

REFLECTIONS ON THE USE OF THE LAW TO ACCESS TO JUSTICE FOR WOMEN: THE CLADEM PERSPECTIVE

Norma Enríquez Riascos
CLADEM REGIONAL COORDINATOR

Success and limitations related to the recognition and exercise of women's rights in our region.

The generation of suffragists of the first half on the XX century was in charge of leading a hard struggle for the recognition of citizenship for women in Latin America. Their efforts constituted the basis for the recognition of other rights which had already been achieved for the majority of men years before. These women gained the right to decide within the public sphere, widening the population basis of citizenship. The same rights for more people ; for women who had been excluded from democracy. This was an achievement that only very few understood in its total dimension-democracy was not only getting wider but a radicalizing process of its concept and essence had already started. It was not only questioning *who* but *why* this inclusion-exclusion, while the most illustrated patriarchal rationality displayed firmly despite their own fears and conceptions, their traditions, interests and ambitions not to admit that the reason for the exclusion of women was based only on a biological fact: sex.

On this platform the new feminist generations started the debate and the new struggle which concluded in the recognition of rights which include the particular conditions we face as women within the framework of a patriarchal society.

These expressions of feminism challenge democracies from the very principles of illustrated conceptions:

a) the principle of universality, looking for the recognition of our condition of female human beings (humanas) and subjects of rights, when the majority of the democratic systems used to exclude them.

b) Equality: to claim for the same rights already recognized for men and universally consecrated in treaties of human rights: we want to be treated as equals,

c) And during the last decades, affirming the premise of equality in difference and the concept of integrality , feminism claims for democracy at home and in the country; autonomy in private life-intimate life and respect and guarantees for the private space. It is a democratization of all aspects of life, the essence of human beings, of desire, pleasure, to relocate the need to consecrate freedom in spaces that were not considered before. We refer to freedoms which are only limited by the freedom of the other.

The struggles for sexual and reproductive rights as an autonomous expression of the capacity to opt for the construction of our own life without interference or coercion have had women as their best allies. This new vision of freedom as an expression of solidarity, as a possibility to be and act in relation to the other/

man-woman, is found in the words of Desmond Tutu: “ I am only if you are” which recognize as the only limit the impossibility to oppress others.

Looking 20 years back we could say that the most significant achievement in the region was the recognition of equality and its incorporation to constitutional texts when de facto governments and internal armed conflicts were left behind. For the first time women participated in Constitutional Assemblies with their own proposals generating news spaces within the social and political map of the region. Their presence in these scenarios is of significant value: they are subjects: women contributing to the formulation of laws which will guide their destinies and the ones of their own communities.

Equality was expressed in the accelerated elimination of laws that implied subordination or exclusion in any space, in the political and working spaces, in the community or the family; it re-conceptualizes motherhood and family and, therefore the inherent rights and duties of each one of its members to give to sense to new realities and facts; motherhood implies collective responsibilities.

The access to equal conditions to education, employment and social security became part of the rights obtained with the presence of women in the corporative spaces, endorsed by their mobilizing capacity of lobbying and the search for agreements within the women’s movement of women. Penetrating the protected feudal spaces as well as the patriarchal one was expressed in relation to the family being based on the traditions of the Napoleonic Code, consecrating man as the protective head or authority of that institution. The laws emphasized this position in relation to the preservation of honor, good reputation and the obedience due to the father, assuring certainty in relation to the descendants and assuming women like minors or disabled subjects, allowing the husband to punish the wife, developing various forms of cruelty. On the other hand, the Catholic Church that has enjoyed an immense power in those areas has traditionally considered the marriage like the only space where sexuality can be exercised, fundamentally oriented to procreation. The Church also sees in the authority of the man the possibility of controlling sexuality, the reproductive capacity of the women, thus has defined the family like a sacred institution. These two visions contributed to the fact that through centuries men have been entitled to exercise violence against women and the girl child. The exercise of the sexuality of its members, specially the one of women was clearly controlled by the father and husband. Before the 80s the violence perpetrated against women especially within the family was tolerated and not visible while in other cases this type of violence was encouraged.

During the first Feminist Latin American Meeting in 1981 held in Bogotá, Colombia, this reality was made public and the commitment was to denounce it. This is the reason why one of the first tasks that CLADEM assumed collectively was to demand domestic violence to be sanctioned and it emerged at national and regional levels by the draft of legal instruments in each of them. This task did not only imply to exert pressure on the Parliaments, but the need to formulate- **write** our rights. We had to put “ the finger on the wound” and show the realities of the deprived world: the home, the family started to be unveiled as obvious spaces of domination where the law was an expression of the will of the

man; the space of obedience and the subordination that Weber defined as the foundation of the patriarchal domination.

It is facing this universal problem that we use the Law as a tool for change. At the moment almost all the Latin American and the Caribbean countries have developed laws against these forms of violence. CLADEM was present in these processes at a national level but also mobilizing, taking into consideration the importance of the work done through the Interamerican system that has equipped the region with the only existing international instrument until now, formulated to prevent, to sanction and to eradicate the violence against the women, known as Belem do Para Convention. In order to go ahead to guarantee women's human rights it is necessary to continue making innovating proposals like the one related to sexual rights and reproductive rights through an alliance of different organizations. This proposal, although raised and proposed initially by CLADEM, was transformed into an alliance which involved initially feminists but nowadays it is formed by other regional organizations which include groups of sexual diversities, sharing dialogues with indigenous organizations along with the national CLADEMs.

To be part of the International Law with a proposal to limit the interventions of the States regarding sexuality and eroticism, looking for the total recognition of the right to choose sexuality and reproduction is a good example of the changes that the women are introducing in the area of Law. In addition it is of relevance to speak about a building process for an Interamerican Convention which emerges from the civil society, in spaces of diverse social expressions. It took nearly eight years of reflection, analysis, dialogues, construction of alliances, to draft rights concerning common people; if this is as successful as we think, millions of people will share the sense that they have created the law from their own needs and their search for a response to their dreams.

Another bold proposal, that preceded to the previous experience and took part during the 90s, was based on the reflections done in association with our Asian and African sisters and many other activists of women's human rights in relation to some sexist characteristics of the discourse of human rights, within the framework of the Vienna Conference in 1993. Then we decided to propose from Latin America and the Caribbean the reformulation of the Universal Declaration to provide it with a different perspective. Nor the seas and the continents that geographically separate us were an obstacle to go ahead with the proposal which was finally presented before the UN Secretary General during the 50th anniversary of the formulation of the Universal Declaration, more than sixty thousand signatures supported it.

There is a dimension that goes along these experiences done by women in relation to Law and public policies and it is the one bound to the existence and fortification of the women social movement, where feminism has played a fundamental role. Its existence has generated the possibility of an articulated work, made simultaneously in different countries including multiple reflections and proposals constructed collectively. It expresses this vision of "movement" that extends all premises, national and even continental, multiplying its incidence and the development of bonds and alliances with other movements

from the common development of Agendas. With joy we feel that it can be affirmed that feminism and the women movement, have *planetary* character. The commitment of our networks along with the promotion and exercise of human rights has equipped us with other elements: the struggle for democracy and sovereignty, for multicultural and multiethnic dimensions; it has approached to movements for vindication and has contributed to articulate our efforts against the imposition of an economic model that condemns the majority of the humankind to poverty, ignorance and to a life far from the dignity principle. These circumstances have reshaped internally and externally the feminist ideology and tasks. We perceived that the work in the area of human rights has approached our proposals and that serious efforts are taken place to understand and to support our vindications. We are convinced that from the struggle for women's human rights of the women we have won in sensitivity to be alert to other discriminations and therefore, simultaneously, we are making an effort to make our discourse not only *legible* and but *audible*.

Cladem started to monitor States from 1998. Starting with CEDAW we have begun to elaborate shadow/ alternative reports and presently we do it for four UN instruments and also for the Belem do Para Convention before the O.A.S. This exercise has meant much more than the denouncing or exercising pressure to the governments so that they comply with their commitments. It has strengthened the knowledge of our militants in the area of International Law and the reflection and the mobilization of women activists, interlinking our work with other social movements which promote same tasks and then together lobby and pressure. But mainly it has promoted the emergence of female social actors who are able to explain, to engage in dialogues and demand from the governments better conditions of life, reaffirming our idea that only through alliances it is possible to obtain significant vindications. Then, a series of actions apparently specific, are translated in the growth and fortification of the movement of women who feel and express themselves like subjects of rights, participating actively in each one of their working spaces and continue to press the competent authorities so that they formulate the necessary measures recommended by the experts of the respective Committees.

The international dimension has been used by Cladem also for litigation. The access to justice looks forward to restrain impunity, to denounce the violations of women human rights and to contribute to introduce -by creating new jurisprudence- the necessary changes so that the national legislations modify and develop public policies able to revert injustices to a certain extent. This experience began in 1994, enabling our members for international litigation. Some of the key cases were related to sexual violence or violations of reproductive rights, among others. Today, the first case of violence against women filed altogether with other organizations has come before the Inter-American Court of human rights. Some of the litigations in this system have been solved by friendly solution with the State, but the jurisprudence gain is high. Our work has inspired other sectors to make similar efforts. Today the rationality of Law is constructed to a certain extent from below and not only from instances of power. But to be able to write the Law represents half of the way to approach us to justice. The Law administrators, the High Courts, judges and juries, the academic ones who teach Law, lawyers, all of them are interpreters

of the Law. One commonly says that judges judge through the light of their own experience and beliefs and not through the one of Law. Cultural changes do not happen with the same speed that legal transformations do, for that reason we must consider great decision and imagination a pedagogical work that can allow the excluded ones to take control of the knowledge and to put the Law in practice; at the same time we need to fortify our socio-legal argumentation and to position our speech in key spaces: in the academy, in the parliaments, mass media, courts and other national and international instances of justice. The international and regional instances of human rights and the structures developed for their defence and guarantee, are good allies for our aspirations. Now when we speak of a globalized world where goods circulate without restrictions, the fortification of the alliances of those who have lived oppression and discrimination must receive greater significance, to construct proposals, interchange and build up strategic support.

Obstacles and threats:

With all those steps forward, it is necessary to affirm nevertheless that the map directs us to eliminate the distance between formal equality and the substantive one. That distance between consecrated rights and the benefit of the Law receives special dimension under the light of economic, social and cultural Rights. - To this there has been a contribution from the scope of progressiveness, which does not force the immediate fulfillment of all the accomplishment, assuming them to be as programmatic, thus, the necessary transformations of the material conditions of life of women, followed without effectiveness in relation to labor rights, access to education or social security, are nothing. There is an interconnectivity for an effective enjoyment of rights. - the patriarchal culture of legislators, justice administrators who give priority to the formal law, determine impunity in relation to the violations of women human rights seen far away from a real insight. Similar visions contribute in such a way that the people in charge of the design of public policies consider the affirmative measures like a *lip service*, losing the background of equality as a right. - the positions of some sectors of social movements, potential allies, sometimes are unable to visualize the specially progressive aspect before the Law on behalf of women's struggles.

The appropriation of the Law by women is still reduced. The sensation of impotence, hopelessness, non-credibility as opposed to justice, reduces interest in knowledge and the will to not only exercise it but demand it. - the construction of a feminist discourse sometimes makes display of a non-accessible language to grassroots women and contributed to make it less audible in relation to other social and political movements. But one of the greater threats comes in relation to the possibility of deciding on our bodies and our lives and this emerges from fundamentalisms. The increasing number of movements which try to go back to the past, to rescue "moral values", which make women to restrict themselves to their roles of preserving and looking after the family, transmitters of traditional values, under the direction of the father or the husband, who will decide on our time, our reproductive capacity and our sexuality. These movements, led by the different sectors specially of religious hierarchies like Christian-Catholics, who under the slogan, *family and property* promote the submission of the women without concerning about their rights and

their capacity to decide on their own lives, now started already in all the continent, from Chile to Canada. It has involved a cruel battle in favor of the criminalization of the therapeutic abortion, one of the few cases that had managed to stand politically and socially, protecting the life of the mother to be, like the abortion for pregnancies as a consequence of rape where the society acted in solidarity with the victims.

Today serious backward movements in all Central America, and countries such as Ecuador and Chile are taken place and women are fighting hard battles to maintain therapeutic abortion, the use of the emergency contraception, the survival of the programs of sexual education as part of the school curricula. During the last days, in a university of Chile, parliamentarians and governors of 17 countries met along with 400 people including mayors, councilmen, university representatives of associations pro-life and young people met to discuss different issues. During the same event one round table was conducted on successful experiences pro Life in Latin America relating cases in Mexico, Peru and Chile and, very specially, in Nicaragua where recently the implementation of the law of abortion has been avoided thanks to an intense mobilization according to reports from the European Network and the Institute of Family Policy; they have constituted the World-wide Assembly of Parliamentarians pro- Life. According to Lola Velarde, President of the European Network of the IPF, this fact "constitutes a great event without precedents at world-wide level, because for the first time in history, but parliamentarians and governors of 17 countries have been united to work for the defense of the life ". The next summit will take place in 2008 in Spain.

This kind a of associations and activities which risk the life and the health of women, especially poor women are being multiplied now and the same is happening in relation to prohibitions and exclusions formulated for women. We must strengthen our struggle for secular states free of moral visions imposed to all of us.

Cladem reaffirms its conviction that the best scenario for the exercise of women human rights and make possible the idea of a life without violence for al, a product of all our wisdom, strength and experience for a better world, is through the consolidation of democratic and secular states committed to peace and solidarity among the people.