



# INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

## REPORT N° 4/01 \*

CASE 11.625

MARÍA EUGENIA MORALES DE SIERRA

GUATEMALA

January 19, 2001

### I. CLAIMS PRESENTED

1. On February 22, 1995, the Inter-American Commission on Human Rights (hereinafter "Commission") received a petition dated February 8, 1995, alleging that Articles 109, 110, 113, 114, 115, 131, 133, 255, and 317 of the Civil Code of the Republic of Guatemala (hereinafter "Civil Code"), which define the role of each spouse within the institution of marriage, create distinctions between men and women which are discriminatory and violate Articles 1(1), 2, 17 and 24 of the American Convention on Human Rights (hereinafter "American Convention").

2. The petitioners, the Center for Justice and International Law and María Eugenia Morales de Sierra, indicated that Article 109 of the Civil Code confers the power to represent the marital union upon the husband, while Article 115 sets forth the exceptional instances when this authority may be exercised by the wife. Article 131 empowers the husband to administer marital property, while Article 133 provides for limited exceptions to that rule. Article 110 addresses responsibilities within the marriage, conferring upon the wife the special "right and obligation" to care for minor children and the home. Article 113 provides that a married woman may only exercise a profession or maintain employment where this does not prejudice her role as mother and homemaker. They stated that, according to Article 114, a husband may oppose his wife's activities outside the home, as long as he provides for her and has justified reasons. In the case of a controversy with respect to the foregoing, a judge shall decide. Article 255 confers primary responsibility on the husband to represent the children of the union and to administer their property. Article 317 provides that, by virtue of her sex, a woman may be excused from exercising certain forms of guardianship.

3. The petitioners reported that the constitutionality of these legal provisions had been challenged before the Guatemalan Court of Constitutionality in Case 84-92. In response, the Court had ruled that the distinctions were constitutional, as, *inter alia*, they provided juridical certainty in the allocation of roles within marriage. The petitioners requested that the Commission find the foregoing provisions of the Civil Code incompatible *in abstracto* with the guarantees set forth in Articles 1(1), 2, 17 and 24 of the American Convention.

4. The Commission indicated to the petitioners the need to identify concrete victims, as this was a requirement under its case system. On April 23, 1997, the petitioners submitted their written presentation of María Eugenia Morales de Sierra as the concrete victim in the case.

### II. PROCESSING BY THE COMMISSION

5. Pursuant to the filing of the petition, on March 14, 1995 the petitioners

sent the Commission a copy of the sentence issued by the Court of Constitutionality in Case 84-92. The Commission opened Case 11.625 on May 6, 1996, and the pertinent parts of the petition were transmitted to the Republic of Guatemala (hereinafter "State" or "Guatemalan State") with a request for information in response within 90 days.

6. The State requested an extension of time to respond by means of a note of August 6, 1996. In a note of August 7, 1996, the Commission indicated that an extension of 30 days had been granted.

7. The response of the State, dated September 10, 1996, was received and the pertinent parts thereof were transmitted to the petitioners for their observations.

8. Pursuant to the petitioners' request, the Commission granted a hearing to address the admissibility of Case 11.625 during its 93rd regular period of sessions. At the conclusion of that hearing, held on October 10, 1996 at the Commission's headquarters, the parties agreed that the Commission should review the matter during its next period of sessions to assess any developments and evaluate the feasibility of resolving the case through the procedure of friendly settlement initiated.

9. Additional information provided by the petitioners during that hearing was formally transmitted to the State for its observations by means of a note of October 15, 1996.

10. On December 13, 1996, the State transmitted a report to the Commission on pending efforts in favor of reforming the Civil Code, as well as the text of the "Law to Prevent, Sanction and Punish Intrafamilial Violence," approved by the Congress by means of Decree Number 97-96, and scheduled to enter into force on December 28, 1996. This submission was transmitted to the petitioners by means of a note dated January 9, 1997.

11. Pursuant to the January 24, 1997 request of the petitioners, the Commission held a hearing on this case at its headquarters on March 5, 1997, during its 95th regular period of sessions. The Commission questioned the petitioners as to whether they were requesting a determination *in abstracto* or pursuing an individual claim. The petitioners indicated that, in the concrete case, María Eugenia Morales Aceña de Sierra had been directly affected by the challenged legislation, and also represented other women victims in Guatemala. The Commission requested that they formalize the status of María Eugenia Morales de Sierra as the victim in writing, in order to comply with the dispositions of its Regulations and proceed to process the petition within its case system.

12. The petitioners formalized the status of María Eugenia Morales de Sierra as victim in a communication of April 23, 1997, the date as of which the Commission considers this status to have been established in the file. The pertinent parts of this communication were transmitted to the State for its observations by means of a note of June 9, 1997.

13. On July 10, 1997, the Government provided a brief submission of additional information which was transmitted to the petitioners for their observations by means of a note dated July 14, 1997.

14. On July 28, 1997, the petitioners provided the Commission with documentation complementing their April 23, 1997 submission. The documentation was transmitted to the Government of Guatemala for its observations on August 14, 1997.

15. Pursuant to the request of the petitioners, the Commission held an additional hearing on the admissibility of the present case on October 10, 1997, at its headquarters, during its 97th period of sessions. Pursuant to Commission inquiry, the State indicated that it remained disposed to consider the option of the friendly settlement

procedure. The petitioners indicated their belief that this option had been thoroughly explored, but had failed to provide any fruitful results.

16. On March 6, 1998, the Commission approved Report 28/98, declaring the present case admissible. That report was transmitted to both parties by means of notes of April 2, 1998.[1]

17. Citing ongoing discussions concerning reforms to the relevant articles of the Civil Code, on May 5, 1998, the State requested an extension of time to provide information relevant to Report 28/98. The Commission granted an extension until June 22, 1998, and informed the petitioners that this had been done.

18. The State filed a brief submission, dated June 23, 1998, indicating that it remained disposed to enter into friendly settlement negotiations, and requesting that, if this were accepted by the petitioners, the Commission suspend its processing of the matter. This filing was transmitted to the petitioners for any observations by means of a note of July 16, 1998.

19. The petitioners filed a summary of their arguments concerning the merits of the claims raised by means of a note dated August 10, 1998. The pertinent parts thereof were transmitted to the State for its observations on August 27, 1998.

### **III. THE POSITIONS OF THE PARTIES**

#### **The Position of the Petitioners**

20. From the initiation of this matter, the petitioners have maintained that the challenged articles of the Civil Code of Guatemala establish distinctions between men and women which are discriminatory and therefore violate the terms of the American Convention. Pursuant to their designation of María Eugenia Morales de Sierra as the named victim, the petitioners asserted that these articles place her in a position of juridical subordination to her husband, and prevent her from exercising control over important aspects of her life. They indicate that the cited provisions discriminate against the victim in a manner which is immediate, direct and continuing, in violation of the rights established in Articles 1(1), 2, 17, and 24 of the American Convention. Pursuant to their arguments submitted after Commission's adoption of Report 28/98 admitting the case, they further allege that this discrimination infringes upon the private and family life of the victim in contravention of Article 11(2) of the Convention.

21. The petitioners contend that Articles 109, 110, 113, 114, 115, 131, 133, 255 and 317 of the Civil Code create distinctions between married women, single women and married men, with the result that María Eugenia Morales is prohibited from exercising rights to which those other groups are entitled. Citing international human rights jurisprudence, including that of the Inter-American Court, they assert that, while a difference in treatment is not necessarily discriminatory, any such distinction must be objectively justified in the pursuit of a legitimate end, and the means employed must be proportionate to that end. The distinctions at issue in this case, they maintain, are illegitimate and unjustified.

22. The petitioners allege that, as a married woman living in Guatemala, a mother, a working professional, and the owner of property acquired jointly with her husband during their marriage, Ms. Morales de Sierra is subject to the immediate effects of this legal regime by virtue of her sex and civil status, and the mere fact that the challenged provisions are in force. By virtue of Article 109, representation of the marital unit corresponds to the husband, and by virtue of Article 131, he administers the marital property. Articles 115 and 133 provide respective exceptions to these general rules only where the husband is essentially absent. By virtue of Article 255, the husband represents and administers the property of minors or incapacitated persons. A wife, in contrast, may be excused from exercising custody over such persons by virtue of her sex and the terms of Article 317. These articles prevent Ms. Morales de Sierra from legally representing her

own interests and those of her family, and require that she depend on her husband to do so.

23. Further, her right to work is conditioned on what the petitioners characterize as the anachronistic legislative division of duties within marriage, with Article 110 providing that care of the home and children corresponds to the wife and mother, and Articles 113 and 114 providing that a wife may pursue activities outside the home only to the extent that these do not prejudice her role within it. Although the victim's husband has never opposed her exercise of her profession, by law he could do so at any moment, and in the case of a dispute, a judge would decide. The petitioners refer to the dicta of the Inter-American Court in Advisory Opinion OC-14 in submitting that a norm which deprives a group within a population of certain rights, for example on the basis of a factor such as race or sex, automatically injures all the members of the group thus affected.

24. The petitioners dispute the finding of the Court of Constitutionality of Guatemala that the challenged provisions are justified as a form of protection for women, and as a means of establishing juridical certainty in the allocation of rights and responsibilities within marriage. They assert that the means employed are disproportionate and the resulting discrimination in treatment is unreasonable. These provisions, they argue, are contrary to the principle of equality between the spouses, and nullify the juridical capacity of a married woman within the domestic legal order, thereby controverting the protections set forth in Articles 17 and 24 of the American Convention, as well as the obligations set forth in Articles 1(1) and 2. Further, they argue that the manner in which the provisions impede the ability of the victim to exercise her rights, in limiting, for example, her right to work or to dispose of her property, constitutes an unjustified interference in her private life in contravention of Article 11(2).

25. Finally, the petitioners note that the challenged provisions contravene Articles 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women, provisions to which the Commission may refer in formulating its decision. They further note that the recognized relationship between inequality in gender relations and the prevalence of violence against women may also serve to guide the Commission's findings.

### **The Position of the State**

26. The State does not controvert the substance of the claims raised by the petitioners. Rather, it maintains that it is continuing to take steps to modify the challenged articles of the Civil Code to bring them into conformity with the norms of the American Convention and the Convention on the Elimination of All Forms of Discrimination against Women. In proceedings before the Commission prior to the adoption of Report 28/98, the State acknowledged that the cited provisions are "out of date" and give rise to concerns with respect to the obligation of nondiscrimination. It further noted that efforts in favor of reform of the articles had been based on the fact that they contravene Article 46 of the Constitution, as well as provisions of the American Convention and the Convention on the Elimination of All Forms of Discrimination Against Women. The Government emphasized that it had demonstrated its interest in derogating or reforming certain articles of the Civil Code, both through supporting initiatives in favor of legislative changes, and through a constitutional challenge to Articles 113 and 114 presented by the Attorney General in 1996.

27. It was principally on the basis of pending initiatives in favor of reform that the State had challenged the admissibility of the case, contending that domestic mechanisms continued to offer available and effective relief for the situation denounced, and that the petitioners had accordingly failed to satisfy the requirement of exhausting internal remedies.[2] Following the adoption of the Commission's report on admissibility, the State indicated that the Congress was continuing to pursue the objective of modifying certain articles of the Civil Code in order to bring them into conformity with the Convention on the Elimination of All Forms of Discrimination against Women. As of the

State's June 22, 1998 submission, those reforms were still under discussion in the Congress. The State maintains that the measures undertaken in favor of reform of the challenged articles demonstrate its commitment to upholding the guarantees set forth in the Constitution, and in the American Convention on Human Rights and other applicable international law.

#### IV. CONSIDERATIONS REGARDING THE MERITS

##### Initial considerations

28. At the outset, it is pertinent to note that, notwithstanding the presentation of various draft reform projects before the Guatemalan congressional commissions charged with pronouncing on such initiatives, as of the date of the present report, the relevant articles of the Civil Code continue in force as the law of the Republic of Guatemala. In brief, Article 109 provides that representation of the marital union corresponds to the husband, although both spouses have equal authority within the home.[3] Article 110 stipulates that the husband owes certain duties of protection and assistance to the wife, while the latter has the special right and duty to care for minor children and the home.[4] Article 113 sets forth that the wife may exercise a profession or pursue other responsibilities outside the home only insofar as this does not prejudice her responsibilities within it.[5] Article 114 establishes that the husband may oppose the pursuit of his wife's activities outside the home where he provides adequately for maintenance of the home and has "sufficiently justified reasons." Where necessary, a judge shall resolve disputes in this regard.[6] Article 115 states that representation of the marital union may be exercised by the wife where the husband fails to do so, particularly where he abandons the home, is imprisoned, or is otherwise absent.[7] Article 131 states that the husband shall administer the marital property.[8] Article 133 establishes exceptions to this rule on the same basis set forth in Article 115.[9] Article 255 states that, where husband and wife exercise parental authority over minor children, the husband shall represent the latter and administer their goods.[10] Article 317 establishes that specific classes of persons may be excused from exercising certain forms of custody, including, *inter alia*, women.[11]

29. The Commission received information about two initiatives in favor of reform of those articles during the on-site visit it carried out in Guatemala from August 6 to 11, 1998, but has yet to receive information as to corresponding action by the plenary of the Congress. Nor has it received information as to the outcome, if any, of the constitutional challenge against Articles 113 and 114 which was presented by the Attorney General before the Court of Constitutionality in 1996. While the State appears to link the continuation of efforts in favor of reform to its willingness to explore the option of friendly settlement, the petitioners have indicated that they consider the possibility of entering into friendly settlement negotiations to have been explored and exhausted.

30. Paragraphs 28 and 29 refer to a general situation which the Commission examined during its recent on-site visit to Guatemala, and to which it made reference in its Report on the Situation of Women in the Americas. (See references, *infra*.) In the concrete case of Maria Eugenia Morales de Sierra, the Commission explicitly addressed its competence *ratione personae* in its Report 28/98 on admissibility:

With respect to the question of jurisdiction *ratione personae*, the Commission has previously explained that, in general, its competence under the individual case process pertains to facts involving the rights of a specific individual or individuals. See generally, IACHR, *Case of Emérita Montoya González*, Report 48/96, Case 11.553 (Costa Rica), in ANNUAL REPORT OF THE IACHR 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, paras. 28, 31. The Commission entertains a broader competence under Article 41.b of the Convention to address recommendations to member states for the adoption of progressive measures in favor of the protection of human rights.

Pursuant to their original petition for a decision *in abstracto*, which appeared to rely on the Commission's competence under Article 41.b of the American Convention rather than that under Article 41.f, the petitioners modified their petition and named María Eugenia Morales de Sierra as an individual victim, as previously noted, in their communication of April 23, 1997. With the identification of an individual victim, the Commission may advance with its decision on admissibility in the present case. As the Honorable Court has explained, in order to initiate the procedures established in Articles 48 and 50 of the American Convention, the Commission requires a petition denouncing a concrete violation with respect to a specific individual. I.Ct.H.R., *Advisory Opinion OC-14/94, "International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention),"* of Dec. 9, 1994, para. 45, *see also*, paras. 46-47. With respect to the other contentious mechanisms of the system, Article 61.2 of the Convention establishes, further, that "[i]n order for the Court to hear a case, it is necessary that the procedures set forth in ... [those Articles] shall have been completed." "The contentious jurisdiction of the Court is intended to protect the rights and freedoms of specific individuals, not to resolve abstract questions." *Id.* para 49.[12]

### **The right of María Eugenia Morales de Sierra to equal protection of and before the law**

31. The right to equal protection of the law set forth in Article 24 of the American Convention requires that national legislation accord its protections without discrimination. Differences in treatment in otherwise similar circumstances are not necessarily discriminatory.[13] A distinction which is based on "reasonable and objective criteria" may serve a legitimate state interest in conformity with the terms of Article 24.[14] It may, in fact, be required to achieve justice or to protect persons requiring the application of special measures.[15] A distinction based on reasonable and objective criteria (1) pursues a legitimate aim and (2) employs means which are proportional to the end sought.[16]

32. Pursuant to the status of Guatemala as a State Party to the Convention on the Elimination of All Forms of Discrimination against Women,[17] and the terms of Article 29 of the American Convention,[18] it must be noted that Article 15.1 of the former requires that States Parties shall ensure that women are accorded equality with men before the law. Article 15(2) specifies that women must be accorded the same legal capacity as men in civil matters, particularly with respect to concluding contracts and administering property, and the same opportunities to exercise that capacity. Discrimination against women as defined in this Convention is:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

This definition, responding as it does to the specific causes and consequences of gender discrimination, covers forms of systemic disadvantage affecting women that prior standards may not have contemplated.

33. In the proceedings before the Commission, the State has not controverted that Articles 109, 110, 113, 114, 115, 131, 133, 255 and 317 of the Civil Code create distinctions between married women and married men which are based on sex. In fact, it has acknowledged that aspects of the challenged provisions are inconsistent with the equality and non-discrimination provisions of the Constitution, the

American Convention and the Convention on the Elimination of All Forms of Discrimination against Women.

34. Notwithstanding that recognition, however, the June 24, 1993 decision of the Court of Constitutionality on the validity of the cited articles remains the authoritative application and interpretation of national law. That decision bases itself on the fact that the Constitution establishes that men and women are entitled to equality of opportunities and responsibilities, whatever their civil status, as well as to equality of rights within marriage. It notes that certain human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women, form part of internal law. In its analysis of Article 109, the Court indicates that the legal attribution of representation of the marital unit to the husband is justified by reason of "certainty and juridical security." This does not give rise to discrimination against the wife, the Court continues, as she is free to dispose of her own goods, and both spouses are attributed with equal authority within the home. The Court validates Article 115 on the same basis. With respect to Article 131, which vests authority in the husband to administer jointly held property, the Court recalls that, pursuant to Article 109, both spouses shall decide on matters concerning the family economy, including whether property shall be held separately or jointly. In the absence of such a decision, reasons of certainty and juridical security justify the application of Article 131. The Court finds Article 133 valid on the same basis.

35. In analyzing Article 110, which attributes responsibility for sustaining the home to the husband, and responsibility for caring for minor children and the home to the wife, the Court emphasizes the mutual support spouses must provide each other and the need to protect the marital home and any children. The division of roles is not aimed at discriminating, the Court finds, but at protecting the wife in her role as mother, and at protecting the children. The woman is not prejudiced; rather, the provisions enhance her authority. In analyzing Articles 113 and 114, which permit a woman to pursue work outside the home to the extent this does not conflict with her duties within it, the Court states that these contain no prohibition on the rights of the woman. As no right is absolute, the Articles contain limitations aimed primarily at protecting the children of the union. Consistent with the duties of each spouse, the husband may oppose his wife's activities outside the home only if he offers adequate sustenance and has justified reasons. The disposition that a judge shall decide in the event of a disagreement protects against the possibility of arbitrary action, as it ensures that the husband's reasons refer to the legally defined role of the wife and the protection of the children.

36. The Commission observes that the guarantees of equality and non-discrimination underpinning the American Convention and American Declaration of the Rights and Duties of Man reflect essential bases for the very concept of human rights. As the Inter-American Court has stated, these principles "are inherent in the idea of the oneness in dignity and worth of all human beings."<sup>[19]</sup> Statutory distinctions based on status criteria, such as, for example, race or sex, therefore necessarily give rise to heightened scrutiny. What the European Court and Commission have stated is also true for the Americas, that as "the advancement of the equality of the sexes is today a major goal," ... "very weighty reasons would have to be put forward" to justify a distinction based solely on the ground of sex.<sup>[20]</sup>

37. The gender-based distinctions under study have been upheld as a matter of domestic law essentially on the basis of the need for certainty and juridical security, the need to protect the marital home and children, respect for traditional Guatemalan values, and in certain cases, the need to protect women in their capacity as wives and mothers. However, the Court of Constitutionality made no effort to probe the validity of these assertions or to weigh alternative positions, and the Commission is not persuaded that the distinctions cited are even consistent with the aims articulated. For example, the fact that Article 109 excludes a married woman from representing the marital union, except in extreme circumstances, neither contributes to the orderly administration of justice, nor does it favor her protection or that of the home or

children. To the contrary, it deprives a married woman of the legal capacity necessary to invoke the judicial protection which the orderly administration of justice and the American Convention require be made available to every person.

38. By requiring married women to depend on their husbands to represent the union—in this case María Eugenia Morales de Sierra—the terms of the Civil Code mandate a system in which the ability of approximately half the married population to act on a range of essential matters is subordinated to the will of the other half. The overarching effect of the challenged provisions is to deny married women legal autonomy.[21] The fact that the Civil Code deprives María Eugenia Morales de Sierra, as a married woman, of legal capacities to which other Guatemalans are entitled leaves her rights vulnerable to violation without recourse.[22]

39. In the instant case the Commission finds that the gender-based distinctions established in the challenged articles cannot be justified, and contravene the rights of María Eugenia Morales de Sierra set forth in Article 24. These restrictions are of immediate effect, arising simply by virtue of the fact that the cited provisions are in force. As a married woman, she is denied protections on the basis of her sex which married men and other Guatemalans are accorded. The provisions she challenges restrict, *inter alia*, her legal capacity, her access to resources, her ability to enter into certain kinds of contracts (relating, for example, to property held jointly with her husband), to administer such property, and to invoke administrative or judicial recourse. They have the further effect of reinforcing systemic disadvantages which impede the ability of the victim to exercise a host of other rights and freedoms.

#### **The case of María Eugenia Morales de Sierra and rights of the family: equality of rights and balancing of responsibilities in marriage**

40. Article 17(1) of the American Convention establishes rights pertaining to family life pursuant to the disposition that, as “the natural and fundamental group unit of society,” the family “is entitled to protection by society and the state.” The right to marry and found a family is subject to certain conditions of national law, although the limitations thereby introduced must not be so restrictive “that the very essence of the right is impaired.”[23] Article 17(4), which derives from Article 16(1) of the Universal Declaration of Human Rights, specifies that “States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities” in marriage and its dissolution. In this regard, Article 17(4) is the “concrete application” of the general principle of equal protection and non-discrimination of Article 24 to marriage.[24]

41. In the case of Guatemala and other States Parties, the Convention on the Elimination of All Forms of Discrimination against Women specifies steps that must be taken to ensure substantive equality in family law and family relations. Pursuant to Article 16 of that Convention, States Parties are required to ensure, *inter alia*, “on the basis of equality between men and women,” the same rights and duties with respect to the exercise of custody or other types of guardianship of children; the “same personal rights ... to choose a family name, a profession and an occupation;” and the same rights with respect to the ownership, administration and disposition of property.

42. The petitioners have indicated that the cited articles of the Civil Code impede the ability of wife and husband to equally exercise their rights and fulfill their responsibilities in marriage. María Eugenia Morales de Sierra alleges that, although her family life is based on the principle of reciprocal respect, the fact that the law vests exclusive authority in her husband to represent the marital union and their minor child creates a disequilibrium in the weight of the authority exercised by each spouse within their marriage—an imbalance which may be perceived within the family, community and society. While the victim, as a parent, has the right and duty to protect the best interests of her minor child, the law strips her of the legal capacity she requires to do that.

43. As discussed above, the challenged articles of the Civil Code establish distinct roles for each spouse. The husband is responsible for sustaining the home financially, and the wife is responsible for caring for the home and children (Article 110). The wife may work outside the home only to the extent this does not prejudice her legally defined role within it (Article 113), in which case her husband has the right to oppose such activities (Article 114). The husband represents the marital union (Article 109), controls jointly held property (Article 131), represents the minor children, and administers their property (Article 255). The Court of Constitutionality characterized the State's regulation of matrimony as providing certainty and juridical security to each spouse, and defended the disposition of roles on the basis that the norms set forth preferences which are not discriminatory, but protective.

44. The Commission finds that, far from ensuring the "equality of rights and adequate balancing of responsibilities" within marriage, the cited provisions institutionalize imbalances in the rights and duties of the spouses. While Article 110 suggests a division of labor between a husband's financial responsibilities and the wife's domestic responsibilities, it must be noted that, pursuant to Article 111, a wife with a separate source of income is required to contribute to the maintenance of the household, or to fully support it if her husband is unable to do so. The fact that the law vests a series of legal capacities exclusively in the husband establishes a situation of *de jure* dependency for the wife and creates an insurmountable disequilibrium in the spousal authority within the marriage. Moreover, the dispositions of the Civil Code apply stereotyped notions of the roles of women and men which perpetuate *de facto* discrimination against women in the family sphere, and which have the further effect of impeding the ability of men to fully develop their roles within the marriage and family. The articles at issue create imbalances in family life, inhibiting the role of men with respect to the home and children, and in that sense depriving children of the full and equal attention of both parents. "A stable family is one which is based on principles of equity, justice and individual fulfillment for each member." [25]

45. In the case of Ms. Morales de Sierra, the Commission concludes that the challenged articles controvert the duty of the State to protect the family by mandating a regime which prevents the victim from exercising her rights and responsibilities within marriage on an equal footing with her spouse. The State has failed to take steps to ensure the equality of rights and balancing of responsibilities within marriage. Accordingly, in this case, the marital regime in effect is incompatible with the terms of Article 17(4) of the American Convention, read with reference to the requirements of Article 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women.

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\* Commission member Marta Altolaguirre, national of Guatemala, did not participate in the discussion or vote on this Report, pursuant to Article 19(2) of the IACHR's Regulations.

[1] Report 28/98 is published in *Annual Report of the IACHR 1997*, OEA/Ser.L/V/II.98, Doc. 7 rev., April 13, 1998, at p. 144.

[2] See generally, Report 28/98, *supra*, paras. 23, 27 and 20.

[3] Article 109 of the Civil Code establishes: "(Representation of the marital union). The husband shall represent the marital union, but both spouses shall enjoy equal authority and considerations in the home; they shall establish their place of residence by common agreement and shall arrange everything concerning the education and establishment of their children, as well as the family budget."

[4] Article 110 of the Civil Code establishes: "(Protection of the wife). The husband must provide protection and assistance to his wife and is obliged to supply everything needed to sustain the home in accordance with his economic means.

The wife has the special right and duty to attend to and look after her children while they are minors and to manage the household chores."

[5] Article 113 of the Civil Code establishes: "(Wife employed outside the home). The wife may perform work, (38) exercise a profession, business, occupation, or trade, (39) provided that her

activity does not prejudice the interests and care of the children or other responsibilities in the home." [Notes 38 and 39 refer to articles of the Constitution and Commercial Code].

[6] Article 114 of the Civil Code establishes: "The husband may object to his wife pursuing activities outside the home, so long as he provides adequately for maintenance of the home and has sufficiently justified grounds for objection. The judge shall rule outright on the issue."

[7] Article 115 of the Civil Code establishes: "(Representation by the wife). Representation of the marital union shall be exercised by the wife should the husband fail to do so for any reason and particularly when : 1) If the husband is legally deprived of that right; 2) If the husband abandons the home of his own free will, or is declared to be absent; and 3) If the husband is sentenced to imprisonment and for the duration of such imprisonment."

[8] Article 131 of the Civil Code establishes: "Under the system of absolute joint ownership [*comunidad absoluta*] by husband and wife or community of property acquired during marriage [*comunidad de gananciales*], the husband shall administer the marital property, exercising powers that shall not exceed the limits of normal administration.

Each spouse or common-law spouse shall dispose freely of goods registered under his or her name in the public registries, without prejudice to the obligation to account to the other for any disposal of common property."

[9] Article 133 of the Civil Code establishes: "(Administration by the wife). Administration of the marital property shall be transferred to the wife in the instances set forth in Article 115, with the same powers, restrictions, and responsibilities as those established in the foregoing articles."

[10] Article 255 of the Civil Code establishes: "Where husband and wife, or common-law spouses, jointly exercise parental authority over minor children, the husband shall represent the minor or incompetent children and administer their goods."

[11] Article 317 of the Civil Code establishes: "(Exemption). The following may be excused from exercising custody and guardianship: 1) Those already exercising another custody or guardianship; 2) Persons over sixty years of age; 3) Those who have three or more children under their parental authority; 4) Women; 5) Persons of low-income for whom this responsibility would threaten their means of subsistence; 6) Persons prevented from exercising this responsibility due to chronic illness; and 7) Those who have to be absent from the country for over one year."

[12] Report, *supra*, paras. 30, 31.

[13] *See e.g.*, Eur. Ct. H.R., Belgian Linguistics Case, Ser. A No. 6, p. 34, para. 10.

[14] *See generally, id.*; U.N.H.R. Committee, Broeks v. The Netherlands, Comm. No. 172/1984, para. 13, Zwaan de Vries v. The Netherlands, Comm. No. 182/1984, para. 13.

[15] *See e.g.*, I/A Court H.R., Advisory Opinion OC-4/84, "Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica," January 19, 1984, para. 56.

[16] *See e.g.* Belgian Linguistics Case, *supra*.

[17] Guatemala ratified the Convention on August 12, 1982.

[18] *See I/A Court H.R.*, "Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights), Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1.

[19] Advisory Opinion OC-4, *supra*, para. 55.

[20] *See e.g.*, Eur. Ct. H.R., Karlheinz Schmidt v. Germany, Ser. A No. 291-B, 18 July 1994, para 24, *citing*, Schuler-Zraggen v. Switzerland, Ser. A No. 263, 24 June 1993, para. 67, Burghartz v. Switzerland, Ser. A No. 280-B, 22 Feb. 1994, para. 27.

[21] *See generally*, Committee on the Elimination of Discrimination against Women (CEDAW), General Recom. 21, "Equality in marriage and family relations," U.N. Doc. HRI\GEN\1\Rev.1 at 90 (1994), para. 7.

[22] *See generally*, U.N.H.R. Committee, *Ato del Avellanal v. Peru*, Comm. No. 202/1986, para. 10.2.

[23] Eur. Ct. H.R., Rees v. United Kingdom, Ser. A No. 106, 17 Oct. 1986, para. 50.

[24] *See* OC-4/84, para. 66.

[25] CEDAW, General Recom. 21, *supra*, para. 24.