems from a number of ongoing labor market trends which affect global markets as well. These include the persistent wage gap, occupational segregation, unequal access to productive resources, capital, education and training and the persistence of stereotypical attitudes and gender bias. All these factors constrain women's labor force access and hinder poverty reduction.<sup>14</sup>

In Latin America, there is a profound social division of labour by sex between paid employment and

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<sup>10</sup> Cornish, Mary, *Engendering Citizenship and Labor Market Regulation*, - International and Canadian Perspectives, research paper presented to the 5th World Bank Gender and Law Conference: "Law, Institutions and Gender Equality" March 18-19, 2003.

<sup>11</sup> Abramo and Valenzuela, *supra*, 369.

<sup>12</sup> Abramo and Valenzuela, *supra*, 369 at 373.

<sup>13</sup> United Nations, "Review of the Implementation of the Beijing Platform for Actions and the 2000 Outcomes Documents, Report of the Secretary General - December 6, 2004. See also, Cornish, 2005, *supra*.

<sup>14</sup> Cornish, Faraday and Verma, 2006 *supra*, and Cornish, 2003, *supra*, United Nations, 2004 *supra*, and *Time for Equality at Work*. Global Report under the follow up to the ILO Declaration on Fundamental Principles and Rights at Work, Report, I(b) 91 St Session, International Labour Conference, Geneva, 2003.

domestic and household labour.<sup>15</sup> Many low income women are finding paid employment in domestic service as a result of the move of higher income women into the labour market.<sup>16</sup> The structure of work is also changing with new decentralized production methods leading to an increase in unregulated workers.<sup>17</sup> Six out of ten new jobs are in the informal sector.<sup>18</sup> Approximately 50 percent of employed women work in the informal sector. Women dominate the lower paid, unpaid and lower status segments of the informal sector such as domestic service which constitutes 15.5% of the total female employment.<sup>19</sup> Women experience higher rates of unemployment than men.<sup>20</sup>

While more poorer women are participating in the labour market, their ability to obtain and hold down a job remains difficult because of the fact they tend to have more children, less education, less help with childcare and domestic duties. Women who are indigenous or of African origin in Latin America suffer from higher levels of inequality and work in particularly precarious and poorly remunerated jobs.<sup>21</sup> Approximately 8 to 15% of the Latin American population is indigenous and a third is of African origin.<sup>22</sup> With respect to pay, while the gap is narrowing slowly, women still earn less substantially than men in every sector of the labour market in Latin America. In every country, women with post secondary education earn less than men with similar education.<sup>23</sup> In the formal sector, women earn about 75 per cent of what men earn and in the informal sector, this figure drops to about 55 per cent. For women disadvantaged by racial status, this gap is much greater. As well, women working in the informal sector make approximately half of what women in the formal sector earn.<sup>24</sup>

Human Rights Watch, Global Unions and others have documented the inequitable labor practices women face in female predominant export processing zones in Latin America and elsewhere. Too often, women's competitive advantage is their lower pay and poor working conditions<sup>25</sup>. With respect to self-employment, while the number of female micro-entrepreneurs has increased, they are still disadvantaged by reason of their sex and run their businesses with much less capital and technology and with lower returns than men.<sup>26</sup> Furthermore, with women now representing 47.5% of migrants, women migrate not only when following their husband or families but also as heads

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<sup>15</sup> Abramo and Valenzuela, supra, 369 at 369 at 369-370.

<sup>16</sup> Ibid. 369 at 375-376.

<sup>17</sup> Ibid. 369 at 369 at 390-391.

<sup>18</sup> Ibid. 369 at 386.

<sup>19</sup> Ibid. 369 at 381-384.

<sup>20</sup> Abramo and Valenzuela, supra, 369 at 377-379

<sup>21</sup> Abramo and Valenzuela, supra, 369 at 382. Also see, Tomei, Manuela, "Discrimination and Equality at Work, A Review of the Concepts' in *International Labour Review* (Geneva), Vol. 142, (2003) No. 4, p. 401-418 and Tomei, Manuela 2005, *Indigenous and Tribal Peoples: An Ethnic Audit of Selected Poverty Reduction Strategy Papers*, Geneva, ILO.

<sup>22</sup> Abramo and Valenzuela, supra, 369 at 369 at 370, fn. 3.

<sup>23</sup> Ibid. 369 at 390.

<sup>24</sup> A Brazilian Study by Lais Abramo concludes that on average women earn 79 per cent of what men earn but black women earn 39 percent of the income of white men. See Abramo and Valenzuela, supra, 369 at 388.

<sup>25</sup> Cornish, Mary, *Engendering Citizenship and Labor Market Regulation*, - International and Canadian Perspectives, research paper presented to the 5th World Bank Gender and Law Conference: "Law, Institutions and Gender Equality" March 18-19, 2003, See *Time for Equality at Work*, supra .

<sup>26</sup> Abramo and Valenzuela, supra, 369 at 385.

of families themselves. While migration has increased opportunities for paid employment, it also holds more dangers for women than men as they are more vulnerable to deprivation, hardship, discrimination and physical, sexual and verbal abuse as well as human trafficking, HIV/AIDS and exploitation.<sup>27</sup>

Gender-based violence is also widespread in Latin America and includes acts perpetrated against “women in the home, in the family, in the community as well as acts perpetrated or tolerated by the State”.<sup>28</sup> It ranges from situations where women are considered the “spoils of war”, where killing and raping of women is an act of terror and intimidation to violence against women workers, migrants, and finally the ongoing violence experienced by women within their families. It is estimated that between 20 to 50% of women in the hemisphere have been victims of violence by their partners. Additionally 33% of women between the ages of 16 and 40 have been victims of sexual harassment and approximately 45% have been threatened with acts of violence.<sup>29</sup> All of this violence is too often socially condoned and tolerated.<sup>30</sup> Further Latin American women suffer from “time poverty” as they struggle to reconcile employment and family, household and community responsibilities particularly with the reduction in state social services flowing from divestment, deregulation and outsourcing that has increased their already inequitable situation.<sup>31</sup>

All of the factors referred to above operate to sustain an inequitable and gendered labour market. As a result, Latin American women are frequently denied access to “Decent Work” which is defined by the ILO to be work that is free from discrimination; meets minimum quality standards; is in the regulated sector of the economy, has rising levels of remuneration; access to good training and coverage by social protection schemes.<sup>32</sup> Accordingly, not only are the region’s women unable to realize their full potential, but region itself is also denied the full productive capacity of its population.<sup>33</sup> To redress this pattern of inequalities, the Inter-American human rights system must target the pattern of labour market inequalities which has been described above.

## **Part II Challenges in Implementing Gender Equality Standards**

Securing gender justice for women workers is now widely accepted as a necessary prerequisite for establishing sustainable social and economic development and security. Yet, international labour and human rights law faces increasing challenges in operationalizing these standards.<sup>34</sup>

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<sup>27</sup> Erica Usher, “The Millennium Development Goals and Migration, International Organization for Migration (IOM), No. 20, IOM Migration Research Series, Geneva, 2005.

<sup>28</sup> “The Three Rapporteurs on the Rights of Women Express Their Concern for the Situation of Violence and Discrimination against Women, Press Release, No. 10/02, Inter-American Commission on Human Rights and see Inter-American Commission on Human Rights Report, Situation of the Rights of Women in Ciudad Juarez, Mexico: The Right to Be Free from Violence and Discrimination.2003.

<sup>29</sup> Rapporteurship on the Rights of Women, IACHR, online: Women Home Page, [http://www.cidh.org/women/press7.05](http://www.cidh.org/women/press7.05.htm) htm. (date accessed: 19 April, 2005)

<sup>30</sup> “The IACHR Special Rapporteur Evaluates the Effectiveness of the Rights of Women in Guatemala to Live free from Violence and Discrimination:”, Press Communique, No. 20/04, Inter-American Commission on Human Rights.

<sup>31</sup> Cornish and Faraday, 2005, *supra* and Cornish, 2003, *supra*.

<sup>32</sup> *Time for Equality at Work*. Global Report under the follow up to the ILO Declaration on Fundamental Principles and Rights at Work, Report, I(b) 91 St Session, International Labour Conference, Geneva, 2003

<sup>33</sup> Abramo and Valenzuela, *supra*, 369 at 369 at 369

<sup>34</sup> Cornish and Faraday, 2005, *supra*, and Cornish, Faraday and Verma, 2006, *supra*.

These challenges flow in part from the following three themes which apply worldwide and are also clearly present in Latin America as described in Part I above: a) the need to recognize that the labour market is heavily gendered and that widespread gender inequality continues. As a result, different and transformative measures are necessary to achieve labour justice for women than for men. b) the traditional ILO core labour standards, the right to unionize, the right to collective bargaining and the right to be free of discrimination found in the 1998 ILO Declaration of Fundamental Principles and Rights of Work are often inaccessible to women. These traditional standards were based on the “male” model of standard, full time employment at the employer’s work site and that standard is disappearing for men and women. But these jobs were never the dominant model for women’s work. In the new “feminized” global economy which is reflected in Latin America, women’s jobs are often precarious, substandard, low wage and often outside of the formal economy;<sup>35</sup> and c) while human rights have often historically been conceived of as gender-neutral, in reality such rights or lack of such rights are experienced very differently as a result of the systemic discrimination women face.<sup>36</sup> This is particularly true in a region such as Latin America, where there is such strong separation between the private and public spheres. Often both the support for and the impairment of women’s economic, social and cultural rights lies within the unregulated domestic sphere. This has led to the phenomena where domestic violence is often not considered a crime; economic resources and food are not divided equally among male and female family members and women often do not have control over their own earnings.<sup>37</sup>

As Latin American women face systemic discrimination in all aspects of their participation or exclusion from labour markets, securing gender justice requires more than new and better laws - it requires a transformative, multifaceted, multi-disciplinary and inter-institutional approach to building gender equality into the region’s labour markets.<sup>38</sup> International and regional institutions and nation states have been moving to develop more gendered labour standards to recognize the need for gender-specific measures to address women’s labour market discrimination. New instruments are increasingly detailed and require state parties and social partners to take positive, pro-active steps to establish substantive and not merely formal equality. These standards recognize the specialized needs of women workers, eg. maternity and family responsibilities. They also recognize that the discriminatory conditions women face in doing work are sustained by the co-existing systemic discrimination they face in education, health, violence against women and political and social exclusion.<sup>39</sup>

### **Part III      The Inter-American Gender Equality Standards**

#### **Introduction**

Over the last century the UN and the OAS have both developed human rights systems and each has increasingly directed their focus on the elimination of gender inequalities in labour markets.

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<sup>35</sup> Cornish and Faraday, 2005, *supra*, and Cornish, Faraday and Verma, 2006, *supra*.

<sup>36</sup> André Côté and Lucie Lamarche, “Ratifying the American Convention on Human Rights: The Stake for Women” National Association of Women and the Law Discussion paper, November 2003, p.33.

<sup>37</sup> André Côté and Lucie Lamarche, “Ratifying the American Convention on Human Rights: The Stake for Women” National Association of Women and the Law Discussion paper, November 2003, p.33.

<sup>38</sup> Cornish and Faraday, 2005, *supra*, and Cornish, Faraday and Verma, 2006, *supra*.

<sup>39</sup> Cornish and Faraday, 2005, *supra*, and Cornish, Faraday and Verma, 2006, *supra*.

## **OAS Human Rights System**

With 35 State members, the OAS created a human rights system to promote and enforce the human rights provisions of the OAS Charter and the organization's conventions and principles. Within that system, three main institutions work collectively with the OAS General Assembly, Summits of the Americas and Member States to promote gender equality and eliminate gender-based discrimination: The Inter-American Commission on Women; the Inter-American Commission on Human Rights (IACHR) with its Special Rapporteurship on the Rights of Women, and the Inter-American Court on Human Rights. Two other Commission Special Rapporteurships also play a role, the Special Rapporteurship on the Rights of Migrant Workers and their Families and the Special Rapporteurship on the Rights of Indigenous Peoples.

OAS Member States have bound themselves through various instruments to take the necessary steps to ensure women are able to fully exercise their basic right to equality and non-discrimination.<sup>40</sup> These instruments bear a number of similarities to the European Convention on Human Rights.<sup>41</sup> Any member country is bound by the OAS founding principles set out in its 1948 *Charter* as amended by the *Buenos Aires Protocol* (1967), the *Cartagena de Indias Protocol* (1985) and the *Washington Protocol*. (1992). These principles set out democratic, economic, social, educational, cultural and scientific standards, which member states undertake to respect and implement. This includes the *American Declaration of the Rights and Duties of Man* ("ADHR") adopted in 1948.

### ***American Declaration on the Rights and Duties of Man***

The 1948 *ADHR* includes a number of gender equality provisions including recognizing the right to equality before the law and the principle of non-discrimination (Art.II); the right to education (Art. XII); the right to work and fair remuneration (Art. XIV); the right to protection for mothers and children (Art.VII); the right to social security (Art.XVI) and the right of association (Art. XXII). All countries are bound by this Convention.

### ***American Convention on Human Rights***

The 1969 *ACHR* establishes a stronger and more comprehensive set of human rights protections for the OAS system along with stronger enforcement and due process mechanisms. The *ACHR* established the Inter-American Court as a further enforcement step toward human rights compliance..<sup>42</sup> The *ACHR* has been ratified by 25 countries to date. However, Canada, the United States and many Caribbean countries have not ratified the Convention which has raised serious issues concerning the universality of the standard. The Inter-American Court only has jurisdiction over countries who have ratified the *ACHR* and acceded to the Court's jurisdiction.

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<sup>40</sup> For a complete listing of Inter-American gender equality instruments see online: Inter-American Commission on Human Rights <<http://www.cidh.oas.org/basic.eng.htm>>; See also "Regional Mechanisms"online: ILO website [http://www.ilo.org/http://www.ilo.org/public/english/employment/gems/eeo/inter/toc\\_main.htm](http://www.ilo.org/http://www.ilo.org/public/english/employment/gems/eeo/inter/toc_main.htm)public /english/employment/gems/eeo>

<sup>41</sup> For a discussion of the comparison between Inter-American system and European system, see Henry Steiner and Philip Alston, *International Human Rights in Context: Law Politics, Morals, Second Edition*. (Oxford University Press, 2000), at 872-873 at 874.

<sup>42</sup> Handbook of Existing Rules Pertaining to Human Rights in the Inter-American System, OEA/Sec.LV11.65,Doc.6, July 1<sup>st</sup>, 1985, Article 1, at 26.

Article 1 of the *ACHR* requires States parties to respect and ensure all recognized rights and freedoms without discrimination on the basis of sex, among other grounds. It also prohibits discrimination on the grounds of “economic status” and “any other condition”. Article 24 recognizes the right to equal protection before and under the law and Article 17 provides that the State shall ensure the equal recognition of rights and “adequate balancing of responsibilities: of spouses within marriage.” Trafficking in women is specifically prohibited by Article 6.

Article 26 of the *ACHR* is similar to Article 2 of the UN International Covenant on Economic, Social and Cultural Rights and establishes the commitment by state parties to take steps to progressively achieve full realization of the rights arising from the economic and social standards provided by the OAS Charter.<sup>43</sup> The *ACHR* in contrast to UN Covenants, treats human rights (civil and political; economic, social and cultural) as interdependent, including women’s rights. All these rights are protected under the *ACHR*, whereas in the UN system, these rights are protected under separate instruments.<sup>44</sup> With respect to enforcement, Article 2 of the *ACHR* commits States parties to adopt any legislative and other measures to give effect to the rights in the Convention and include providing available and effective judicial recourse for violations. Further, where such domestic remedies are inadequate, the Convention provides the option of recourse through the individual petition system.

### ***Additional Protocol to the American Convention on Economic, Social and Cultural Rights (“Protocol of San Salvador”)***

Countries who have ratified the *ACHR* can also ratify the San Salvador Protocol which contains the strongest and most comprehensive set of economic rights. These include the right to work (Art. 6); right to just, equitable, and satisfactory conditions of work (Art. 7); trade union rights (Art. 8); right to social security (Art.9); right to health (Art. 10); right to healthy environment (Art. 11); right to food (Art. 12); right to education (Art. 13); right to formation and protection of families (Art. 15). Trade union rights and the right to education also have special rights of protection through the petition system (Art. 19.6). Article 19 on Means of Protection includes a requirement of State parties to submit periodic reports of progressive measures (Art. 19.1).

### ***Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention Belém do Pará)***

The OAS took the lead in 1994 in being the first human rights system to create a specific convention to address the worldwide problem of systemic violence against women. The *Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention Belém do Pará)* states that “every woman has the right to be free from violence in both the public and private spheres”. It recognizes the central role which violence has played and continues to play in impairing and often nullifying the enjoyment of womens’ human rights in the social and economic sphere. The Convention complements the norms found in the 1993 UN Declaration on the Elimination of Violence against Women. It follows on prior UN provisions, starting with the UN Nairobi Forward-looking Strategies for the Advancement of Women, and continuing with the measures in *CEDAW* and finally *BDPA* which recognized that “in all societies, to a greater or

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<sup>43</sup> 1985 Inter-American Handbook, *supra* at 38.

<sup>44</sup> Steiner, Henry J. & Alston, Philip, *supra*, at 872-873.



lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture.”<sup>45</sup> As stated by the UN Declaration, violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men and this subordination is then reflected throughout society and particularly in the way women’s work is treated.

With the Convention acknowledging that violence against women is rooted in “historically unequal relations between men and women”, the Convention is an important recognition by the OAS that violence against women is a human rights violation and constitutes a profound manifestation of gender-based discrimination. Violence against women under the Convention is also defined broadly to include physical, sexual and psychological violence that takes place in the home, in the community and that is perpetuated or tolerated by the state. The Convention also includes an important “due diligence” provision which requires member States to bring to trial and punish those who perpetrate gender-based violence and to take social measures to eradicate the roots of such violence. The Convention also recognizes that special measures are necessary to address the specific vulnerability of certain groups of women. This includes women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict. In 2002, the OAS also created the Follow-Up Mechanism to the Convention which is a tool to evaluate the implementation of the Convention.

The Convention came into being primarily as a result of the efforts of the Inter-American Commission on Women which organized in 1990 a special meeting with the IACHR, civil society, human rights experts and state actors to address the issue of violence against women. The 1990 Inter-American Consultation on Women and Violence was followed by two sessions of the Intergovernmental Meeting of Experts in 1993 to consider a draft convention. The final text was passed by CIM and approved by the OAS General Assembly in 1994. With 32 out of 35 member state ratifications, it is the most widely ratified OAS Convention.

### ***Convention on the Elimination of Discrimination Against Persons with Disabilities***

This 1999 Convention is directed at preventing and eliminating all forms of discrimination against persons with disabilities and to promote their full integration into society. The Convention includes measures to address the elimination of labour-related barriers.

### **Draft Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance**

The OAS has also established a Working Group to prepare a Draft Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance. This Convention and the Working Group are part of an OAS strategy to analyze the social, economic and political obstacles faced by marginalized groups and to identify practical steps to combat racism, discrimination and intolerance <sup>46</sup>.

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<sup>45</sup> General Assembly resolution 48/104 of 20 December 1993.

<sup>46</sup> OAS Resolution AG/RES 2126 (XXXV 0/05).

## **Other OAS Gender Equality Instruments**

There are also a number of other specific OAS gender equality instruments. The 1933 Convention on the Nationality of Women enabled a woman to retain her own nationality in the event of marriage to a man of another nationality. This was the first international instrument ever adopted concerning the rights of women. At the 1948 OAS founding, state parties in the Americas also agreed to a number of other gender-related instruments: 1) the Organic Statute of the Inter-American Commission of Women; 2) the Inter-American Convention on the Granting of Civil Rights to Women which granted women “the same civil rights that men enjoy”; and 3) the Inter-American Convention on the Granting of Political Rights of Women which granted women the right to vote and to be elected into office.

## **Part IV Inter-American Human Rights Institutions**

As noted above, the Inter-American system created a number of institutions to promote and implement the gender equality provisions which were described in Part III above.

### **Inter-American Commission on Women**

Established in 1928, the Inter-American Commission of Women, (“CIM”) was the first official intergovernmental agency in the world created expressly to ensure the recognition of the civil and political rights of women.<sup>47</sup> Largely driven by the suffragette movement, extending the vote to women was CIM’s first goal. With explosive population growth in Latin American urban centres and increased educational opportunities for women, female school teachers formed the nucleus of the first women’s groups who protested the unequal legal status of women and their limited access to education, political and economic power.<sup>48</sup>

CIM’s role continued and expanded under the 1948 OAS Charter. Member states gave CIM the mandate to “promote and protect women’s rights, and to support member states in their efforts to ensure the full exercise of civil, political, economic, social, and cultural rights that will make possible equal participation by women and men in all aspects of society, so that women and men will share, fully and equally, both the benefits of development and responsibility for the future”.<sup>49</sup> In carrying out this mandate, CIM provides support to member State’s gender equality promotional efforts and collaborates and coordinates its efforts with the IACHR, the OAS General Assembly and other regional and international organizations and agencies.

Consistent with the many dimensions of women’s inequality, CIM’s stated mandate is multi-faceted and multi-layered: 1) To identify through appropriate means the areas where work is needed to integrate participation of women in the economic, political, social, and cultural life of the State; 2) To formulate strategies aimed at transforming and making equitable the roles of and relationship between women and men in all spheres of public and private life, including removing barriers to achieving gender equity; 3) To promote the mobilization, training, and organization of women to achieve equal participation in civil, political, economic, social, and cultural leadership positions and

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<sup>47</sup> <http://www.oas.org/cim>

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

in development programs; 4) To promote access by women and girls to education and training programs, paying particular attention to the situation of women in the labor force and in disadvantaged sectors; 5) To urge governments to comply with their gender equality obligations and implement the necessary legal measures to eliminate all forms of gender discrimination; 6) To serve as an advisory body to the OAS and its organs in all matters related to the women of the hemisphere; 7) To report regularly to the OAS General Assembly; and 8) To submit to Member States recommendations aimed at solving problems related to women's status in the countries of the region.<sup>50</sup>

To carry out this mandate, CIM operates under a State delegation structure which is usually lead by the head of the women's machinery in each state. With 35 permanent delegates designated by each member State, the Assembly of Delegates, held every two years, sets CIM policies and its Plans of Action.<sup>51</sup> The permanent delegates preside over National Committees of Cooperation working with State officials and civil society to promote the work of CIM and the OAS.<sup>52</sup>

CIM's initial focus was on taking steps to promote equal access to education for women as an essential prerequisite for women attaining and exercising their other equality rights. As more women became educated, their focus shifted to economic, social and cultural rights. Using a strategy of developing Plans for Action, CIM's priorities were reflected in CIM's Regional Action Plan for the Decade of Women in the Americas (1976 - 1985); CIM's Strategic Plan of Action: Full and Equal Participation by the Year 2000 (1986); and CIM's Strategic Plan of Action of the Inter-American Commission of Women (adopted in 1994 and presented in Beijing 1995).

In order to coordinate gender equality efforts, CIM works closely with the UN women's machinery and gender equality promoting institutions. CIM delegates played a key role in securing the creation of the United Nations Commission on the Status of Women in 1946-7. Following on the adoption of a gender mainstreaming perspective at the 1995 UN Beijing World Women's Conference and the identification of a multi-faceted gender strategy, CIM subsequently worked to incorporate a gender perspective into the OAS machinery. This included at OAS Summits, Ministerial level meetings, and in particular, on matters related to Gender and Labour (2001), Gender and Justice (2002), Gender and Education (2003).<sup>53</sup> As a technical advisor to the OAS Summit Implementation Review Group (SIRG), CIM has worked to mainstream gender issues into State actions dealing with, among other matters, labour and employment, civil society, health, justice and indigenous peoples. This has included conducting two major studies on Trafficking (2002) and Violence Against Women (2000-1).

As stated earlier, CIM played a key role in the development and approval of the 1994 *Convention*

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<sup>50</sup> Ibid.

<sup>51</sup> See Chapter IV, Article 6 of the *Regulations of the Inter-American Commission on Women* (approved by the XXIX Assembly of Delegates (Inter-American Commission of Women/RES.210 (XXIX-O/98)) on November 18, 1998

<sup>52</sup> *Organization of American States (OAS) - The Inter-American Commission on Women*, International Labour Organization (ILO), online: <[http://www.ilo.org/public/english/employment/gems/eeo/oas/i\\_iacw.htm](http://www.ilo.org/public/english/employment/gems/eeo/oas/i_iacw.htm)> (date accessed: 21 April 2006).

<sup>53</sup> XII Inter-American Conference of Ministers of Labour (IACML), 2001 – see the Final Document; also see the Final Documents from the Summits of the Americas (Miami 1994; Santiago de Chile, 1998; Quebec, Canada 2001; Argentina 2005).

*Belém do Pará* and has made the issue of violence against women a key priority. CIM's work is evident in the OAS Mar Del Plata Summit Plan for Action in November, 2005 which targeted the creation of decent work particularly for women as an essential OAS strategy. (See discussion below.)<sup>54</sup> On May 16, 2006, OAS leadership pledged its continuing support for mainstreaming gender equity issues throughout the OAS and for the specific CIM programmes which CIM has prioritized: combatting violence against women, workplace inequality, human trafficking and HIV/AIDS.<sup>55</sup>

## **Inter-American Commission on Human Rights**

While CIM has a specific gender mandate, the Inter-American Commission on Human Rights has the primary function to protect and promote human rights in the Americas and serves as an advisory body to the OAS. It is composed of seven members who are neutral human rights experts elected in a non-governmental capacity by the OAS General Assembly.<sup>56</sup>

With the passage of the *ACHR*, the IACHR took up a dual role as an OAS political organ as well as an organ of the Convention with the power and duty to supervise human rights in the signatory countries to the Convention. The IACHR's mandate includes ensuring that the rights of women are protected in each member state. Its functions include: a) promoting human rights compliance in all OAS member states; b) advising in the drafting of human rights documents, including treaties and conventions; c) advising OAS member states; d) preparing country and special reports which includes visits to the territories of the states to observe and investigate the status of human rights and publishing reports and sending to General Assembly; e) mediating disputes over serious human rights problems; f) handling individual complaints and initiating individual cases on its own motion both in regard to *ACHR* signatory state parties and states who are not *ACHR* signatories but are bound by the *ADHR* or other instruments; and g) participating in the handling of the cases and advisory opinions before the Court.

## **Reports**

The IACHR has played an important role in stimulating public consciousness regarding human rights in the Americas, particularly through its reporting function. Their reports have covered many topics including ensuring independence of the judiciary and controlling the activities of irregular armed groups. They have also reported on a number of important gender equality issues and have also included a gender perspective in their reports on the human rights of indigenous peoples.<sup>57</sup> The Commission generally includes in its country reports chapters on the status of women's rights in the country.<sup>58</sup> These chapters are prepared in conjunction with the Commission's Special

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<sup>54</sup> The Fourth Summit of the Americas Declaration of Mar Del Plata dated November 5, 2005.

<sup>55</sup> "Program for Gender Equity in the Americas Enjoys Full OAS Support", *supra*.

<sup>56</sup> <http://www.cidh.org/women/mandate.htm>

<sup>57</sup> <http://www.cidh.org/what.htm>

<sup>58</sup> The following IACHR Country Reports highlight the situation facing women: Fifth Report on the Situation of Human Rights in Guatemala (2001), ch. XIII: "The Rights of Women"; Third Report on the Situation of Human Rights in Paraguay (2001), ch. VIII: "Women's Rights"; Second Report on the Situation of Human Rights in Peru (2000), ch. VII: "Women's Rights"; Third Report on the Situation of Human Rights in Colombia (1999), ch. XII: "The Rights of Women"; Report on the Situation of Human Rights in Dominican Republic (1999), ch. X: "The Situation of Women in the Dominican Republic"; Report on the Situation of Human Rights in Mexico (1998), ch. IX: "Human Rights of Women";

Rapporteur on the Rights of Women who participates as a Commission member.<sup>59</sup>

The Peru, Paraguay and Guatemala Country reports are examples of this reporting function. The Commission's Report on the Situation of Human Rights in Peru included an analysis of the discrimination facing Peruvian women and included a focus on women workers. It also made recommendations including enacting measures to implement equal pay for work of equal value and restoring measures to protect working mothers. The Paraguay Report followed the same framework and included an analysis of the problem of sexual harassment with recommendations for proactive measures to improve workplace gender equality and eliminate discriminatory stereotyping. The Guatemalan Country report focussed particularly on the role of the State and public policy in hindering women's equality and identifying the inter-relationship between women, work and development. Among many recommendations, the Report recommended strengthening girls' access to education; eliminating the persistence of gender stereotyping and strengthening labour legislation and inspection services.<sup>60</sup>

### Petitions

As part of its mandate, the IACHR receives, analyzes and investigates individual petitions which allege human rights violations pursuant to Articles 44 to 51 of the *ACHR*. Any person, group of persons or any legally recognized NGO in a member OAS state can submit a "petition" to the IACHR through its Executive Secretariat alleging a violation of the Convention.<sup>61</sup> State complaints also start before the Commission. The complainant need not be the victim of the human rights violation. The right of individual petition is a mandatory provision binding all OAS states not just *ACHR* signatories. In order to access the Commission and the Court, the applicant must have exhausted all domestic remedies. A state complaint can only be made between states which are Convention signatories. The Commission can also initiate its own complaint. The Commission has the power to request information and with the consent of the government to investigate the facts alleged in the complaint. The IACHR prepares public reports on petitions and cases. Most complaints do not proceed further than the stage of the conclusions and recommendations of the *ACHR* and these are not legally binding. Only where a state is signatory to the *ACHR* can a case proceed to the Inter-American Court.

The IACHR has processed a substantial number of cases that have alleged human rights violations with gender-specific causes and consequences. In the *Maria Eugenia Morales de Sierra* decision, the Commission's merits' decision on the Petition found that the facial inequalities in the treatment of men and women under nine provisions of Guatemala's *Civil Code* violated the provisions of non-discrimination and protection under the *ACHR*. These inequalities included an article that permitted a wife to pursue work outside the home only if it did not interfere with her role as wife and mother

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Report on the Situation of Human Rights in Ecuador (1997), ch. XI: "The Human Rights of Ecuadorean Women"; Report on the Situation of Human Rights in Brazil (1997), ch. VIII: "The Human Rights of Brazilian Women"; Report on the Situation of Human Rights in Haiti (1995), ch. IV.3.B: "Violence against Women and Sexual Abuse".

<sup>59</sup> Inter-American Commission on Human Rights Report, Situation of the Rights of Women in Ciudad Juarez, Mexico: The Right to Be Free from Violence and Discrimination.2003. Also see Rapporteurship on the Rights of Women, Inter-American Commission on Human Rights, online: Women Home Page <<http://www.cidh.org/women/country.htm>> (date accessed: 19 April 2006).

<sup>60</sup> "Update on the Work of the Rapporteurship on the Rights of Women, supra.

<sup>61</sup> IACHR Regulations, Article 26 and 28, 1985 Inter-American Commission Handbook, supra, at 125.

and only if she had her husband's permission and one which provided that a wife not husband had the special duty to care for the home and children. Following the Commission's merits' decision, the Guatemalan Government amended or repealed the discriminatory provisions. A 2001 Brazilian decision addresses the issue of obligation of the state concerning domestic violence. The IACHR has also convened hearings into broader topics affecting women in the Americas. During its 113th and 114th sessions, the IACHR held three different general hearings, one on the situation of the women's rights in the Americas, one on status of women's legal rights and one relating to gender-based violence.<sup>62</sup>

A major part of the IACHR gender mandate is carried out by its appointed Rapporteurships which are discussed in the next section.

### **Gender-Related Rapporteurs**

Like the UN system, the Inter-American system utilizes rapporteurships to provide specialized focus. Three Rapporteurships relate to the protection of the women's human rights: the Rapporteurship on the Rights of Women has the main responsibility while the Rapporteurship of the Rights of Migrant Workers and the Rapporteurship on the Rights of Indigenous Peoples also address the issue of gender equality in carrying out their specific mandate. The Rapporteurships have engaged in a number of important functions: 1) raising awareness of the ongoing gender inequalities facing women in the Americas; 2) issuing specific recommendations aimed at enhancing member State compliance with their obligations of equality and nondiscrimination; 3) promoting the mechanisms – for example, the filing of individual complaints of violations – that the inter-American human rights system provides to protect the rights of women; 4) working with the IACHR, conduct on site visits, specialized studies and prepare reports; and finally 5) assisting the IACHR in responding to petitions and other reports of violations of gender equality in the region.<sup>63</sup>

#### Special Rapporteur on the Rights of Women

The IACHR established its Special Rapporteurship on the Rights of Women in 1994 in order to strengthen its ability to carry out its mandate of ensuring member States respect women's human rights. The Rapporteurship works under the direction of a IACHR Member named by the IACHR plenary. Its initial mandate was to analyze the extent to which member states' law and practices complied with the broad obligations of equality and nondiscrimination set forth in the *ADHR* and *ACHR*. This study prepared under the leadership of the first Special Rapporteur, Dean Claudio Grossman, resulted in the Commission's Report on the Status of Women in the Americas which was approved and published by the IACHR in 1997/98. The Report provided an initial overview of how member State laws and practices complied with the OAS guarantees of gender equality and discrimination and made recommendations on measures States should undertake to bring their *de facto* and *de jure* laws and practices into compliance. In addition to its focus on measures to ensure equality between spouses, the elimination of gender-based violence and the elimination of civil code inequities, the Report also called for corrections to discriminatory labour law and practices. As well, it established priorities for further action by the Special Rapporteurship and the IACHR.

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<sup>62</sup> "Update on the Work of the Rapporteurship on the Rights of Women, IACHR, online: Annual Report, 2001 <<http://www.cidh.org/annualrep/2001eng/chap.6c.htm> -date accessed 20 April 2006

<sup>63</sup> Ibid.

The Rapporteurship on Women has focussed on the eradication of violence against women and the barriers women face in gaining access to justice mechanisms. This has been done through many different types of interventions and activities, including on-site visits, independently or with the IACHR, monitoring, research and investigation; reporting, participation in advisory opinions and Commission or Court cases, working with the OAS Assembly and Summit of the Americas and establishing and maintaining inter-governmental and inter-institutional links.

#### ....Violence against Women....

The Special Rapporteur has conducted three on-site visits to investigate the problem of violence and discrimination against women- in Juarez, Mexico, Columbia and Guatemala. The first independent on-site visit of the Rapporteurship on Women was carried out in 2002 for the purpose of examining the situation of the rights of women in Ciudad Juárez, Mexico. The visit was undertaken as result of information and expressions of concern received from hundreds of nongovernmental organizations and other representatives of civil society, and was made at the invitation of the Mexican Government. This concern arose from the grave situation of violence against women in that area, including the killing of over 250 women and girls since 1993, and the unresolved disappearance of over 200 others. Although many high level actors and institutions had condemned the killings, including the Mexican National Human Rights Commission, the Mexican President, the UN High Commissioner for Human Rights, the situation of impunity remained.<sup>64</sup> Prior to this visit, the IACHR had addressed the issue in a number of ways, including processing a number of individual petitions concerning women and girls killed in Ciudad Juarez.<sup>65</sup>

The Juarez Report made a number of important contributions to the Juarez situation. While prior to the report, there had been a view that the killings were the result of a serial killer, the report concluded that the issue was more complicated and systemic. It noted the then general agreement among both state and non-state actors that most of the violence was gender-based, with a “substantial number...linked to sexual violence and others to domestic and intrafamilial violence” and some “present multiple forms of such violence.” The Report also described the women who had been killed and noted the labour connection with a number of the victims being maquila and domestic workers. With the Report’s emphasis on the systemic causes of gender-based violence, it shifted the focus of the debate to the need to seek justice not only for the particular killings but also for the societal imposition of sexual crimes and domestic violence on women. The Report calling on the words of the UN Special Rapporteur of Violence Against Women stated that “domestic violence exist as a powerful tool of oppression” which serves which “not only derives from but also sustains the dominant gender stereotypes...” As violence has its roots in concepts of the “inferiority and subordination of women”, the Report found that the failure to hold perpetrators to account in Ciudad Juárez “confirms that such violence and discrimination is acceptable.” The Report found that where there is a pattern of state failure to take adequate steps to effectively prosecute and punish the perpetrators, it creates a climate which is conducive to such violence.<sup>66</sup>

The Juarez Report also highlighted the obligations of the Mexican State under the Convention of Belém do Pará and the *ACHR* which makes the State responsible for the violence perpetrated by

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<sup>64</sup> See <http://www.cidh.org/annualrep/2002eng/chap.vi.juarez.htm> (<http://www.cidh.org/women/mandate.htm>).

<sup>65</sup> For eg. see IACHR Petitions 104/02, 281/02, 282/02, 283/02.

<sup>66</sup> For eg. see IACHR Petitions 104/02, 281/02, 282/02, 283/02.

its agents and for failure to take due diligence to solve the crimes and their root causes.<sup>67</sup> The report also noted the important role of the National Women's Institute (INMUJERES) and state Institutes. INMUJERES created an Inter-Institutional panel to bring together Federal government institutions and representatives of civil society. As well, since a significant number of the victims were under the age of 18, the Report noted they were entitled under the *ACHR* (Art.19) and the UN Convention on the Rights of the Child to special measures of protection.

The Rapporteurship also conducted a country visit to Colombia in June, 2005, to evaluate the impact of the armed conflict on Colombian women and to collect information about the legal, public policy and institutional measures adopted by Colombia to protect the rights of women. During her stay, the Rapporteur visited the cities of Bogotá, Valledupar and Quibdó, where she held meetings with government authorities as well as victims and their relatives, civil society organizations and intergovernmental agencies linked with the defence and promotion of the rights of women. The observations, conclusions and recommendations of the Rapporteurship were then included in a special IACHR report.<sup>68</sup> The report noted how women were subjected to modalities of sexual violence designed to dehumanize them, including trafficking and forced prostitution. As well, armed actors had targeted for harassment and threats the leadership exercised by women's organizations in conflict zones. The Special Rapporteur found that indigenous women and Afro-Columbian women suffered even deeper forms of discrimination. The Rapporteur called on the State to implement measures to address not only the armed conflict issues but also to implement measures to eliminate the discriminatory patterns of gender-based prejudice in other sectors.<sup>69</sup>

In 2005, the Special Rapporteur visited Guatemala at the request of the Government and civil society organizations as a result of concerns about the number of murders and prevalence of other forms of violence against Guatemalan women. The purpose of the visit was to investigate and obtain reliable information on the serious situation of discrimination and violence facing Guatemalan women; to evaluate the effectiveness of State policies and institutions; and the obstacles that may prevent women from accessing justice. In addition, because Guatemala is a multi-ethnic and multi-cultural state, another objective was to investigate the situation of indigenous women. The Rapporteur held meetings in both urban and rural communities with senior Guatemalan government representatives as well as with victims, family members of victims, academics, and organizations of civil society dedicated to the defence and promotion of the human rights of women. The visit was conducted in collaboration with the Office for the Protection of Indigenous Women (Defensoría de la Mujer Indígena) and the Rapporteurship for the Rights of Indigenous Peoples. A workshop on the inter-American human rights system was held with the participation of 40 indigenous women.<sup>70</sup>

#### ....Access to Justice....

The Women's Rapporteurship recognized the need to address access to justice issues if women were to secure their human rights, particularly in the area of being free from gender-based violence. In April, 2005, the Rapporteurship convened a work meeting: "The Protection of Women's

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<sup>67</sup> Inter-American Commission on Human Rights Report, Situation of the Rights of Women in Ciudad Juárez

<sup>68</sup> see Rapporteurship on the Rights of Women, IACHR, online: Women Home Page <<http://www.cidh.org/women/Press27.05.htm>> (date accessed: 19 April 2006)

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.



Rights in the Inter-American System: An Analysis of Access to Justice” to review the main achievements and challenges women face in gaining access justice in the Americas. The meeting included approximately 24 experts from the region, among them representatives from the administration of justice, regional and international agencies, civil society organizations, the academic sector and others, as well as IACHR lawyers. Throughout 2005, the IACHR and the Rapporteurship organized a series of sub-regional consultations funded by Finland to identify the challenges to obtain access to justice; to discuss new strategies and best practices to confront these obstacles and to identify recommendations to put forward to OAS member states.<sup>71</sup>

### **Special Rapporteurship on Migrant Workers and Their Families**

Following a specific OAS request, the IACHR established the Special Rapporteurship on Migrant Workers and their Families in 1997. Its mandate was limited to migrant workers and their families who have moved beyond the borders of their state of origin and it does not include internally displaced persons, stateless persons, refugees, or asylum seekers. As with the Women’s Rapporteurship, one of the seven IACHR Commissioners was appointed as the Special Rapporteur. As noted earlier, many more women are now migrating and looking for work and accordingly the Rapporteurship’s activities are important to the securing of their human rights. The Rapporteurship’s activities has included: (a) promoting Member States’ duty to respect the human rights of migrant workers and their families; (b) making specific recommendations to Member States on migrant-friendly measures to be adopted; (c) preparing reports and special studies on the situation of migration and migrant workers and (d) assisting with work on petitions or communications in which it is noted that the human rights of migrant workers and their families are violated. Following a specific mandate from the Third Summit of the Americas and a Specific Resolution by the OAS General Assembly, the Special Rapporteurship actively participates in the discussion and preparation of an Inter-American Program for the Protection and Promotion of the Human Rights of Migrants which includes a focus on women migrants.<sup>72</sup>

### **Inter-American Court on Human Rights**

The Inter-American Court on Human Rights was established by the *American Convention on Human Rights* and has jurisdiction only over those countries who have ratified the *ACHR* and acceded to its jurisdiction. The Court consists of seven judges who may be nationals of any member OAS state.<sup>73</sup> The Court has both a dispute resolution and advisory jurisdiction and handles state and individual complaints. The Court may consider a case referred by either the Commission or by a state party. For the Commission to refer a case, the case must have been admitted to investigation and the Commission’s draft report sent to the state party. A state can refer directly to the Court.<sup>74</sup> It publishes its judgments, advisory opinions and provisional measures. Under its advisory jurisdiction, the Court can interpret the *ACHR* and any other treaty concerning the protection of human rights in the OAS states. Judgments of the Court are legally binding on the parties. The Court is also responsible for “supervision of compliance”. If a state does not comply

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<sup>71</sup> Ibid.

<sup>72</sup> AG/RES. 1928 (XXXIII-O/03).

<sup>73</sup> Steiner & Alston, *supra*, at 872-873. See also Inter-American Court of Human Rights , Annual Report, 2005 for a review of the Court’s decisions.

<sup>74</sup> 1985 Inter-American Handbook, *supra*.

with the decision of the Court, the Court may inform and make recommendations to the OAS General Assembly.

While the Court has not addressed the issue of women workers' rights, it has addressed the issue of gender equality. In its Advisory Opinion OC 4/84 concerning the Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, the Court, found that a difference in treatment is only discriminatory when it has no objective and reasonable justification. In this regard, the Court cited a 1998 ruling of the European Court of Human Rights which found that some inequalities in legal treatment may not violate principles of justice if they are "instrumental in achieving justice or in protecting those who find themselves in a weak legal position".<sup>75</sup> The Court found that the law which provided that women but not men who marry Costa Ricans gain a special status for purposes of naturalization was based on traditional principles of family unity and conjugal inequality and was therefore discriminatory. In the *Hulica Tecse* case from Peru dealing with the extrajudicial execution of a male trade union leader, the Court issued a judgment against the State and ordered reparations as well as ordering the Peruvian government to investigate the situation.<sup>76</sup>

The Inter-American Court has rendered a number of important decisions which address the requirement for remedies to be made available and effective. Where the State apparatus operates in a way that crimes go unpunished and the victim's rights are not restored, then the State has failed in its duty to ensure those rights. The Court also issued a Precautionary Measures order under Article 25 of its Rules of Procedure for Esther Chávez, a human rights defender who was involved in seeking justice for the Juárez crimes and had received a series of threats.

As well, the Court issued an important decision relating to the rights of migrant workers, many of whom are women. The Migrant Workers Rapporteurship in conjunction with the IACHR, submitted a brief to the Inter-American Court in Advisory Opinion Case (OC-18) issued on September 17, 2003. This advisory opinion had been requested by the Mexican State to clarify the scope of the right to equality and the principle of non-discrimination (Article II of the *ADHR*, and Articles 1(1) and 24 of the *ACHR*) and their application to the labour rights of workers whose immigration status in the state in which they live and work is irregular. The Court found that the US court decision in *Hoffman* which denied labour rights to undocumented workers was a violation of the *ACHR*.

### **The OAS General Assembly and Summit of the Americas**

The OAS General Assembly has overall responsibility for human rights compliance as the OAS governing body. CIM and the IACHR both report to the General Assembly and they work to inform and engender the Plans of Action adopted by the OAS Summits. For example, the Plan of Action adopted by member States during the Third Summit of the Americas recognized the importance of women's empowerment, and their full and equal participation in development, political life, and in decision-making at all levels. To this end, the Plan endorsed the Inter-American Program on the Promotion of Women's Human Rights and Gender Equality and other regional initiatives aimed at implementing the commitments set forth in the 1995 Beijing Declaration and its Platform for Action.

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<sup>75</sup> Eur.Court. H.R. Certain Aspects of the Laws on the Use of Languages in Education in Belgium (Merits) Judgment of July 23, 1968.

<sup>76</sup> See also Inter-American Court of Human Rights , Annual Report, 2005 for a review of the Court's decisions.

As noted above, the Fourth Summit of the Americas Declaration of Mar Del Plata dated November 5, 2005 contains an important focus on the creation of Decent work for Latin American women. Relying on the ILO Declaration on Fundamental Principles and Rights at Work 1998 and the commitments in the OAS Charter, the *ADHR* and the *ACHR* assigns the right to work articulated in the human rights instruments to a central place in the hemispheric agenda, “recognizing the essential role of the creation of decent work to achieve these objectives.”<sup>77</sup>

The Mar Del Plata Declaration includes the commitment to “eliminate discrimination against women at work through. among other measures the implementation of a range of policies that will increase women’s access to decent, dignified and productive work, including policies addressing training and education and protection of the rights of women, as well as proactive policies to ensure that men and women enjoy equality in the workplace.”<sup>78</sup> As well, it commits States to “ensure equal access for men and women to the benefits of social protection and ensure attention to gender issues in labor and social policies”; to “implement policies that provide equal pay for equal work or as appropriate, for work of equal value”; to provide, improve or widen comprehensive social protection systems so that all workers are protected, especially domestic workers; to promote tripartite and inclusive social dialogue and cooperation among social partners with the assistance of the ILO; to strengthen the capacity of Ministries of Labour to enforce national labour laws and regulations; and finally to take measures to give effect to the rights of migrant workers.”<sup>79</sup>

## **Part V      Some Lessons Learned and Issues to Consider**

Engendering labour market practices in the Americas is a complex multi-faceted process. There are many diverse issues which need to be addressed in order to fulfill of the promise of the OAS gender equality standards.<sup>80</sup>

### **The Importance of Regional Mechanisms**

In response to a 1968 UN study, the IACHR supported regional human rights mechanisms on four grounds: 1) existence of geographic, historical and cultural bonds amongst States of a particular region; 2) recommendations of a regional organization may be met with less resistance than those from a global body; 3) publicity about human rights are likely to be wider and more effective; and 4) less room for compromise based on considerations of a political nature<sup>81</sup> At the same time, others argue that: 1) human rights are global in nature and should be defined by global instruments and implemented by global bodies; 2) regional bodies will unnecessarily duplicate the work of international bodies or develop contradictory policies and procedures; and 3) regional mechanisms can take the funding and focus away from international instruments and mechanisms.<sup>82</sup> The better approach, looking at the experience of the Inter-American system is that such mechanisms are complementary – global instruments set the minimum standards, whereas regional instruments can

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<sup>77</sup> The Fourth Summit of the Americas Declaration of Mar Del Plata dated November 5, 2005.

<sup>78</sup> Section 1 A. Fourth Summit of the Americas “Mar del Plata, Argentina” Plan of Action dated November 5, 2005.

<sup>79</sup> Section 1 A. Fourth Summit of the Americas “Mar del Plata, Argentina” Plan of Action dated November 5, 2005

<sup>80</sup> Cornish, Faraday and Verma, “Securing Gender Justice, supra

<sup>81</sup> Steiner & Alston, supra at 783.

<sup>82</sup> Ibid.supra at 783.

refine and expand those rights and take special account of regional differences<sup>83</sup>

Regional mechanisms can be more effective than universal ones “because within the limited segments of the globe we can find the cultural foundation of common loyalties, the objective similarity of national problems, and the potential awareness of common interests necessary for the effective operations of multilateral institutions”.<sup>84</sup> As well, such mechanisms are particularly suitable where collaboration is necessary to achieve an objective.<sup>85</sup> A good example of this is the *Convention Belém do Pará* which expands on the UN instruments and declarations which refer to gender-based violence and translates the regions’ pressing concern with gender-based violence into the first convention directed specifically at gender-based violence. Given the region’s targeted violence against women along with systemic domestic violence, the *Convention* represents a consensus amongst a region which shares a tradition of violence and conflict.

Regional mechanisms also appear to be more accessible to women who are trying to secure their rights who are largely poor and marginalized. Additionally, in loco visits, country reports, monitoring of compliance – are made easier by the proximity of regional bodies. A good example of this is the visit of the Special Rapporteur on Women to Ciudad Juarez, Mexico and her influential visit Report.

### **Complementarity of Regional and International Human Rights Obligations**

But what is the effect if regional bodies interpret international standards too narrowly, or create precedents that adversely affect the work of global bodies? To date, there have been no major conflicts of interpretation, or of formal decisions between the regional and UN bodies. Interpretation approaches favour avoiding such conflicts using some basic rules: 1) Standards in the Universal Declaration and in any other UN-related treaties accepted by the state or states concerned must be respected; 2) Human rights standards forming part of general principles of international law must be respected; and 3) Where standards conflict, the one most favourable to the individual concerned should prevail.<sup>86</sup>

As well, Article 29(b) of the *ACHR* stipulates that no provision of the Convention may be interpreted as restricting the enjoyment and exercise of any right or freedom granted not only by the legislation of the state party but also by any covenant to which the state is a party. The *ACHR* represents a “levelling upward” in that it preserves national and international gender equality advances. As well, common approaches to interpretation promotes coherence and a levelling upward of human rights standards.<sup>87</sup>

### **The Need for Coordination between Regional and International Human Rights Mechanisms**

There has been increasing recognition that effective action on development and human rights goals requires greater dialogue and cooperation among the various equality promoting mechanisms in

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<sup>83</sup> Ibid.supra, at 784.

<sup>84</sup> Rights & Democracy, supra, at 28

<sup>85</sup> Ibid. supra, at 782.

<sup>86</sup> Steiner and Alston, supra, at 785.

<sup>87</sup> See the Vienna Convention on Law and Treaties (principle of coherence and good faith); and Article 5(2) of the UN Covenant on Civil and Political Rights.

the worlds and its regions. The world's commitment to the Millennium Development Goals is a clear recognition of this need. There are a number of significant examples of this dialogue and co-operation in the Inter-American system. Rights and Democracy, a Canadian NGO organized a joint meeting of the special rapporteurs on the rights of women in 2002 - the UN Special Rapporteur on Violence against Women, its Causes and Consequences, the Special Rapporteur on the Rights of Women in the African Commission on Human and People's Rights and IACHR Special Rapporteur on the Rights of Women. The Rapporteurs issued on March 8, 2002, International Women's Day, a Joint Declaration denouncing the persistence of discrimination and violence against women. The Declaration noted the widespread impunity which individual and state agents enjoyed who committed such violence and called for states to comply with their obligations.<sup>88</sup>

As noted in Part III, the Inter-American institutions have also incorporated the ILO's Decent Work strategy into its gender equality strategies, with the recent Mar Del Plata Summit making Decent Work a central focus of its work. As well, CIM with its Delegates consisting primarily of leaders of Women's machinery, has also worked closely with the UN Commission on the Status of Women to implement the international gender equality obligations set out in UN instruments, including *CEDAW* and the *BDPA*. While there is no obligatory system of state reporting on treaty obligations as there is in the UN system, many Delegates to CIM are also the same entities who prepare their countries' periodic *CEDAW* reports. .<sup>89</sup>

### **The Importance of Universality**

There are three levels of adherence in the Inter-American system: Those who live in member countries are all protected by the *ADHR*. Then there are those who have ratified the *ACHR* but have not accepted the Inter-American Court's contentious jurisdiction, and then there are the 21 member States who have accepted the Court's jurisdiction. This uneven ratification means not only that inhabitants of some countries have fewer rights than others, but also that there is less funding for the human rights system with the two large Northern countries absent from the Court.

Brazil has proposed that member states who have not ratified the *ACHR* should report to the OAS on the steps taken to ratify it.<sup>90</sup> With the United States, Canada and a number of Caribbean states refusing even to ratify the *ACHR*, the OAS human rights system does not have system-wide universalism of the European human rights system. In Europe, the development and enforcement of region-wide standards of human rights and social protection was a central part of the European process of economic and social integration.<sup>91</sup> A 2003 Canadian Senate Report has called on the Canadian Government to ratify the *ACHR* but to date the Government has not moved to have country-wide, transparent consultations on such ratification.<sup>92</sup>

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<sup>88</sup> "Update on the Work of the Rapporteurship on the Rights of Women, IACHR, online: Annual Report, 2001<<http://www.cidh.org/annualrep/2001eng/chap.6c.htm> -date accessed 20 April 2006

<sup>89</sup> Freeman and Van Ert, *supra*, at 427.

<sup>90</sup> Claudio Grossman, President of the IACHR, Speech in the Context of the Dialogue on the Improvement of the Inter-American Human Rights System. Washington, May 3, 2001 at 3-4.

<sup>91</sup> Steiner and Alston, *supra*, Freeman and Van Ert, *supra* and John W. Foster, "Canadian Ratification of the ACHR and San Salvador Protocol - Benefits to the Economic, Social and Cultural Rights of Canadians", March 8, 2001.

<sup>92</sup> Enhancing Canada's Role in the Oas: Canadian Adherence to the American Convention on Human Rights Report of the Standing Senate Committee on Human Rights, May, 2003

## Supporting the Equality Role of the State

Securing human rights for women workers requires many different democratic institutions to play an equality promoting role with the main leadership role of necessity going to national governments responsible for implementing appropriate laws and practices. Given the often reduced capacity of the state in the new globalized Latin American economy and the lack of effective control of any one state over global trading practices and the transnational businesses, the state's role in protecting women in such precarious employment is often compromised. As well, with low paid women being a significant way for developing countries to compete against developed countries in producing low cost goods and services, some countries through easing labor regulations and encouraging low wage costs have facilitated a labor market which permits precarious and inequitable employment.<sup>93</sup> Human rights institutions must recognize these pressures on the state. The recent Mar Del Plata Declaration appears to recognize the importance of supporting state institutions to provide appropriate labour and social protections.<sup>94</sup>

## Ensuring System Compliance

As noted by then IACHR President Dean Grossman in 2001, while compliance with resolutions issued by the Commission and the Court has improved, the "political organs of the OAS are sufficiently active as collective guardians of the system."<sup>95</sup> Many States have not taken the necessary steps to incorporate the OAS gender equality standards in their domestic legal frameworks and domestic judges have also not fully applied these standards. There needs to be a system like in Europe where member states continually review their legislation to ensure compliance with regional standards and European judges regular consult EU jurisprudence.<sup>96</sup> In the area of women's rights, there has been a important focus on the role of impunity and its effect of condoning and encouraging further violations of women's rights which was highlighted by the Juarez situation. As stated by the Special Rapporteur, "impunity undermines the very system of guarantees and creates a climate conducive to the repetition of violation."<sup>97</sup>

## The Role of Civil Society and Inter-Institutional Collaboration

Other important roles are played by civil society including employers and trade unions working with women's organizations. Neutral human rights institutions such as the OAS institutions play a key role in developing cooperation among these actors and promoting equality promoting actions. As reviewed in Part III of this paper, labour market gender equality standards exist within the Inter-American systems but as evidenced by Part I, these standards have not yet been translated fully into the lives of Latin American women. The work of the OAS human rights institutions reviewed in Part IV of this paper shows that these institutions are playing an important role in assisting member States working with civil society to comply with their gender equality obligations. The recent CIM Access to Justice Conference is an excellent example of this where participants from

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<sup>93</sup> Cornish, Faraday and Verma, 2006 *supra.*, Cornish and Faraday, 2005, *supra.* UN, 2004 *supra.* ILO, 2003 *supra.*

<sup>94</sup> The Fourth Summit of the Americas Declaration of Mar Del Plata dated November 5, 2005.

<sup>95</sup> Grossman, *supra* at 4.

<sup>96</sup> *Ibid*, at 5.

<sup>97</sup> "Update on the Work of the Rapporteurship on the Rights of Women, *supra.*

many sectors came together to identify and analyze the barriers to access to justice women face, including economic, institutional, budgetary, geographic, cultural, racial/ethnic and language considerations and worked on devising comprehensive and multi-disciplinary strategies to eliminate them. The IACHR and its Rapporteurship on Women along with CIM then followed up after the Conference with member States and civil society to continue the work on furthering women's access to justice.<sup>98</sup>

## **Promoting a Gender Equality Culture**

The Inter-American human rights system was designed to complement domestic legal systems but it assumed a larger role as the primary protector of human rights due to the inability or unwillingness of domestic systems to protect such basic rights as the right to life and physical integrity.<sup>99</sup> In the Latin American context, the strengthening of human rights protections has focussed on democratization and the transition from authoritarian rule to uneasy democracies.<sup>100</sup> The Inter-American system played an important role in that transition, where states of emergency were common, domestic institutions could be dictatorships, weak or corrupt, and large-scale practices involving torture, disappearances and executions have existed with some actions perpetrated by state officials or with state sanction. In this context, many governments have also been ambivalent, if not hostile to the Court and Commission.<sup>101</sup>

While European human rights regime largely reinforced national restraints on the exercise of state power, within the inter-American system, the Commission was attempting to impose on governments restraint that were not existent domestically.<sup>102</sup> The Inter-American system provides governments with another mechanism to improve human rights conditions by strengthening the rule of law, domestic institutions and the legitimacy of governments".<sup>103</sup> In this context, international and regional human rights instruments and bodies play a critical role in filling the gap left by domestic legislation and authorities.

## **Impact of Trade Mechanisms**

At the Mar del Plata November 2005 Summit, the States Parties recognized the impact of trade and investment issues on the region and its economic and social development but were unable to reach a consensus on how to move forward on that issue. Some countries favoured the negotiation of a FTAA agreement which would incorporate a social dimension with human rights protections and others lead by Brazil and Venezuela were opposed to such a plan.<sup>104</sup> The States parties agreed to continue the discussions and there remains no consensus on the appropriateness of including

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<sup>98</sup> Rapporteurship on the Rights of Women, Inter-American Commission on Human Rights, online: Women Home Page <<http://www.cidh.org/women/press17.05.htm>> (date accessed: 19 April 2006)

<sup>99</sup> Rights and Democracy, *supra*, at 24.

<sup>100</sup> Rights & Democracy, *Strengthening the Inter-American Human Rights System: The Current Debate*, Feb 4-6, 1998, at 3.

<sup>101</sup> Steiner & Alston, *supra*, at 869.

<sup>102</sup> Steiner & Alston, *supra*, at 877-878.

<sup>103</sup> Rights & Democracy, *supra*, at 24.

<sup>104</sup> The Fourth Summit of the Americas Declaration of Mar Del Plata dated November 5, 2005.

a human rights dimension in trade agreements.<sup>105</sup>

### **Use of On-site and Country Visits and Reports**

IACHR Commission and/or Rapporteur in loco visits and country reports are a very important part of the Inter-American system's work, more so than its processing of individual complaints. Country reports, because they reveal a pattern of delinquency by public officials, attract far more attention than individual cases. They also provide a far more accurate perspective on the extent and the endemic character of human rights violations.<sup>106</sup> Because the Commission often deals with gross violations of human rights by those who are unlikely to comply with European-style rulings, the Commission has been most effective to date by establishing the facts in reports or decision and then publicizing what is happening, and negotiating and pressuring for change through the OAS. By focussing on visiting states, talking with governments, publication of country reports, and present to the General assembly for debate, the Commission's work in this regard parallels the work of the UN Commission on Human Rights.<sup>107</sup>

### **The Need for Adequate Funding**

While there are strong commitments made in OAS instruments and by member States, the reality is that the Inter-American human rights system is vastly underfunded for the commitments it has to discharge. With the IACHR processing over 900 individual cases in 2001, Grossman pointed out that the IACHR budget represented less than 3.4% of the OAS budget. The IACHR and its Rapporteurship on Women has repeatedly drawn attention to this lack of funding and its impact on the ability of the OAS to carry out its gender equality mandate.<sup>108</sup> While OAS human rights institutions have not been significantly strengthened or provided with sufficient resources, new institutional supports and resources have been provided – at state and multilateral levels – to advance, implement and enforce trade and investment agreements.<sup>109</sup>

### **Conclusion**

The OAS human rights system continues to develop an important focus on women's labour market equality as it moves to protect women beyond their basic right to life and physical security. Given the importance of economic security, this focus is critical for Latin American women. Translating regional labour equality standards into concrete improvements in the lives of working women and their families and communities requires the collaboration of all those with equality obligations. This includes governments, civil society and the institutions of the OAS, and particularly its human rights institutions. As this paper shows, this collaboration is starting to take hold in the OAS system but much remains to be done to secure human rights justice for women workers.

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<sup>105</sup> See also, Cornish, 2005 *supra* for a discussion of building gender equality into a trading system.

<sup>106</sup> Steiner & Alston, *supra*, at 879.

<sup>107</sup> Steiner & Alston, *supra*, at 874-876.

<sup>108</sup> IACHR, Annual Reports, <http://www.cidh.org/annualrep>.

<sup>109</sup> Grossman, *supra*, at 5-6 and Foster, *supra*.