



*The Leadership Council for
Inter-American Summitry*

***Advancing Women's Rights in the Americas:
Achievements and Challenges***

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Inter-American Dialogue
International Center for Research on Women (ICRW)
Women's Leadership Conference of the Americas (WLCA)*

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MONITORING IMPLEMENTATION OF THE SUMMIT OF THE AMERICAS

A Working Papers Series

Edited by Richard E. Feinberg and Robin L. Rosenberg

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ADVANCING WOMEN'S RIGHTS IN THE AMERICAS : ACHIEVEMENTS AND CHALLENGES

Mala N. Htun

In 1994 and 1998, heads of states of the countries of the Americas endorsed an array of objectives related to women's rights. On behalf of their governments, the region's leaders agreed to take measures to improve the position of women in society, to promote women's equal participation in decisionmaking, to eliminate legal discrimination, to reduce violence against women, and to fortify governmental mechanisms to oversee progress toward these goals. The consensus among American states that promoting women's rights is an essential component of democratic consolidation and sustainable development is significant. The normative frameworks contained in Summit documents help to orient all levels of government policy, lend legitimacy to advocates of women's rights, and promote cultural transformations toward gender equality.

In the late 1990s, the activities undertaken by American governments to fulfill commitments made at the Summit of the Americas and other international forums, such as the United Nations Fourth World Conference on Women, held in Beijing in 1995, have been impressive. Twelve Latin American governments adopted quota laws establishing a minimum level (between 20 percent and 40 percent) for women's candidacies in national elections. At least 12 countries introduced legislation to punish and prevent domestic and sexual violence against women, and hundreds of women's police stations were created across the region to receive victims of violence. National and local governments set up official agencies to propose and coordinate public policies to improve women's lives and frequently staffed these agencies with representatives of women's movements. Various national constitutions grant women rights to family planning, to equality of employment, to effective political participation, and to equal rights

in family decisionmaking. Many governments launched special policy initiatives designed to improve women's lives, such as day care centers, literacy drives, microcredit programs, and public health campaigns to reduce cervical cancer and maternal mortality.

Inter-American organizations have also taken steps to follow up on Summit agreements on women's rights. In April 2000, the Inter-American Commission on Women of the Organization of American States (OAS) held a meeting of ministers responsible for the advancement of women in various countries of the Americas, leading to adoption of a resolution on the "Integration of a Gender Perspective in the Summit of the Americas" and the "Inter-American Program on the Promotion of Women's Human Rights and Gender Equity and Equality" (IAP), a framework for integrating gender equality into the OAS. The resolution and IAP were subsequently adopted by the OAS General Assembly, which recommended that gender be a cross-cutting theme of the Political Declaration and Plan of Action to be endorsed at the Quebec Summit of the Americas in April 2001. In October 1999, the Canadian Department of Foreign Affairs organized a summit of spouses of heads of state of the Americas. The first spouses endorsed the Ottawa Declaration, a hemispheric commitment to equal rights and opportunities for men and women citizens of the Americas.

In spite of these advances, profound challenges still need to be met. This paper highlights the achievements and the failures of American governments in implementing Summit provisions related to women's rights in the areas of violence, health, political participation, legal rights, and the maintenance of women's agencies in the state. Most countries have made major advances in eliminating sex discrimination in the law, opening the

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doors of decisionmaking to unprecedented numbers of women and adopting laws and policies designed to reduce domestic and sexual violence. Women have gained a significant number of “new rights.” Yet, in few cases have state institutions changed and sufficient funds been committed to make these “new rights” concrete. Implementing the advanced normative frameworks endorsed by the region’s legislatures and by heads of states in international agreements requires executive action. Yet, women are poorly represented in the executive branch, and executive agencies designed to coordinate public policies directed at women lack, for the most part, sufficient institutional power and status to carry out their mandates.

Regional non-governmental organizations (NGOs) have been working to hold governments accountable to their commitments and to increase public awareness of progress on Summit initiatives. The Women’s Leadership Conference of the Americas (WLCA) has conducted periodic surveys of the situation of women and gender-related policy initiatives in the Americas and has published several policy briefs on women’s rights and opportunities, political participation and leadership, and violence against women. The Santiago-based PARTICIPA has twice convened — most recently in cooperation with the Esquell Group Foundation of the United States and FOCAL of Canada — representatives from NGOs around the hemisphere, including women’s rights groups, to formulate proposals for governments to include in the Quebec Summit’s Plan of Action and to coordinate efforts to follow up on summit mandates. The sustained vigilance of these organizations will help compel governments to make greater investments in improving women’s rights.

Violence Against Women

Violence against women was the subject of sustained regional and international attention in the 1990s. Regional organizations, such as the OAS’s Commission on Women and the Inter-American Development Bank (IDB), played a critical role in calling official attention to the problem of violence and urging governments to take action to prevent violence. A major achievement of these organizations, which worked in conjunction with networks of women activists from civil society, was in framing the issue of violence against women as a violation of human rights. Governments have recognized the widespread

nature of violence in general, as well as the pernicious consequences of violence as it affects wages, economic output, and social violence. Approximately 50 percent of all women in the Americas suffer from psychological abuse, and between 20 percent and 40 percent from physical abuse. Women who are victims of violence earn less than other women, which the IDB estimates reduces gross domestic product (GDP) by 1.6 percent to 2 percent per year. Studies have demonstrated that children’s exposure to violence increases the likelihood that they will adopt criminal and violent behavior as adults.¹

The Declarations, adopted at the Summit of the Americas meetings in Miami in 1994 and in Santiago in 1998 (see this paper’s Appendix for the texts of these Declarations), both make special mention of the problem of violence against women and call on governments to undertake measures to eliminate this type of violence. These documents reinforce the 1994 Inter-American Convention on Violence, adopted by members of the OAS, which affirmed the state’s responsibility for violence perpetuated by its agents as well as violence committed by citizens. The Convention declared that the state’s *failure* to take action to prevent violence itself constitutes a violation of women’s rights and established a procedure for citizens of signatory nations to denounce acts of violence to the Inter-American Commission on Human Rights.

In the 1990s, many Latin American and Caribbean states adopted laws and policies addressing the problem of violence at the national level (see Table 1).

The majority of these laws introduced measures to protect victims in the immediate term by allowing judges to remove aggressors from the home, to suspend their guardianship over children, and to issue restraining orders. Most of the laws allow for public policies to combat violence, including women’s police stations, counseling services for victims, legal advice, training for judges and other law enforcement officials, and national education campaigns.

For these laws to be implemented, victims of violence and judges must make use of their provisions, there must be sufficient funding for preventative policies, and the treatment of victims by law enforcement authorities must improve. Yet, reports from some countries suggest a wide gap between the letter of the law and actual implementation. Guatemala’s domestic violence law calls on public

Table 1. Laws to Prevent and Punish Violence Against Women

Country	Date	Law
Argentina	1994	Law on Protection against Family Violence; various provinces also enacted domestic violence laws
Bahamas	1991	Law on Sexual Offenses and Domestic Violence
Barbados	1992	Law on Orders of Protection about Domestic Violence
Belize	1992	Law on Domestic Violence
Bolivia	1995	Law Against Domestic or Family Violence
Chile	1994	Law on Intrafamily Violence
	1999	Law on Sexual Crimes
Colombia	1996	Norms to Prevent, Remedy, and Punish Intrafamily Violence
Costa Rica	1996	Law against Domestic Violence
Dominican Republic	1997	Law Modifying Various Articles of the Criminal Code
Ecuador	1995	Law on Violence against Women and the Family
El Salvador	1997	Law against Intrafamily Violence
Guatemala	1996	Law to Prevent, Punish, and Eradicate Intrafamily Violence
Guyana	1994	Law on Domestic Violence
Honduras	1997	Law against Domestic Violence
Mexico	1997	Law against Domestic Violence (applicable to the Federal District and to other areas of federal jurisdiction)
Nicaragua	1996	Law of Reforms and Additions to Criminal Code
Panama	1995	Crimes on Intrafamily Violence and Mistreatment of Minors
Peru	1993	Law on Protection against Family Violence
	1999	Reform to Criminal Code to make rape a public, rather than a private, criminal action
Saint Vincent and the Grenadines	1994	Law on Domestic Violence
Trinidad and Tobago	1991	Law on Domestic Violence
Uruguay	1995	Domestic Violence integrated into Criminal Code
Venezuela	1998	Law on Violence against Women and the Family

prosecutors, hospitals, and the police to take steps to prevent violence, yet little has been done because of a lack of political will and scarce financial resources. In El Salvador, the women's department in the Public Prosecutor's office, which is responsible for overseeing implementation of the domestic violence law, is allocated only 2.5 percent of the agency's entire budget. In Honduras, a 1993 law obliged the public health system to create family counseling centers to offer psychological help to victims and aggressors. By 1998, however, there were only two centers in the

entire country, in Tegucigalpa and San Pedro Sula, and even these are unable to deal with the avalanche of cases sent to them by the courts and police.²

Resistance from judges poses another major obstacle to implementation. In El Salvador, the new Intrafamily Violence Law allows judges to extend a broad array of protective measures to victims, such as prohibiting aggressors from drinking alcohol, issuing restraining orders, and mandating requirements that aggressors receive psy-

chological counseling. At the request of the victim or the state, these protective measures can be imposed at any time after violence is reported; an investigation or sentence is not necessary. Yet, many judges believe that there needs to be proof of violence in order for protective measures to be applied. In other words, whereas the new law authorizes judges to impose protective measures prior to a trial or an investigation, judicial traditions imply that judges should have definitive proof of guilt before applying protective measures against aggressors. Though the Salvadoran Prosecutor's office runs a program to train personnel from family courts about the new law (in hopes of provoking a sea change in judicial traditions), judges who have begun to use protective measures to help victims have been the subject of a barrage of complaints from lawyers representing aggressors, who claim that the new measures preclude their clients from receiving due process. The judicial investigation agency that was created in a recent administration reform has been flooded by lawyers claiming that judges are being partial to women.³

How can problems implementing new policies against violence be overcome? The experience of Brazil is instructive in this respect. In Brazil, state-society partnerships have helped combat domestic violence by training law enforcement authorities and by increasing awareness of women's rights to be free from violence. The Brazilian case also demonstrates that effective violence prevention is best administered at the local rather than the national level.

State-Society Partnerships

In Brazil, NGOs have worked to expand women's knowledge of their legal rights. In Porto Alegre, Brazil, an NGO named Themis offers legal training to low-income women so that these women, in turn, can disseminate legal knowledge throughout their communities. Women "popular prosecutors" hold clinics in low-income neighborhoods, where they offer free advice on the law and on other services offered by the state. Themis has been so successful that other organizations are emulating its methods and approach. For example, the National Human Rights Program, which operates under the Ministry of Justice, decided to multiply Themis' experience in the rest of the country. In the late 1990s, the Program contracted NGOs throughout Brazil to train "multiplying agents of

citizenship" (*agentes multiplicadores de cidadania*) to raise citizens' awareness of their rights in a variety of areas.⁴

Other NGOs in Brazil, such as the Rio de Janeiro group CEPIA, work with state governments to train law enforcement officers in women's human rights. In 1999, CEPIA offered a 32-hour course to 240 officers. Representatives from other state agencies offering services to women, such as public hospitals with legal abortion procedures, also took part in the course to increase police awareness of the range of resources available to women. The objective was to create more effective linkages within the state and thus promote more integrated action on behalf of women's rights.⁵

Local-Level Action

In Brazil, local governments have taken the lead in violence prevention by creating and maintaining women's police stations, battered women's shelters, and centers of attention for women in public defenders' offices. Local governments have also monitored incidents of violence and established procedures to perform abortions for women who became pregnant as the result of rape. In 2000, there were 250 women's police stations around the country, 16 hospitals with procedures to perform legal abortions, two cities with women's clinics in public defenders' offices, one hospital with an incest clinic, and a unit to work with sexual abusers.⁶

Local governments have also taken the lead in monitoring trends in denunciations of violence and in following up on violent incidents. Data collected by the government of Betim, a municipality in the state of São Paulo, demonstrate that the number of violent incidents reported to the women's police station increased every year (from 602 cases in 1993 to 2,180 in 1997, after which the number of incidents reported stabilized with 2,150 incidents in 1998 and 2,046 in 1999), as did the number of women offered psychological and legal advice. The government also collects information on the social profile of victims and their aggressors, providing an important source of data for the design of preventive policies.⁷

However, the majority of these local initiatives are isolated events. Policies in areas such as violence have been adopted in the absence of a central organizing framework or general strategy for women's empowerment. As a result, services

directed at women are not explicitly linked to one another, and the continuity of services beyond particular administrations is uncertain. According to Brazilian activists, the key challenge for the future is to develop more connections between activities at the “micro” and “macro” levels. That is, states should generalize successful local experiences and develop linkages between the policy frameworks adopted at the national and regional levels and the activities of local governments. As later sections of this paper will argue, linking state services for women within the executive branch is a critical challenge for other women’s rights areas as well.

Health

Historically, the lack of state action with regard to women’s reproductive health has resulted in alarmingly high levels of maternal mortality (see Table 2), low awareness of techniques to prevent disease, precipitous growth in HIV infection rates and high rates of other sexually transmitted diseases, and a significant unmet demand for contraceptives.

In the 1990s, American states committed themselves to address problems of women’s reproductive health. In 1994, the region’s governments endorsed an integral approach to women’s health and the notion of “reproductive rights” contained in the consensual document adopted at the United Nations Conference on Population and Development held in Cairo. The 1998 *Declaration of the Summit of the Americas* endorsed policies designed to improve women’s health. These international agreements and pressure from networks of women’s rights and health organizations motivated many governments to adopt new policies on reproductive health (see Table 3).

Argentina’s adoption of a women’s health program at the federal level is particularly notable. In contrast to the previous administration, the government of Radical Party President Fernando de la Rúa has recognized reproductive and sexual rights as constituting part of women’s human rights and has publicly acknowledged the connection between high rates of illegal abortion and inadequate access to reproductive health services. The plan calls for an expansion and improvement of family planning services, sex education, and the prevention of sexual violence. One of the stated goals of the plan is to help reduce unwanted pregnancies.⁹ In the past, Argentine governments

Table 2. Maternal Mortality

Country	Rate per 100,000 live births
Antigua and Barbuda	150
Argentina	38
Bahamas	64
Barbados	0
Belize	140
Bolivia	390
Brazil	160
Canada	0
Chile	23
Colombia	80
Costa Rica	29
Cuba	27
Dominica	65
Dominican Republic	230
Ecuador	160
El Salvador	160
Guatemala	190
Guyana	190
Haiti	457
Honduras	220
Jamaica	120
Mexico	48
Nicaragua	150
Panama	85
Paraguay	190
Peru	270
Saint Kitts and Nevis	130
Saint Lucia	30
Saint Vincent and Grenadines	43
Suriname	110
Trinidad and Tobago	75
Uruguay	21
United States of America	8
Venezuela	65

Source: For all of the countries (except the Bahamas, Canada, Haiti, and Trinidad and Tobago*) the numbers represent the most recent year of data available from UNICEF. See UNICEF (<http://www.unicef.org/status/>). *Numbers for these countries are available from (<http://www.paho.org/>); select Country Health Profiles.

Table 3. Some Recent Initiatives on Women's Reproductive Health in Select Countries

Country	Year	Policy
Argentina	2000	National Plan to Reduce Maternal and Infant Mortality Reproductive and Sexual Health/Family Planning Laws in provinces of Mendoza, Neuquén, La Pampa, Tierra del Fuego, Río Negro, Córdoba, Chaco, and City of Buenos Aires
Brazil	1998	Program to Prevent Cervical Cancer
	1999	Technical Norm on the Prevention and Treatment of Sexual Violence Various programs organized and executed at municipal level ⁸ National Council to Prevent Maternal Mortality
Peru	1996-2000	Program on Reproductive Health and Family Planning
Mexico	1995-2000	Program on Reproductive Health and Family Planning

took little action with regard to women's reproductive health, contributing to a high rate of illegal abortion. Estimates suggest that Argentine women undergo between 350,000 and 400,000 illegal abortions per year.¹⁰

In the 1990s, several Argentine provincial governments adopted legislation on women's reproductive health at the same time that a federal law guaranteeing access to family planning was debated in Congress and archived due to political opposition. The vanguard actions of local governments in the health area parallels local action to prevent violence against women and provides further evidence that services to advance women's rights are primarily conceived and implemented at the local level. In the case of women's reproductive rights, local governments may have had more success in adopting progressive policies because they present a less obvious target for conservative opposition than the national government, and because the effects of local laws are more immediate.¹¹

In spite of good intentions, new women's health programs, even those otherwise deemed successful, have suffered from problematic implementation, as the cases of Brazil and Peru demonstrate. To reduce the incidence of cervical cancer (responsible for the deaths of 7 million women per year in Brazil), the Brazilian government launched a Program to Prevent Cervical Cancer in 1997. The Program performed pap smears on 3.5 million Brazilian women in more than 5,000 municipalities in 1998. Over 50,000 of those exam-

ined were diagnosed with cervical cancer.¹² Unfortunately, the program suffered from organizational problems when its management and operations were transferred from the Ministry of Health in Brasília to the National Cancer Institute in Rio de Janeiro. Feminist groups have also expressed concern that many women with positive test results did not receive follow-up treatment.

A study by a feminist network concluded that Brazil's Program was a one-shot deal that failed to install permanent services to detect cervical cancer in women. They also suspected that the campaign, executed in the final months of a presidential campaign, was motivated by the elections and not by a serious concern for women's health.¹³ According to the former president of the National Women's Council, the experience revealed both the possibilities and limitations of executive action to promote women's health. Though the Program was a success in terms of the sheer numbers of women who participated, the inefficiency of the national health system made it clear that advancing women's rights is premised on the reform of Brazilian state institutions.¹⁴

The Peruvian government's family planning program reached large numbers of women but also came under severe criticism for abuses of women's reproductive rights. In three years, the program sterilized over 200,000 women. Yet, the Peruvian Defensoría del Pueblo, a human rights ombudsman agency, alleges that the government reached many of its numerical population goals at

the expense of the free choices of Peruvian citizens about family planning. The Defensoría alleges that the government program has been focused almost exclusively on sterilization at the expense of other, reversible methods of contraception, that its numerical goals led to “compulsive tendencies” on the part of state agents administering the program, and that women suffered from a lack of follow-up procedures to their surgeries. These claims of abuses in the family planning program provoked outcries from the Roman Catholic Church, feminist groups, and human rights organizations. As a result, the number of reported “irregularities” in the program declined in the late 1990s, though several of the problems reported by the Defensoría continued even after prior abuses were acknowledged by the Ministry of Health.¹⁵

As in the domestic violence area, NGOs have assumed much of the initiative in efforts to improve women’s reproductive health. Many of the most innovative policies adopted by governments were designed in cooperation with women’s groups from civil society. To institutionalize state-society partnerships in the design and monitoring of health programs, some countries have created consultative bodies at the federal and state levels. Countries without these consultative forums should consider creating them in order to increase the visibility and legitimacy of health programs.

Women in Political Decisionmaking

At the Miami Summit in 1994, heads of state representing 34 countries of the Americas

**Table 4.
Women in the Legislature (Bicameral Parliaments)**

Country	Senate			Chamber of Deputies		
	Year of Election	Number of Women	% of Seats Held by Women	Year of Election	Number of Women	% of Seats Held by Women
Argentina	1998	2 of 72	3%	1999	68 of 257	27%
Bolivia	1997	1 of 27	4%	1997	15 of 130	12%
Brazil	1998	6 of 81	7%	1998	29 of 513	6%
Chile	1997	2 of 49	4%	1997	13 of 120	11%
Colombia	1998	13 of 102	13%	1998	19 of 161	12%
Dominican Republic	1998	2 of 30	7%	1998	24 of 149	16%
Mexico	2000	20 of 128	16%	2000	78 of 500	16%
Paraguay	1998	8 of 45	18%	1998	2 of 80	3%
Uruguay	1999	3 of 31	10%	1999	12 of 99	12%

Women in the Legislature (Unicameral Parliaments)

Country	Year of Election	Number of Women	% Seats Held by Women
Costa Rica	1998	11 of 57	19%
Cuba	1998	166 of 601	28%
Ecuador	1998	18 of 123	15%
El Salvador	2000	5 of 84	6%
Guatemala	1999	10 of 113	9%
Honduras	1997	12 of 128	9%
Nicaragua	1996	9 of 93	10%
Panama	1999	7 of 71	10%
Peru	2000	26 of 120	22%
Venezuela	2000	18 of 165	11%

expressed a commitment to promote women's participation in decisionmaking in politics, the economy, and society. Since then, the region has made major gains in women's presence in elected office. In terms of women's presence in Congress, the Americas has the second-highest regional average in the world (15.2 percent), behind only Nordic Europe (38.8 percent) and exceeding the world average (13.8 percent). If we take into account only the 19 Spanish- and Portuguese-speaking Latin American countries, however, the averages drop. Women make up 13.2 percent of the lower or single house of Congress in Latin America and 9 percent of the Senate (see Table 4).

Women's representation in national cabinets has increased in many countries. In Honduras, women hold 26 percent of the cabinet positions. In Chile, the government of Ricardo Lagos that assumed power in March 2000 appointed five women to the cabinet; 25 percent of Chile's ministers are women. In El Salvador and Panama, women represent 25 percent of these positions. In Venezuela, women make up 21 percent of cabinet ministers. In Colombia, 19 percent of the ministers are women, and in Costa Rica, 18 percent hold these positions. In other countries, however, women's representation in cabinets remains low.

In general, women's participation in the legislative branch is greater than in the executive branch. This is true at the local as well as national levels. In the 1990s, women's participation in provincial (or state) and municipal legislative councils exceeded women's representation among mayors and governors. The discrepancy between levels of representation in the legislature and in the executive stems primarily from the existence of quota

rules intended to boost women's presence in legislative office.

In the 1990s, 12 Latin American countries — Argentina, Bolivia, Brazil, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Panama, Paraguay, Peru, and Venezuela — adopted laws establishing a minimum level of between 20 percent and 40 percent for women's participation as candidates in national elections. On average, quotas have served to boost women's presence in Congress by 5 percentage points. Yet, the effectiveness of quotas varies considerably across countries. In some countries, such as Argentina, quotas have been tremendously successful: women's presence in the Chamber of Deputies rose from 6 percent before the quota to 28 percent after the quota. In other countries, however, the results of quotas have been minimal.

What factors explain the success of quotas? First, the law must be obligatory and specify how it is to be applied. In some countries, quota laws are vague, leaving the interpretation of compliance at the discretion of political parties, and serve as recommendations but not obligations to political parties to field women candidates. Second, quotas work best in electoral systems with closed lists and/or large electoral districts. Finally, to be effective in a closed-list system, the quota law must contain a placement mandate requiring parties to place women in electable positions on party lists (and not at the bottom where they stand no realistic chance of getting elected).¹⁷

The growth in women's presence in legislatures has coincided with important legal advances in women's rights. Women legislators, united in multipartisan political alliances, were responsible for enacting laws on domestic violence, rape, quo-

Table 5.
Women Ministers in Latin America
and the Caribbean ¹⁶

Country	Year	% of Women Ministers
Argentina	2000	8%
Barbados	2000	13%
Bolivia	2000	0%
Brazil	2000	0%
Chile	2000	25%
Colombia	2000	19%
Costa Rica	2000	18%
Cuba	2000	10%
Dominican Republic	2000	8%
Ecuador	2000	7%
El Salvador	2000	25%
Guatemala	2000	8%
Honduras	2000	26%
Jamaica	2000	12%
Mexico	2000	16%
Nicaragua	2000	8%
Panama	2000	25%
Paraguay	2000	8%
Peru	2000	7%
Trinidad and Tobago	2000	11%
Uruguay	2000	0%
Venezuela	2000	21%

tas, and the reform of discriminatory civil and criminal codes. Yet, the mere presence of women in positions of power will not automatically produce policy outcomes favorable to women’s interests. Women owe primary political loyalty to their political parties and to their mentors and constituencies within the party. Few women are elected to office on a platform of women’s rights. Under pressure, if the interests of the political party contradict the interests of women’s alliances, most women opt to vote with their party and not with other women.

Civil society organizations have played an important supporting role for alliances of women politicians and congressional commissions on gender equality. In Brazil, the feminist lobbying group CFEMEA provides legislative information and advice to members of the *bancada feminina*, or “women’s caucus.” The Peruvian NGO Movimiento Manuela Ramos accompanies women elected to Congress and lobbies for bills promoting women’s rights. The Mexican group Diversa has helped forge political pacts among women politicians to push for a women’s rights agenda. These three groups also serve to link women politicians with larger networks of women’s groups. For women politicians to exercise real power, they need to count on mobilized constituencies of women in society.

Sex Discrimination in the Law

With the exception of abortion law, the legal framework of women’s rights in Latin America and the Caribbean is quite advanced. Constitutions, civil and criminal codes, and labor laws reflect principles of gender equality to varying extents. Nonetheless, there is a considerable gap between law and practice. The key challenge facing most societies in the twenty-first century is not to adopt new laws and regulations but to implement those that already exist.

Women are explicitly granted equal rights under several constitutions in the region (see Table 6).

Constitutions that do not explicitly declare equality between men and women but prohibit discrimination based on sex include Colombia, Bolivia, and Peru. Yet, many Latin American constitutions grant rights that are not respected in practice. The Brazilian Constitution of 1988, for example, contains a series of positive rights relating to women’s work, social benefits, and family

planning. Guaranteeing these rights, however, requires massive advances in social policy that have not yet been implemented.

Table 6. Latin American Constitutions That Establish a Principle of Equal Rights Between Men and Women

Country	Date	Equality Principle
Mexico	1917	1974 amendment granted men and women equal rights.
Brazil	1988	Men and women are equal.
Cuba	1976	Women enjoy the same rights as men.
Ecuador	1979	Women and men have equal rights.
Guatemala	1985	Men and women have equal opportunities and responsibilities.
Paraguay	1992	Men and women have equal rights.

A majority of the region’s civil codes have been reformed to grant women equal property rights and equal rights in family matters. In the region’s original civil codes, decision-making authority over marital property and minor children was vested in men, and married women did not enjoy full civil capacity. Laws regulating the rights of women partners also represent important milestones. In some countries, these rights have crystallized into stable union laws that recognize different types of families.¹⁸ So-called “partners’ laws” grant women or men the right to demand alimony and child support payments. Prior to such laws, women and children who were abandoned by their male partners had little legal recourse.

Criminal codes historically have posed major obstacles to women’s equality, largely because of their aim to protect men’s honor and “good customs” (traditional mores). For example, rape was long considered a crime against customs, not against a person. In most countries rapists could be absolved of their crime by marrying their victims. Moreover, rape was the subject of a private rather than a public criminal suit. As a result, charges could only be pressed against a rapist through a private suit initiated by the victim or her legal representatives, exposing women to threats by the rapist and pressure from family and peers to drop the charges.

Table 7. Women's Rights in the 1988 Brazilian Constitution

Area	Rights
Basic principles	Women and men have equal rights and obligations.
Family	Women and men have equal rights and obligations in the family. Families are constituted by marriage and stable unions. The state is obliged to take measures to prevent intrafamily violence.
Health	All couples have the right to decide the number and spacing of their children, and the state is obliged to furnish information on family planning. (In addition, organized Brazilian women were able to block an effort to include a constitutional clause protecting "life at conception.")
Work	The state is obliged to protect women's position in the labor market. 120 days of paid maternity leave Prohibits sex discrimination in employment and wages
Domestic workers	Minimum wage Weekly day of rest Paid annual vacation Maternity leave Social security

In the late 1990s, several countries reformed their criminal codes related to rape. Due to public outcry over a case in which a female victim of a gang rape was pressured by family members into marrying one of her assailants, Peru reformed its criminal code in April 1997. In 1999, Peru further reformed its code, making rape the subject of a public criminal action, permitting state prosecutors *on their own initiative* to investigate and prosecute rapists. Importantly, any member of the community can now report a crime of rape. In Colombia, the criminal code reform of 1997 redefined rape as a crime against "sexual freedom and human dignity."¹⁹ In December 1997, a political alliance of women, composed of members of the Mexican Congress and representatives of civil society groups, secured approval of a law that defined marital rape as a serious crime. Argentina modified its criminal code in 1999, removing the concept of "crimes against honesty" and replacing it with "crimes against physical integrity."²⁰

With one significant exception, criminal laws on abortion have not been reformed in any Latin American country. Abortion is considered a crime and punished except under a narrow range of cir-

cumstances, such as risk to the mother's life or if the pregnancy results from a rape. In 2000, the criminal code of Mexico City was reformed to expand the circumstances of legal abortion to include risk to the mother's *health* and in the event of fetal anomaly. Yet, even these "legal" abortions are rarely performed in public health facilities. Middle-class women who can afford private doctors and clinics have safe access to legal abortions, but poor women do not. With the aim of equalizing access to legal abortions, about 20 Brazilian hospitals have adopted procedures to verify the legality of the abortion requested. In 1999, the Brazilian Ministry of Health issued an internal rule, requiring all public hospitals to attend to legal abortions as part of a general policy to improve the state's treatment of women victims of violence. The Mexican reform of 2000 also obliges public hospitals to perform those abortions permitted by law.

Chile and El Salvador, countries that once permitted therapeutic abortions, now forbid it. A 1989 decree in Chile reformed the country's health code to remove grounds for therapeutic abortion, and reforms to the Salvadoran criminal code in

1997 eliminated the few circumstances in which abortion was not punished and increased the penalties applied to women and to the abortion practitioner. In other countries, anti-abortion movements have supported bills and constitutional amendment proposals to outlaw all abortions and to "protect life at conception." However, in Argentina in 1994 and in Brazil in 1995, anti-abortion amendment proposals were considered and defeated in Congress.

In general, few women are prosecuted and punished by the state for having an abortion. In Brazil, for example, most abortion suits are rejected by the courts and archived. In a sample of 765 abortion cases heard in a São Paulo court from 1970 to 1989, 53 percent were archived. Only four percent of the cases led to a conviction. Based on her laborious analysis of court records of abortion trials, Danielle Ardaillon concludes that society is not interested in punishing abortion: "It is as if there is an enormous social investment in [abortion's] prohibition and little interest in its de facto criminalization."²¹ In Peru in 1988, only one of the 668 suits considered by the fourth Correctional Tribunal in Lima dealt with abortion.²²

There is little evidence that the criminalization of abortion deters the practice of abortion. Rather, the millions of women who undergo abortions every year in Latin America must do so in unregulated and often dangerous circumstances. Women who undergo clandestine abortions are at risk of infection, hemorrhage, damage to the uterus or cervix, and adverse reactions to drugs. Not surprisingly, abortions performed under these conditions account for a high proportion of maternal mortality.

State Agencies to Coordinate Women's Rights Policies

The *Declaration of the Second Summit of the Americas* called on governments to "strengthen . . . national mechanisms and governmental organs . . . in charge of promoting legal equality and equality of opportunities between women and men . . . and provide them with adequate and timely financial resources to enable these entities to promote, coordinate, and carry out the commitments undertaken by the States at the World Conference on Human Rights, the International Conference on Population and Development, the World Summit on Social Development, the Summit of the Americas, the Fourth World Conference on

Women, and the recent 'Santiago Consensus' of the VII Regional Conference on Beijing Follow-Up." In other words, the *Declaration* calls on American states to institutionalize attention to women's rights by maintaining strong and stable governmental agencies charged with monitoring the implementation of international commitments.

Few states have lived up to this provision of the *Declaration*. To be sure, virtually every country created national women's agencies within the executive branch to propose, coordinate, and monitor women's rights policies. Yet, the vast majority of these agencies have suffered from low institutional status and no leverage over other agencies. In some countries, the position of women's agencies has been precarious. In Brazil, for example, the National Women's Council, created after the 1985 transition to democracy, initially enjoyed a significant presence within the executive. The Council was able to coordinate and implement women's rights programs in a number of areas. However, since the late 1980s, successive Brazilian administrations have progressively weakened the Council's institutional and financial positions. The final blow came in March 2000, when the Council was demoted to the status of a department within the Secretariat of Human Rights within the Ministry of Justice.

Moreover, the Brazilian Council is weakly funded. Between 1996 and 1999, the Ministry of Justice spent a mere US\$30,000 per year on women's rights.²³ Because of these frequent changes in institutional power and status, not to mention a lack of resources, the Brazilian National Women's Council has been unable to secure a sustainable state commitment to women's rights.

The Argentine National Women's Council has suffered from similar changes in mission and status. The Council played a proactive role in the first Menem administration, coordinating a campaign to implement the 1991 quota law (to be discussed in more detail below), promoting women's rights initiatives in the Constitutional Convention, and joining efforts to reject proposals to prohibit abortion absolutely. In the next Menem administration, the Council ceased much of its policy advocacy, as its president and senior staff were forced to resign. Under new leadership, however, the Council secured a great deal of funding and began building women's councils in provincial governments. Under the administration of President Fernando De La Rúa, the Council changed again. Though it lost most of its budget,

the Council succeeded in changing government policy to recognize women's reproductive rights as human rights.²⁴

State and local governments in many countries have created agencies to coordinate women's rights policies. Data from Brazil in 1998 show that 67 municipalities and 13 states had established women's agencies. These represent a mere fraction of the total number of municipalities (there are more than 5,000 municipalities in all of Brazil) and almost half of the 27 states.²⁵

The weakness of state agencies promoting women's rights is a major obstacle to implementation of the Summit Declarations and other international agreements. Most of the responsibility for further advances in women's rights lies in the executive branch. As argued earlier, the central challenge facing the Americas is not to adopt new laws but to implement those that already exist. Women do not lack abstract rights; they lack concrete rights. The executive has the power to propose the budgetary changes and institutional transformations necessary to make women's formal rights concrete.

When the executive branch takes action, the results can be stunning. Consider the following three situations, all examples of how focused executive action translated women's abstract rights into concrete rights:

1. *Argentina's quota law of 1991.* The success of Argentina's quota law, which caused women's presence in the Chamber of Deputies to grow from 6 to 28 percent, is attributable to executive action. The first factor explaining the success of the law is the placement mandate contained in the law's *reglamentación*, established in a decree issued by President Carlos Menem in 1993. The *reglamentación* states that women must be placed in electable positions on party lists. Without this executive decree, the quota law would have produced few results, since parties would have placed women in low positions on the list, giving them little chance to get elected. The second factor that affected the law's success is the 1993 and 1995 national campaigns waged by the National Women's Council, an executive branch agency, to challenge in court those party lists that failed to comply with the electability rule. These campaigns established judicial precedents and norms of compliance among parties. In short, the mere

existence of a quota law did not guarantee success. Executive action to establish the electability rule and to monitor compliance with quotas was necessary to make quotas work.

2. *Abortion in Mexico.* In 2000, Rosario Robles, the mayor of Mexico City, spearheaded reforms to the city's laws on abortion.²⁶ This was unprecedented. No major national officeholder in any Latin American country had ever publicly supported the liberalization of restrictions on abortion. As a result, laws on abortion have not changed since the adoption of modern criminal codes decades ago. Individual members of Congress in several countries had introduced bills to liberalize abortion, but these bills generated more controversy than support. Significantly, Mexico's reforms not only broadened the conditions of legal abortion, but also required public hospitals to perform those abortions permitted by law.²⁷ The experience of Mexico demonstrates, first, that executive action can break the historic stalemate over abortion law and, second, that an elected official can take a stand in favor of liberalizing abortion and not lose popularity.
3. *Women's Health in Brazil.* The appointment of José Serra as Minister of Health in Brazil led to the adoption of several new programs to improve women's health, particularly reproductive health. After assuming office, Serra made women's health a priority of the Health Ministry. As mentioned earlier, the ministry organized a Campaign to Prevent Cervical Cancer that attended to 3.5 million women in 1998 and issued a technical norm requiring all public hospitals to perform legal abortions and provide emergency contraception at the request of women who had been raped. The Ministry also launched programs to reduce the high incidence of caesarian sections and promote "natural" birth, reduce maternal mortality, increase the supply of contraceptives distributed at health posts, expand HIV testing and treatment for those with AIDS, and promote greater attention to the health of Afro-Brazilian women. Many of these actions had been anticipated by a formal women's health policy, adopted in 1983, but were never implemented until a minister committed to women's health arrived on the scene.

These examples illustrate the potential of executive action to institutionalize women's rights as well as the limitations of contemporary women's agencies. The changes mentioned above all resulted from officials in senior positions — presidents, mayors, and ministers — exercising individual initiative. They are striking examples because the weakness of most women's agencies means that the executive branch in most countries lacks continuous commitment to women's rights. As a result, the promotion of women's rights is not institutionalized but depends on the individual initiative of high-level decisionmakers.

Conclusion

In the immediate term, the most effective way to make concrete the “new” rights granted women by international agreements and advanced domestic legislation is for high-level officials in the executive branch to propose and carry out initiatives. The need for executive action raises the question of how executive agents may be compelled to take action on behalf of women. In the past, politicians have been reluctant to serve as advocates of women's rights, believing that the voting public cared more about other, more “fundamental” issues such as food, jobs, and shelter. If they focused on women's issues, they were concerned about appealing only to a narrow constituency instead of to the broader public.

There is some evidence that these concerns are no longer valid. In a survey of adult urban

residents in five Latin American countries, conducted by Gallup on behalf of the Inter-American Dialogue and the Inter-American Development Bank, the majority of respondents affirmed the importance of women's issues. Fifty-seven percent declared that a candidate's opinion on women's issues would be “very important” to their voting decision in the next presidential election, and an additional 23 percent said that women's issues would be “somewhat important” to their vote.²⁸ These numbers suggest that promoting women's rights is not merely charitable but politically profitable. Politicians who help women may also help themselves.

Trends in public opinion also augur well for women hoping to gain access to decision-making positions. The same Gallup survey demonstrated a high public willingness to vote for women candidates and revealed that a majority maintained that women public officials would do better than men at dealing with the wide range of issues and problems facing contemporary societies. Importantly, the belief in women's greater competence extended beyond social policy to economic management, foreign affairs, and fighting corruption. Voters fed up with the intractable problems of corruption, crime, and poverty may be turning to women to represent a different face and hope for the future. Women must take advantage of this opportunity to secure implementation of international commitments — turning women's abstract rights into concrete rights.

NOTES

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5. Interview, March 2000, with Leila Linhares Barsted, CEPIA, Rio de Janeiro.
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16. I thank Kelly Alderson of the Inter-American Dialogue for gathering the data on Women Ministers for Table 5.
17. For more information on the interaction of quota laws and national electoral systems, see Mala Htun and Mark Jones, forthcoming, "Engendering the Right to Participate in Decisionmaking: Electoral Quotas and Women's Leadership in Latin America," in *Gender, Rights and Justice in Latin America*, eds. Nikki Craske and Maxine Molyneux (London: Macmillan).
18. The Brazilian Constitution of 1988 recognized stable unions as a family entity; laws passed in 1994 and 1996 regulated the rights of partners in stable unions.
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23. Articulação de Mulheres Brasileiras, 2000, *Balanço nacional. Políticas públicas para as mulheres no Brasil. 5 anos após Beijing*, Brasília, 41.
24. Interviews with Brazilian CNDM President Rosiska Darcy D'Oliveira and former President Jacqueline Pitanguy; Argentine CNM President Carmen Storani and former President Esther Schiavoni; Rio de Janeiro and Buenos Aires, March 2000, July 1997,

August 2000, and August 1998, respectively.

25. Articulação de Mulheres Brasileiras, 2000, *Balanço nacional. Políticas públicas para as mulheres no Brasil. 5 anos após Beijing*, Brasília, 41.

26. The new Criminal Code adds two grounds for legal abortion: If the mother's *health* (not merely her life) is at risk and if the fetus has severe birth defects.

27. The reform's provisions for abortion availability are significant because Latin American hospitals have historically been reluctant to perform legal abortions on women. Lacking procedures for verifying the legality of the abortion, doctors and nurses were afraid of criminal prosecution. As a result, women in practice were denied access to those abortions permitted by law.

28. The survey was conducted by Gallup in October 2000.

APPENDIX : DECLARATION OF THE SUMMITS OF THE AMERICAS PROVISIONS ON WOMEN'S RIGHTS

Declaration of the First Summit of the Americas

Initiative 18: Strengthening the Role of Women in Society

The strengthening of the role of women in society is of fundamental importance not only for their own complete fulfillment within a framework of equality and fairness, but to achieve true sustainable development. It is essential to strengthen policies and programs that improve and broaden the participation of women in all spheres of political, social, and economic life and that improve their access to the basic resources needed for the full exercise of their fundamental rights. Attending to the needs of women means, to a great extent, contributing to the reduction of poverty and social inequalities.

Governments will:

- Recognize and give full respect for all rights of women as an essential condition for their development as individuals and for the creation of a more just, united and peaceful society. For that purpose, policies to ensure that women enjoy full legal and civil rights protection will be promoted.
- Include a gender focus in development planning and cooperation projects and promote the fulfillment of women's potential, enhancing their productivity through education, training, skill development and employment.
- Promote the participation of women in the decision-making process in all spheres of political, social and economic life.
- Undertake appropriate measures to address and reduce violence against women.
- Adopt appropriate measures to improve women's ability to earn income beyond traditional occupations, achieve economic self-reliance, and ensure women's equal access to the labor market at all employment levels, the social security systems, the credit system, and the acquisition of goods and land.

- Cooperate fully with the recently appointed Special Rapporteur on Violence Against Women, its Causes and Consequences, of the United Nations Commission on Human Rights.
- Support and actively work to secure the success of the United Nations World Conference on Women that will take place in Beijing in September 1995.
- Encourage, as appropriate, ratification and compliance with the International Convention on the Elimination of all Forms of Discrimination Against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.
- Further strengthen the Inter-American Commission on Women.
- Call upon regional and international financial and technical organizations to intensify their programs in favor of women. Encourage the adoption of follow-up procedures on the national and international measures included in this Plan of Action.

Declaration of the Second Summit of the Americas

Women

Governments will:

- Strengthen and establish, where they do not exist, national mechanisms and governmental organs, as well as the respective regional and subregional networks in charge of promoting legal equality and equality of opportunities between women and men, focused on gender equity, and provide them with adequate and timely financial resources to enable these entities to promote, coordinate, and carry out the commitments undertaken by the States at the World Conference on Human Rights, the International Conference on Population and Development, the World

Summit on Social Development, the Summit of the Americas, the Fourth World Conference on Women, and the recent "Santiago Consensus" of the VII Regional Conference on Beijing Follow-up (ECLAC/UN).

- Examine the existing laws and their implementation in order to identify obstacles limiting the full participation of women in the political, economic, social and cultural life of our countries. Whenever necessary, promote reforms or create new laws to eliminate all forms of discrimination and violence against women and to guarantee the protection of children's rights.
- Implement and follow up on the commitments regarding the status of women as agreed to at the Summit of the Americas, with the support of the Inter-American Commission on Women (ICW), in collaboration with civil society, with the Inter-American Development Bank (IDB), the World Bank, United Nations Economic Commission on Latin America and the Caribbean (ECLAC), and other entities of international cooperation, using when appropriate the System of Indicators adopted by the countries of the Americas at Montelimar, Nicaragua.
- Promote policies designed to improve women's health conditions and the quality of health services at every stage of their lives.

