

4-1-2011

Gender Justice In The Americas: A Transnational Dialogue On Sexuality, Violence, Reproduction, And Human Rights

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Recommended Citation

Alma Luz Beltrán y Puga, Caroline Bettinger-López, Jorge Contesse, Paola Garcia-Rey, Diana Hortsch, Risa E. Kaufman, and Nicole Tuszynski, *Gender Justice In The Americas: A Transnational Dialogue On Sexuality, Violence, Reproduction, And Human Rights*, 65 U. Miami L. Rev. 751 (2011)
Available at: <https://repository.law.miami.edu/umlr/vol65/iss3/2>

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Gender Justice In The Americas: A Transnational Dialogue On Sexuality, Violence, Reproduction, And Human Rights

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Foreword

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In February 2011, 110 advocates and scholars from 20 countries in North and South America gathered at the University of Miami in Coral Gables, Florida to attend a groundbreaking convening, *Gender Justice in the Americas: A Transnational Dialogue on Violence, Sexuality, Reproduction, and Human Rights*.¹ The convening arose at a unique historical moment. In recent years, we have witnessed significant shifts in the normative and policy landscape concerning issues of gender, sexuality, violence against women, and human rights at the national, regional and international levels. Legislative and executive bodies, domestic courts, and international tribunals have, in several instances, made tremendous progress in recognizing new protections in these areas; and in other instances, these entities have rolled back established protections.

As the convening's co-organizers, we hoped that this timely gathering would expose participants to these developments, and foster a strate-

* Co-Organizers, *Gender Justice in the Americas: A Transnational Dialogue on Sexuality, Violence, Reproduction, and Human Rights* (February 23–25, 2011; Coral Gables, Florida). Alma Luz Beltrán y Puga, Gender and Human Rights Fellow, Diego Portales University, Chile; Caroline Bettinger-López, Faculty Director, Human Rights Clinic, University of Miami School of Law; Jorge Contesse, Faculty Director, Human Rights Center, Diego Portales University, Chile; Paola García-Rey, Counsel, Inter-American Human Rights System Project, Columbia Law School Human Rights Institute; Diana Hortsch, Director, Law School Initiative, Center for Reproductive Rights; Risa E. Kaufman, Executive Director, Columbia Law School Human Rights Institute; Nicole Tuszynski, Program Associate, Center for Reproductive Rights.

1. For more information on the convening, see www.law.miami.edu/genderjustice.

gic exchange of information to advance advocacy at the domestic and international levels. We intended to assess common threats, and to create opportunities for coalition and movement-building amongst key women's rights, gender, and sexuality advocates and scholars in the Americas. Specifically, we hoped the convening would stimulate interest in the use of the international human rights framework as a tool for gender, sexuality, and women's rights advocacy in the United States and Canada (where human rights principles and rhetoric are invoked less often than in Latin America) and to reflect on the potential for domestic impact litigation in the Caribbean and Latin America (where such litigation is less familiar than in the United States and Canada). We also sought to facilitate participants' reexamination of the roots of women's rights and gender justice movements globally and recognition of the fundamental links between gender-based violence, reproductive justice, discrimination, sexuality, and health—links that are underscored when one brings a human rights lens to the inquiry. We hoped the convening could help to bridge our geographic, linguistic, conceptual, and professional divides and foster the development of a new "Inter-American Gender Justice Network" of advocates and scholars spanning the Western hemisphere.

Three landmark cases before the Inter-American Commission and Court on Human Rights formed much of the inspiration behind the Convening. *Jessica Lenahan (Gonzales) v. United States*,² a case currently before the Inter-American Commission on Human Rights, concerns the State's duty to protect a domestic violence victim and her children and to provide a remedy for law enforcement's inadequate response to her calls for help. It is the first international human rights case brought by a domestic violence survivor against the United States, and the first time the Inter-American Commission has been asked to outline the contours of positive obligations in the context of domestic violence. *In re Campo Algodonero*,³ a case decided by the Inter-American Court on Human Rights in 2009, concerns the State's duty to exercise due diligence to prevent femicide and other forms of widespread gender-based violence in Juarez, Mexico. The case marks the first time the Inter-American Court has squarely addressed violence against women as a human rights violation, and is notable for its critical holding that gender-based violence constitutes a form of gender discrimination. *Karen Atala v.*

2. *Jessica Lenahan (Gonzales) v. United States*, Case No. 12.626, Inter-Am. Ct. H.R., Report No. 52/07, OEA/Ser.L.V/II.128, doc. 19 (2007). The final decision on the merits is expected in 2011.

3. *González and Others v. Mexico* ("*In re Campo Algodonero*," or the "Cotton Field" Case), Inter-Am. Ct. H.R. Preliminary Exceptions, Merits, Reparations and Costs. Judgment (Ser. C) No. 205. (Nov. 16, 2009).

Chile,⁴ a case that has been resolved favorably by the Inter-American Commission and will soon be considered by the Inter-American Court, concerns a lesbian mother's rights to family, child custody, and due process. *Atala* marks the first time the Inter-American Commission and Court have dealt squarely with the issue of discrimination on the basis of sexual orientation and the intersection of sexuality with family law.⁵

These generally positive developments in the inter-American system parallel new norms pertaining to violence against women and gender discrimination in the European human rights system. In June 2009, the European Court of Human Rights (ECHR) issued a landmark decision, *Opuz v. Turkey*,⁶ finding Turkey in violation of its obligation to protect women from domestic violence, and holding, for the first time, that gender-based violence is a form of discrimination under the European Convention on Human Rights. *Opuz* followed on the heels of the Court's decision in *Bevacqua and S. v. Bulgaria*,⁷ in which the Court held that domestic violence is a public, not private concern, and *D.H. and Others v. Czech Republic*,⁸ which expanded the scope of evidence that could be introduced to prove discrimination in indirect discrimination cases.

At the national level in the Americas, we have seen significant progress, as well as setbacks, in the fields of women's rights, gender and sexuality. On a positive front, the United States government, under President Obama, conceded in immigration court that domestic violence can constitute valid grounds for asylum when foreign governments fail to protect victims.⁹ (Advocates have noted with irony that courts do not apply the same standard to the duty owed by officials within the United

4. *Karen Atala and Daughters v. Chile*, Case No. 12.502, Inter-Am. Ct. H.R. (Application is pending before the Inter-American Court of Human Rights, as of September 17, 2010).

5. Other important human rights cases in the inter-American system that helped to shape the convening include *Paulina v. Mexico*, Case 161-02, Inter-Am. Ct. H.R., Report No. 21/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007) (concerning the right to abortion and reproductive health services); *Ana Victoria Sánchez Villalobos and Others v. Costa Rica*, Case 12.361, Inter-Am. Ct. H.R., Report No. 25/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004) (concerning the right to access reproductive technologies, such as *in-vitro* fertilization); *Fernandez Ortega and Others v. Mexico*, Inter-Am. Ct. H.R. Preliminary Exceptions, Merits, Reparations and Costs. Judgment (Ser. C) No. 215. (Aug. 30, 2010) (concerning the use of rape as a form of torture against Me'phaa indigenous women and the problem of access to justice and health services for these women); *Rosendo Cantú and Others v. Mexico*, Inter-Am. Ct. H.R. Preliminary Exceptions, Merits, Reparations and Costs. Judgment (Ser. C) No. 216. (Aug. 31, 2010) (same).

6. *Opuz v. Turkey*, App. No. 33401/02, Eur. Ct. H.R. (June 9, 2009).

7. *Bevacqua and S. v. Bulgaria*, App. No. 71127/01, Eur. Ct. H.R. (June 12, 2008).

8. *D.H. and Others v. the Czech Republic*, App. No. 57325/00, Eur. Ct. H.R. (2006).

9. See *Matter of L.R.*, Department of Homeland Security, Supplemental Brief submitted to BIA (Apr. 19, 2009). More information available at: http://www.tribunact.com/news/2009/0722/news_english/003.html.

States, and have expressed interest in pursuing domestic legislative initiatives to apply similar “duty to protect” standards at home). Mexico’s Supreme Court and Colombia’s Constitutional Court issued landmark decisions expanding women’s reproductive rights, including access to abortion.¹⁰ Uruguay, Mexico, Colombia, Argentina, and Brazil expanded the rights of same-sex couples through legislative initiatives and judicial rulings.¹¹

Conversely, there have been significant and startling rollbacks in the region. For example, the government of Nicaragua criminally banned abortion under all circumstances¹² and the Dominican Republic recently amended its constitution to do the same.¹³ Chile’s Constitutional Court has banned the sale and distribution of the morning-after pill in public health facilities.¹⁴ Another worrying development is the issue of female genital mutilation (FGM) in the Embera-Chami aboriginal group in Colombia, which first entered public discourse in 2007.¹⁵ This “discovery” has already spurred a debate about the limits of cultural sovereignty and its clash with international human rights norms.¹⁶ In the United States, legal protections for women’s reproductive rights

10. See Ruling 146/2007 and 147/2007 (Acción de Inconstitucionalidad 146/2007 y su acumulada 147/2007), Supreme Court of Justice of Mexico (Aug. 28, 2008); Colombia, Rulings C-355/2006, Constitutional Court of Colombia (May 10, 2006).

11. See Law 26.618, which modified the Civil Code provisions regarding civil marriage, Official Bulletin of the Government of Argentina (July 22, 2010); Uruguay’s Civil Law Reform that defined civil unions regardless of the sex of the couple (Dec. 2007). The law entered into force in 2008. More information available at: <http://www.lanacion.com.ar/974337-uruguay-legalizo-el-matrimonio-homosexual>; Rulings C-075/07, and C-029/09, Constitutional Court of Colombia (Feb. 7, 2007) (Jan. 28, 2009); Ruling of the Supreme Tribunal of Brazil regarding ADPF-RJ n° 132 (Arguição de Descumprimento de Preceito Fundamental del gobierno del estado de Rio de Janeiro) and ADI 4.277-DF (Ação Direita de Inconstitucionalidade, de la Procuradoria Geral da Republica) (May 6, 2011) (granting same legal effects to same-sex unions). More information available at: http://www.elpais.com/articulo/sociedad/Supremo/brasilenno/reconoce/uniones/homosexuales/elpepusoc/20110506elpepusoc_1/Tes.

12. Nicaragua’s reforms in July 2008 to the Penal Code proscribed abortion under all circumstances, including rape, incest and health conditions. See *The Total Abortion Ban in Nicaragua: Women’s Lives and Health Endangered, Medical Professionals Criminalized*, AMNESTY INTERNATIONAL (2009), <http://www.amnesty.org/en/news-and-updates/report/shocking-abortion-ban-denies-life-saving-treatment-girls-women-nicaragua-20090727>.

13. Article 37 of the Dominican Republic Constitution was amended in 2010 establishing that “the right to life is inviolable from conception until death.” See Mia So, *Resolving Conflicts of Constitution: Inside the Dominican Republic’s Constitutional Ban on Abortion*, 86 IND. L.J. 713–34 (2011).

14. Ruling 1.288-10, Constitutional Tribunal of Chile (Jan. 14, 2010). For a further analysis of the ruling, see Helena Olea Rodriguez, “*The Last Decision of the Constitutional Tribunal on Emergency Contraception: An In-Depth Analysis*,” WOMEN’S RIGHTS AND LEGAL DISCOURSE, Humanas, Chile (2009) (available only in Spanish).

15. See *Colombia: Colombia Confronts Female Genital Mutilation*, FORWARD (Aug. 18, 2008), <http://www.forwarduk.org.uk/news/news/348>.

16. Due to the international collective efforts and awareness raised on sexual and reproductive rights in Colombia, the Embera Community recently announced the stopping of the

have been at risk for a decade.¹⁷ States have passed laws intended to ban abortion,¹⁸ laws that require mandatory biased pre-abortion counseling,¹⁹ and laws that target abortion providers for excessive or discriminatory regulation.²⁰

As we began planning for the Convening, we considered how these cases and normative developments would impact gender, sexuality, and women's rights advocacy in the Western hemisphere. What were the common links between the issues? Were there collective strategies that could be helpful, and mutually reinforcing, at the hemispheric level?

As co-organizers, we shared an interest in the way international human rights standards could be "brought home" and utilized in domestic fora, both in Latin America and the United States. We were interested in exploring how the understandings and practices that give meaning to human rights are transported from one jurisdiction to another and, further, out to regional human rights fora, such as the inter-American human rights system. We noticed that many individuals and institutions in our hemisphere were advancing parallel and mutually-reinforcing strategies on gender justice and human rights, but were often doing so in isolation from (and often without knowledge of) one another. Practitioners, scholars, activists, and affected communities across the Americas were increasingly using international human rights norms to translate their claims, and demanding that states give responses to those claims, oftentimes in a legal form. We shared the view that these women – and men – were shaping a robust and sophisticated agenda and creating a body of transnational law on gender justice that arose from different local practices, through the interaction with other legal systems and the final judgment or sanction of regional human rights bodies.

As we considered the transnational connections, we thought of "gender justice" as a unifying theme that offers a useful approach to common opportunities, challenges and threats. In the Americas, gender discrimination continues to be a common issue that is prevalent and persistent at all levels—from the hemispheric to the national to the local.

practice of female genital mutilation. See "*Suspension of Female Genital Mutilation*," UNFPA (Nov. 23, 2010), <http://unfpacolombia.org/noticias.php?id=23>.

17. CENTER FOR REPRODUCTIVE RIGHTS, *DEFENDING HUMAN RIGHTS: ABORTION PROVIDERS FACING THREATS, RESTRICTIONS, AND HARASSMENT* 37 (2009), available at <http://reproductiverights.org/en/document/defending-human-rights-abortion-providers-facing-threats-restrictions-and-harassment>.

18. See, e.g., L.B. 1103, 101st Leg., 2d Sess. (Neb. 2010), available at <http://nebraskalegislature.gov/FloorDocs/101/PDF/Intro/LB1103.pdf>.

19. TEX. HEALTH & SAFETY CODE ANN. § 171.004 (Vernon 2003).

20. *Targeted Regulation of Abortion Providers (TRAP): Avoiding the TRAP*, CENTER FOR REPRODUCTIVE RIGHTS (Nov. 1, 2007), <http://reproductiverights.org/en/document/targeted-regulation-of-abortion-providers-trap-avoiding-the-trap>.

The same themes are repeated throughout the region: a low employment rate for women; high rates of domestic violence committed against women and girls; poverty, social exclusion and a generalized deprivation of human rights and citizenship for women and individuals who are gender-nonconforming.

From this foundational interest in the interplay between the spheres of the international and the domestic, the academic and the activist, all in the context of something called “gender justice,” we considered how the Convening could serve as a conduit to bridge various silos and develop shared understandings, and, perhaps, common strategies.

We thought of these silos in several senses: geographic, linguistic, thematic, and professional. As described earlier, geography and language tend to separate Latin American advocates and scholars working on gender and sexuality issues from their counterparts in the North. Valuable networks exist in both regions—such as Red Alas and the Latin American Human Rights Clinicians’ network in the South and the Bringing Human Rights Home Lawyers’ Network and the U.S. Human Rights Clinicians’ Network in the North—but the limited interaction between the networks tends to rely on individual relationships, and not institutional constructs. We sought, through the Gender Justice Convening, to foster coalition and movement-building by strengthening existing individual and institutional relationships and fostering new ones. As mentioned earlier, one goal we identified was to form a new regional “Inter-American Gender Justice Network” that would offer advocates new perspectives on framing their work and offer an extended support network for amicus briefs and parallel campaigns. Such transnational human rights initiatives, we hoped, would mark a new, international foray for grassroots organizations whose mandate was domestic and oftentimes local. Those of us from the United States saw great potential in linking the domestic and the international: an increasingly conservative judiciary and a nationwide rollback in civil rights in our country has left advocates seeking new alternatives for mobilization and accountability in the gender justice arena.

Bridging our thematic silos was also an important component of our vision for the convening. Particularly in the United States, professional specialization in the areas of gender and sexuality, spurred largely by focused funding streams that demand such specialization, has left many advocates wondering whether we have lost our common roots. By examining these inter-related areas at the regional level, we sought to take a collective step back and examine the opportunities that a human rights approach might offer to make connections between the fields of

reproduction, violence, and sexuality—connections which are all-too-often forgotten in our increasingly specialized world.

Finally, we sought through the Convening to bridge our professional divides, such that law professors (including traditional legal academics and clinical faculty), lawyers, and grassroots advocates would be involved in the same streams of conversation and planning for gender justice advocacy in the region. We thought it essential to forge a dialogue between those engaged in theory and practice, to move the field forward with creativity and vision, while responding to real needs and challenges. We knew that the key to success lay in having candid conversations, including the voices of participants, and pushing for greater interaction among those working on these issues.

Ultimately, we hoped, the Convening could foster the development of a transnational network of gender justice advocates and scholars that could help us to move beyond these silos. We identified nine key objectives of the Convening:

1. Identify regional trends with regard to gender, sexuality, violence against women, and reproduction, with specific attention to sexual and reproductive rights, socio-economic justice, and women's human rights;
2. Engage in strategic regional planning on responses to recent national court decisions (supreme and constitutional courts) as well as decisions of international tribunals and bodies (e.g., *Jessica Lenahan (Gonzales) v. U.S.*, *González and Others v. Mexico (The "Cotton Fields" cases)*, *Valentina Rosendo Cantú v. Mexico*, *Karen Atala v. Chile*, *Ana Victoria Sánchez Villalobos and Others v. Costa Rica*, "*Amelia*" (Nicaragua));
3. Cross-fertilize ideas and strategies regarding the implementation of international human rights norms in domestic law and policy frameworks, including national courts and legislation with attention to the application of human rights developments generally;
4. Promote exchange between advocates working on gender, sexuality and women's rights issues from different countries from the Americas and identify common threats and opportunities for collaboration;
5. Strengthen, reinvigorate and broaden existing networks of advocates, academics and human rights practitioners and reinforce existing hemispheric coalitions committed to women's rights, gender-sensitive human rights generally and in particular, reproductive and sexual rights;
6. Foster the creation of an Inter-American Gender Justice Net-

work that includes advocates and scholars from Latin America, the Caribbean, the United States, and Canada;

7. Examine the opportunities that a human rights approach may offer to make connections between the fields of reproduction, violence, and sexuality—connections which are all-too-often forgotten in our increasingly specialized world;
8. Explore the use of international human rights strategies in countries (the U.S. being a prime example) in which advocates, policymakers, and the judiciary have traditionally been skeptical or cautious of such approaches, with explicit attention to different legal and political traditions; and
9. Discuss how human rights approaches may help bridge differences in legal and political traditions (civil *vis-a-vis* common law countries), social justice lawyering, different histories of feminism, and queer and left-progressive movements.

The discussions at the convening revealed the participants' tremendous knowledge and commitment. Boundaries became blurred, local practices became regional and international human rights standards adopted the form of a quasi-legal, quasi-moral language that disrupts injustice, discrimination and social exclusion. For two days, we engaged in a path-breaking conversation fueled by the desire to bring about change for the many women and sexual minorities who still suffer from injustice.

Our keynote speakers, Rebecca Cook and Susana Chiarotti Botero (whose speeches are described below and are reproduced in this issue), spoke in plenary sessions addressing transnational legal perspectives on gender justice and gender stereotyping (Cook) and violence against women in the Americas (Chiarotti). Various panels considered achievements and challenges to advancing reproductive rights in the hemisphere; legal developments in the area of sexual rights; the evolving due diligence standard in responding to violence against women; the relationship between health, discrimination and conscience; violence that occurs in institutional settings, and in particular, violence involving public institutions; and the relationship between economic autonomy, sexual self-determination and gender equality. Breakout sessions focused on mechanisms for monitoring gender justice in the Americas; women's rights in conflict situations and fragile states; migration, sexuality, reproduction, and gender-based violence across borders; reproductive technologies and scientific developments; and disadvantaged groups and social exclusion. Advocates from Haiti and the U.S. working to combat gender-based violence in Haiti gave a powerful presentation entitled

“Our Bodies Are Still Trembling: Haitian Women’s Fight Against Rape.”

We planned the Gender Justice Convening with the high hopes of bringing together a critical group of individuals to wrestle with ideas and share experiences. What we encountered—a gathering of the most committed scholars and advocates, willing to speak honestly and openly about their work and think collectively about the great challenges that lie ahead of us—exceeded our expectations. The transnational convening that we first imagined at a café in New York City, in 2008, and later on a crowded street in Bogota, in 2009, was nothing compared to the actual dialogue that took place in Miami in 2011. The articles collected in this volume express the views of their authors; yet they also express an ongoing collective conversation about gender and human rights, and the path for repairing the injustice that women still face in the Americas.

The articles and speeches presented in this edition of the *University Miami Law Review* reflect a broad array of themes and ideas presented by distinguished scholars, lawyers, and advocates at the Gender Justice Convening. They also identify areas for further research, scholarship, and advocacy.

Professor Rebecca Cook from the Faculty of Law at the University of Toronto in Canada and Susana Chiarotti Boero, a member of the OAS Follow-Up Mechanism on the Implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Convention of *Belém do Pará* (MESECVI), Director of INSEGNAR and former Regional Coordinator of CLADEM in Argentina, delivered the two keynote addresses at the Convening. Those speeches are reproduced in their entirety in this issue.

Professor Rebecca Cook, a distinguished scholar whose landmark contributions to the fields of reproductive rights and human rights are unparalleled, gave her keynote address, *Modern Day Inquisitions*, during the Opening Plenary.²¹ As described above, the plenary focused on transnational legal perspectives on gender justice and gender stereotyping. Professor Cook reflects on the achievements of the women’s human rights movement and challenges in applying human rights and constitutional law to protect sexual rights, reduce violence, and promote reproductive and sexual health in the Americas. Cook identifies important inroads such as the acknowledgment by various domestic and international tribunals and governments of different gender norms and identities, progressive decisions around freedom from violence (most

21. Rebecca J. Cook, *Modern Day Inquisitions*, Keynote Speech at Gender Justice and Human Rights in the Americas Convening (Feb 23–25, 2011), in 65 U. MIAMI L. REV. 767 (2011).

notably, the Inter-American Court's recent ground-breaking decision concerning freedom from gender-based violence in the "Cotton Fields" cases (*Gonzalez et al v. Mexico*),²² and movement in the region toward acknowledging reproductive choice as a critical component of human dignity. She explores lessons learned by gender justice advocates in the region, including the need to redefine religious space, the need to limit the abuse of the right of conscience, the importance of understanding technology as transformation, and the significance of evidence-based policies and laws. Specifically, she poses and analyzes critical reflections regarding the expansion of religious space to the detriment of gender justice, the right of conscience in the context of professional and ethical duties of health providers toward their patients, the inclusion of new reproductive technologies together with regulatory guidelines as essential in meeting the practical reproductive and sexual health needs of women and men, and the need to expose judicial reasoning not based in evidence by taking into account the constitutive role of the law.

Cook also underscores the challenges ahead, including laws that protect life from the moment of conception and the persistence of health disparities along the lines of gender, race, class, and sexual orientation. With this, Cook offers her audience a way forward, inviting advocates and scholars to "push ourselves to network beyond our disciplinary, programmatic and geographic borders to work with differently minded groups that can expand our visions in order to more adequately address the challenges of the Modern Day Inquisitions to secure gender justice in the region."

Susana Chiarotti Boero, a key figure in the development of women's human rights in Latin America, particularly in the area of violence against women, delivered her keynote speech, *Women's Citizen Security*.²³ Chiarotti begins her keynote by presenting an anecdote that speaks volumes about the lack of a gender perspective in our hemisphere's basic human rights mechanisms. The topic of the 41st General Assembly of the Organization of American States (OAS), she explains, is "Citizen Security in the Americas," and the main issues to be addressed include arms control, terrorism, organized crime, and drug-related violence. "But nothing," Chiarotti continues, "is said about the citizen security of over half the region's population —its women— which is clearly affected by other factors, such as gender violence."

22. See *González and Others v. Mexico (The "Cotton Field" Case)*, Inter-Am. Ct. H.R. Preliminary Exceptions, Merits, Reparations and Costs. Judgment (Ser. C) No. 205. (Nov. 16, 2009).

23. Susana Chiarotti Boero, *Women's Citizen Security, Keynote Speech at Gender Justice and Human Rights in the Americas Convening* (Feb 23–25, 2011), in 65 U. MIAMI L. REV. 797 (2011).

Chiarotti urges a reconfiguration of the notion of human security to include security from acts of aggression within the home. In the majority of countries in the Americas, she reminds us, homicides committed by partners or ex-partners are the first or second leading cause of violent death of women. Thinking about these themes from a gender perspective would allow us, for example, “to demonstrate the relationship between the number of arms within a community and the number of women killed by the hands of their partners.” As coordinator of the OAS’s Committee of Experts on Violence (CEVI), Chiarotti reviews the challenges and obstacles the Committee has faced over the years as it has attempted to make real the promise of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (“Convention of Belém do Pará”). The Convention, Chiarotti contends, is a strategic tool for promoting guiding policies to enhance the citizen security of women.

The keynote speeches created a common point of reference for the ensuing discussions throughout the convening about sex discrimination, violence, and reproduction. This volume reproduces those speeches, and also contains articles by a number of convening participants, expanding on their presentations and responding to interventions made during the course of the convening.

In *Negative Impacts of Abortion Criminalization in Brazil: Denial of Women’s Reproductive Autonomy and Human Rights*, Beatriz Galli exposes the effects of the criminalization of abortion in Brazil by analyzing maternal mortality and morbidity rates, and problematizing the lack of access to safe and legal abortion care in cases permitted by law.²⁴ She also looks at the role of the police and judicial systems that prosecute women and healthcare providers, resulting in increased abortion stigma and violations of basic human rights. Galli highlights the benchmark 2007 case *Mato Grosso do Sul* in which police confiscated and publically disclosed the medical records of more than 9600 patients, violating their rights to privacy and confidentiality and exposing many women (and healthcare workers) to shame, stigma and prosecution. Galli explores the international legal framework that commits Brazil to equality and non-discrimination in the provision of access to health services, as well as to the right to health, privacy, self-determination and security of the person. Galli concludes that the Brazilian government should take measures to protect and fulfill women’s human rights to reproductive self-determination by opposing overzealous police investigations and any legislative proposals that further criminalize abortion

24. Beatriz Galli, *Negative Impacts of Abortion Criminalization in Brazil: Denial of Women’s Reproductive Autonomy and Human Rights*, 65 U. MIAMI L. REV. 969 (2011).

and threaten sexual and reproductive rights protected in domestic and international law.

In *Who Is a Human Rights Defender? An Essay on Sexual and Reproductive Rights Defenders*, Cynthia Soohoo and Diana Hortsch call attention to the 2011 report by the United Nations Special Rapporteur on the Situation of Human Rights Defenders, which recognizes the unique risks faced by sexual and reproductive rights defenders due to their work challenging traditional gender norms and power relations.²⁵ The authors articulate the basis for the recognition of sexual and reproductive rights defenders as human rights defenders and briefly explore the risks these rights defenders face, including stigma, harassment, threats of physical violence, arrests and detention. The authors pay special attention to risks faced by healthcare providers, including those providing comprehensive sexuality education, HIV/AIDS prevention and services, and abortion care. The authors conclude that the work of the Special Rapporteur to mobilize the international community, governments, and civil society to protect sexual and reproductive rights defenders is a timely step indicating growing recognition of sexual rights and reproductive rights as fundamental human rights.

Ximena Casas, in *Multiple Discrimination in Access to Sexual and Reproductive Health: Experiences from Latin America and the Caribbean*, explores the impact of the diverse forms of discrimination regarding women's access to sexual and reproductive health services and the exercise of their sexual and reproductive rights.²⁶ She discusses the importance of international human rights advocacy in addressing these rights violations. Through the lens of gender, as well as race, ethnicity, culture, location, financial status and age, Casas offers stark examples of rights violations of women in Latin America with respect to privacy, health, and non-discrimination, despite the embrace by countries in the region of international law and principles protecting against such violations. In examining this implementation gap, she notes the long road that states have to travel before women's rights to sexual and reproductive health are fully realized in the region, and the critical role that civil society organizations, such as Planned Parenthood Federation of America, play in promoting and protecting the rights of women in Latin America. International human rights protection mechanisms, such as treaty monitoring bodies and U.N. special procedures, provide advocates and the communities they serve with opportunities to highlight the dis-

25. Cynthia Soohoo & Diana Hortsch, *Who Is a Human Rights Defender? An Essay on Sexual and Reproductive Rights Defenders*, 65 U. MIAMI L. REV. 981 (2011).

26. Ximena Casas, *Multiple Discrimination in Access to Sexual and Reproductive Health: Experiences from Latin America and the Caribbean*, 65 U. MIAMI L. REV. 955 (2011).

connection between internationally recognized standards and local practice and policy, and to work towards effective change.

In *Sexual Rights and Religion: Same-Sex Marriage and Lawmakers' Catholic Identity in Argentina*, Juan Marco Vaggione discusses the ways in which sexuality is being legally defined in contemporary societies and reveals the political dimension that religion encompasses.²⁷ The author argues that where sexuality becomes a legal matter, usually in the form of sexual and reproductive rights, religious institutions and discourses loom large in the political debates and legislative reform processes. He offers a critical description of the forms in which the religious sectors of society sought to influence the process of legal reform that culminated in the authorization of marriage for same-sex couples in Argentina in 2010. By focusing on the complex influences of Catholicism on the legal debate, Vaggione describes the ways in which the Catholic Church remains the main challenge to the expansion of sexual rights in Latin America. He dives into the official Vatican documents to examine the Vatican's construction of sexual politics to understand the institution's political participation in opposing sexual rights. The resistance of legislators to legal change, as seen in the Parliament's debate that preceded the sanction of the new law allowing marriage for same-sex couples, is also critically examined. Finally, Vaggione navigates through the complex forms in which religion and politics are implicated in the debate over sexual rights.

In *The Rights of Women in the Inter-American System of Human Rights: Current Opportunities and Challenges in Standard-Setting*, Rosa Celorio offers a contemporary analysis of women's rights standards in the inter-American human rights system by examining three recent ground-breaking rulings issued by the Inter-American Court of Human Rights on violence against women: *González et al. v. Mexico (the "Cotton Fields" Cases)*, and the cases of *Inés Fernández-Ortega* and *Valentina Rosendo-Cantú*.²⁸ Celorio comprehensively reviews the legacy of these first three decisions of the Inter-American Court in four key areas of gender equality: violence against women; discrimination; due diligence; and access to justice. She suggests that these three rulings represent both a culmination and beginning for the inter-American system of human rights in regards to women's rights issues. On the one hand, they consolidate what the Inter-American Commission and other international human rights monitoring bodies have been stating for years

27. Juan Marco Vaggione, *Sexual Rights and Religion: Same-Sex Marriage and Lawmakers' Catholic Identity in Argentina*, 65 U. MIAMI L. REV. 935 (2011).

28. Rosa M. Celorio, *The Rights of Women in the Inter-American System of Human Rights: Current Opportunities and Challenges in Standard-Setting*, 65 U. MIAMI L. REV. 819 (2011).

about the interrelated problems of discrimination and violence against women, and the scope of State obligations to prevent, investigate, sanction and offer reparations for these acts. On the other hand, they represent a beginning and a crucial point of departure by setting groundbreaking standards in the fields of due diligence, access to justice, and reparations for victims and their family members in cases of violence and discrimination against women. The article also discusses the opportunities and challenges the rulings present to the inter-American system of human rights in setting legal standards related to the human rights of women.

In *Access to Justice and the Permissive State: The Brazilian Experience*, Carmen Hein de Campos explores the development and evolution of the “Maria da Penha Law,” designed to address the problem of violence against women in Brazil, in the wake of international human rights condemnation.²⁹ Hein de Campos tracks the origin of this law to the emblematic *Maria da Penha* case, a tragic instance of domestic violence against a Brazilian woman, where the Inter-American Commission on Human Rights condemned the State of Brazil for not acting with due diligence to sanction the acts of violence. The case gave name to the legislation analyzed. The author argues that the enactment of the *Maria da Penha* Law can be seen as a positive step for society and the women’s rights movement regarding the State’s tolerance towards violence against women. However, Hein de Campos underscores the current difficulties the country faces in the effective implementation of the legislation, especially in the justice system. She also provides a critical view on the criminal response to violence against women and analyzes the difficulties of the legal framework to enforce protection mechanisms for women’s survivors of violence. Given the current limitations of domestic violence legislation, Hein de Campos suggests that alternative, non-punitive solutions need to be crafted to address the complex phenomena of violence against women in Brazil.

In *Double Discrimination and Equality Rights of Indigenous Women in Québec*, Bernard Duhaime and Josée-Anne Riverin discuss their experience addressing issues of double discrimination and of equality rights of indigenous women in Québec.³⁰ They explore the notion of double discrimination using an intersectional approach and analyze three specific case studies raised by indigenous women in this Canadian province. The authors contend that traditional legal approaches to discrimina-

29. Carmen Hein de Campos, *Access to Justice and the Permissive State: The Brazilian Experience*, 65 U. MIAMI L. REV. 893 (2011).

30. Bernard Duhaime & Josée-Anne Riverin, *Double Discrimination and Equality Rights of Indigenous Women in Québec*, 65 U. MIAMI L. REV. 903 (2011).

tion are “frequently maladapted” in the case of double discrimination that indigenous women face, based both on the basis of their sex and on their ethnicity. Drawing on critical race and feminist theories, they suggest “it is preferable to analyze where and how these forms of discriminations are intersecting,” rather than analyzing each form of discrimination independently – as they do in the case studies regarding legislation only applicable to indigenous peoples (providing Indian status); a public policy dealing with the protection of children of indigenous mothers; and real matrimonial property laws on Indian reserves, regarding indigenous persons. The article is based on the broad research the authors have undertaken with partners, including Québec Native Women and UQAM’s Service aux collectivités, in a project called Wasayia.

Lisa Davis argues in *Still Trembling: State Obligation Under International Law to End Post-Earthquake Rape in Haiti*, that the right to be free from sexual violence committed by third-party perpetrators is not only required under domestic and international law but is also a mandatory obligation states must enforce.³¹ Taking into account the historic context of addressing gender-based violence in Haiti, Davis engages in an in-depth examination of how post-earthquake conditions in Haiti have left women and girls in a heightened state of vulnerability. She analyzes the ineffectiveness of the United Nations’ response to the crisis in Haiti, as well as other government omissions regarding their obligations under international law to include grassroots women’s leadership in the planning and implementation sessions to address sexual violence in displacement camps. Davis analyses the implications of the recent decision by the Inter-American Commission of Human Rights granting precautionary measures in a case involving sexual violence in Haiti, and considers that donor states might enforce the precautionary measures decision through building the capacity of the Haitian government and Haitian civil society in order to end the epidemic of sexual violence.

In her essay, *Thinking Critically About How to Address Violence Against Women*, Tamara Rice Lave urges advocates to think critically about solutions intended to address the problem of violence against women in the United States.³² Lave does not purport to offer such a solution. Rather, she offers the example of sex offender policy in the United States to sound a note of caution about the undesirable conse-

31. Lisa Davis, *Still Trembling: State Obligation Under International Law to End Post-Earthquake Rape in Haiti*, 65 U. MIAMI L. REV. 867 (2011).

32. Tamara Rice Lave, *Thinking Critically About How to Address Violence Against Women*, 65 U. MIAMI L. REV. 923 (2011).

quences of a punitive regime that is rooted in a (faulty) utilitarian theory, rather than a rights-based approach. Twenty states and the federal government have passed sexually violent predator (SVP) legislation, which allows the state to civilly commit individuals who have completed prison sentences on the justification that they are mentally ill and dangerous. Lave challenges SVP legislation on several levels, noting the ineffectiveness, unintended consequences, and opportunity costs associated with it. Most critically, however, she contends that SVP legislation violates an individual's fundamental human rights to liberty and due process. "[I]t is the *universality* of rights that gives them their authority," writes Lave.³³ "Without it, rights become as contingent as the practices they are being used to criticize."³⁴ Lave's essay offers an analysis of the implications of overreliance on punishment of domestic violence perpetrators through the criminal justice system as a way to solve our country's domestic violence epidemic. Her essay suggests the need to forge holistic solutions that are designed to reverse social acceptance of the very existence of domestic violence and to empower domestic violence survivors on multiple fronts.

We are grateful to all the Gender Justice convening participants for their thoughtful and constructive engagement in this project. We hope that this volume captures and builds on the discussion that was started in Miami, and inspires our continued collective efforts as we work to build a network of gender justice advocates and scholars across the Americas.

33. *Id.* at 928 (emphasis in original).

34. *Id.*