

**National Association of
Women and the Law**



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**Ratifying the American Convention
on Human Rights:**

The Stakes for Women

Discussion Paper

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Table of Contents

<i>Foreword</i>	3
Acknowledgments	3
Introduction	4
<i>1. The OAS and the Inter-American Human Rights System</i>	5
1.1 What is the OAS?	5
1.2 Canada and the OAS.....	6
1.3 Canada and the Ratification of OAS Conventions	7
1.4 Better Human Rights Protection in Canada.....	7
1.5 Canada’s Priorities.....	8
1.6 Canadian ACHR Ratification: Back on the Agenda at the Summit of Americas	8
<i>2. ACHR Ratification: Characteristics, Issues and Difficulties for Canada</i>	10
2.1 Characteristics.....	10
2.2 The ACHR, the Right to Life and the Abortion Prohibition	11
2.3 The Right to Life “From the Moment of Conception”	13
<i>3. Abortion, Reproductive Health and Women’s Human Rights</i>	15
3.1 Canadian Law and Access to Abortion	15
3.2 International Law	17
3.3 Inter-American Law.....	18
3.4 Reproductive Health and Abortion in the Era of Privatization.....	19
<i>4. Ratifying the ACHR: Safeguards for Women’s Rights</i>	20
4.1 Reservations and Interpretative Declarations	21
4.2 Model Interpretative Clauses.....	22
4.3 Issues for Discussion, Necessary Decisions.....	24
Conclusion.....	26

Foreword

This report was written for the Working Group on Abortion, Reproductive Health, and Women's Citizenship in the Americas of the National Association of Women and the Law (NAWL). Its authors are Andrée Côté, Director of Legislation and Law Reform at the National Association of Women and the Law, and Professor Lucie Lamarche, Université du Québec à Montréal, Faculty of Political Science and Law, Centre d'études sur le droit international et la mondialisation (CEDIM).

NAWL hopes that this report will lead to a cross-Canada discussion on the suitability of a recommendation from women's groups that Canada ratify the *American Convention on Human Rights*. We hope that other women's groups will join us in this initiative and that, following Quebec's lead, training sessions on the inter-American human rights system can be offered in different cities. We are also in discussions with certain organizations around the possibility of holding a Canada-wide consultation on the ratification of the Convention.

If you have any comments or suggestions about this report or would like to discuss the issues raised, please feel free to contact NAWL at andree@nawl.ca. This discussion paper will be available on the NAWL Web site in a few weeks at www.nawl.ca.

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Ce rapport est disponible en français.

Introduction

The *American Convention on Human Rights* (ACHR) is a regional human rights instrument existing under the aegis of the Organization of American States (OAS). Although it has been an OAS member since 1991, Canada has not ratified the ACHR, and yet the matter has been raised from time to time. Since the government has never made public its official position, explanations of why it has never ratified the ACHR remain in the realm of speculation; nor has anyone seen fit, since 1991, to hold a formal consultation on the desirability of ratification. So why bring the matter to the attention of Canadian women's groups at this time? There are four main reasons why the matter deserves serious consideration.

Firstly, Canadian parliamentary developments suggest that the situation is favourable for ratification. The Senate Standing Committee on Human Rights has been reviewing the matter over the last two years. At Committee hearings in 2001, several expert witnesses stressed the urgency of ratifying international and regional human rights instruments, as well as the importance of Canada's clarifying its commitment to human rights in the Americas. However, as we shall discuss in Part II of this report, NAWL voiced concerns that ratification of the ACHR could reverse gains made around abortion rights in Canada. Although the Committee did not, in its report tabled December 2001, take a position on ratification, further hearings were held in 2002 and a second report was tabled in May 2003.¹ Women's groups and other rights advocacy organizations must be prepared to take a position if and when a decision is made. This makes it necessary for them to become familiar with the specifics of the inter-American human rights protection system and the ACHR.

The second factor is the ongoing process of hemispheric economic integration. As stressed by the civil society representatives attending the Summit of the Americas in Quebec City (April 2001), it would be dangerous to pursue hemispheric trade integration without a concomitant integration and consolidation of human rights protections. The ACHR is one component of the regional (OAS) human rights protection system and, as such, could offer a counterweight to the negative effects of full-speed trade integration; the Convention is, in some sense, "part of the regional solution." Thus, we think that both regional economic integration in the Americas and the new manifestation of women's rights violations call for considered attention and productive dialogue in order to enrich our thinking on the desirability of Canada's ratifying the ACHR.

Thirdly, the democratic movement in Latin America is anxiously waiting for Canada to ratify the Convention. This would signify the possibility of Canada's participating actively in the OAS institutions, including the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights. The Latin

¹ *Enhancing Canada's Role in the OAS: Canadian Adherence to the American Convention on Human Rights*. Report of the Standing Senate Committee on Human Rights, May 2003, p. 62. Available online at www.senate-senat.ca/dp.asp.

American feminist movement has extensive expertise in the use of the OAS human rights system (petitions, representations before the Court). Not only has the movement made gains; it has helped to enrich the heritage of women's rights conventions in the Americas, a matter to which we return. Moreover, the movement is actively pursuing its work. Women in Latin America are organizing around a convention on women's reproductive health rights. Canada's contribution to the inter-American system would be significant by virtue of the specific expertise of our women's movement. An important example is represented by the successive Supreme Court decisions entrenching a progressive interpretation of women's right to equality, a standard that many hope to see "exported" throughout the Americas.

Finally, due consideration must be given to the contribution that ratification of the ACHR would make to the protection of women's social and economic rights in Canada. The *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (San Salvador Protocol of 1988) represents "value added" to the ACHR. But in order to ratify the Protocol, a state must first ratify the Convention itself. The IACHR is then competent to review petitions regarding violations, which it may then submit to the Inter-American Court of Human Rights. This is a "jurisdictional" advantage not offered by the United Nations systems.

This report offers an introduction to the issue of ACHR ratification by Canada, but it attempts to go a little further by proposing approaches to ratification that can guarantee respect for and promotion of women's human rights in the context of hemispheric integration.

1. *The OAS and the Inter-American Human Rights System*

1.1 What is the OAS?

The OAS is an international institution founded by the States of the Americas in 1948. The current membership consists of 34 states, including Cuba. Numerous meetings among American states (1826–1948), guided by Simon Bolívar's ideals of asserting the independence of the Americas and guaranteeing peace, security and democracy in the hemisphere, led to the founding of the organization. The OAS is to the Americas what the United Nations is to the world community of nations. However, the "Bolívar doctrine" appears to be unique to this regional institution; it arose from the shared need for solidarity in order to achieve liberation from the European colonizers. As with the United Nations, the OAS also adopted a human rights protection system (conventions, investigation and petition mechanisms, etc.). Other regions of the world, such as Europe and Africa, have also implemented regional human rights systems.

1.2 Canada and the OAS

Canada joined the OAS in 1991 and is a full member of the organization. As such, Canada is bound by the founding principles of the OAS set forth in its charter, as amended by the *Buenos Aires Protocol* (1967), the *Cartagena de Indias Protocol* (1985) and the *Washington Protocol* (1992). The OAS Charter sets out democratic, economic, social, education, cultural, and scientific standards, which the member states undertake to respect and implement.

As an OAS member state, Canada is bound by the *American Declaration of the Rights and Duties of Man* adopted in Bogotá in 1948. This declaration has the same status as the *Universal Declaration of Human Rights* in international law and resembles it in several respects. The rights it protects include the right to life, liberty and the security of the person (Article I); equality before the law (Article II); health, food, clothing, housing, and medical care, to the extent permitted by public and community resources (Article XI); and ownership of such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and the home (Article XXIII). Chapter two of the Declaration enumerates the duties of individuals. Certain complaints of violations of rights guaranteed by the Declaration may be referred to the IACHR, which investigates.

The ACHR of 1969 is one of several human rights conventions adopted by the OAS and has been ratified by 25 member countries to date; the list does not include Canada or the United States. The other conventions include the *Inter-American Convention to Prevent and Punish Torture* (1985), the *Inter-American Convention on the Forced Disappearance of Persons* (1994), and the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* (Belém Do Pará Convention, 1994). Canada has not ratified any of these conventions, but it did ratify the *Inter-American Convention Against Terrorism*, adopted by the OAS in 2002.

Additionally, Canada's failure to ratify the ACHR means that it cannot ratify the San Salvador Protocol (which entered into force in 2000) or the *Protocol to the American Convention on Human Rights to Abolish the Death Penalty* (1990).

The OAS has created two institutions to enforce the provisions of the OAS Charter and the organization's conventions and principles: the IACHR and the Inter-American Court of Human Rights, located in Washington and San José, Costa Rica, respectively.

Though Canada has not ratified the ACHR, it is, as an OAS member, bound to uphold its commitments under the *American Declaration of the Rights and Duties of Man*. Article 20 of the IACHR Statute provides that the

Commission must pay particular attention to the observance of certain human rights by member states that are not parties to the ACHR. The Commission may examine communications from individuals claiming that their rights have been violated (fundamental freedoms, access to justice, legal guarantees). In addition, the IACHR may conduct missions to Canada even in the absence of ratification, and has done so in relation to refugee issues. But Canada is not thereby subjected to the jurisdiction of the Inter-American Court, since it has not ratified the ACHR. In summary, it is no exaggeration to state that Canada maintains an imperfect or incomplete relationship with the OAS.

1.3 Canada and the Ratification of OAS Conventions

Latin American experts, including several feminists, argue that Canada has much to contribute to the OAS. Canada's expertise and the breadth of its case law on equality are well known. Canada's participation in the inter-American legal system (the Court) would represent a dual advantage: on the one hand, the presence of Canadian experts on the Commission and Court would hasten the transfer of Canadian human rights standards and practices to the rest of the Americas; on the other, Canada's recognition of the Court would strengthen the institution by boosting its chronically insufficient resources. These arguments affect both women's rights and other rights whose protection and promotion are essential to human dignity.

Moreover, as a non-ratifier, Canada has on occasion found itself poorly positioned to criticize when certain countries (Barbados, Jamaica, Peru) threatened to withdraw from the Inter-American human rights system or reject the Court's jurisdiction. Thus, Canada's non-ratification of the ACHR raises foreign policy issues. In addition, since the Convention is the central nervous system of a set of human rights instruments, it could also serve to better protect the rights of Canadians. This makes it also a domestic policy issue.

1.4 Better Human Rights Protection in Canada

Economic Rights

Economic rights would certainly enjoy better protection under the *San Salvador Protocol*. Despite the recent Supreme Court of Canada decisions in *Irwin Toys* (1989) and *Gosselin* (December 2002), Canadian women do not know precisely where they stand when it comes to the protection of the core economic rights essential to their security under the *Canadian Charter of Rights and Freedoms*. Though the international instruments provide formal mechanisms, it can hardly be claimed that the series of criticisms of the Canadian federal, provincial and territorial governments by the Committee on Economic, Social, and Cultural Rights and the experts committee of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) have really ensured that the principles of the *Charter* are interpreted to include the right to be protected against the vicissitudes of poverty and social exclusion.

Remedies to Enforce State Party Commitments

What distinguishes the enforcement of Canada's commitments under the UN treaties from the OAS conventions is the opportunity for all citizens in the Americas to appeal to the Inter-American Court of Human Rights when the country of which they are nationals has accepted its jurisdiction. This acceptance will soon be automatic when a state ratifies the ACHR. Victims of rights violations can petition the Court where the IACHR finds that the complaint is well-founded and no other remedies are available. This benefit is available only in the Inter-American and European human rights systems. Furthermore, Canada's ratification of the San Salvador Protocol, conditional on ratification of the ACHR, would give its citizens access to the Court in cases of violations of the right to education and freedom of association. Increasingly in Latin America, petitions to the Inter-American Court involve interdependent allegations of violations of civil, political, economic, and social rights protected by the ACHR and the San Salvador Protocol.

1.5 Canada's Priorities

All evidence suggests that Canada is in greater haste to ratify the inter-American instruments on hemispheric security (e.g. the recent *Inter-American Convention Against Terrorism*) than the human rights instruments. It is a genuinely strange situation; while one of the few OAS treaties ratified by Canada concerns terrorism, heated debate has taken place at home around the alleged infringement of fundamental freedoms by a set of domestic anti-terrorism laws.

Canada seems determined to cultivate confusion regarding its role and commitments toward the Inter-American human rights system, choosing its actions to the detriment of commitments by which it should be bound. To support this strategy, it uses arguments as classic as they are Canadian. The provinces and territories are said to differ on ratification of the inter-American instruments; or, certain sectors of civil society, such as the feminist movement, are claimed to be blocking ratification of the ACHR. The fact remains that since it joined the OAS, Canada has not undertaken any serious analysis or consultation to determine whether and how it should consider ratifying the convention.

1.6 Canadian ACHR Ratification: Back on the Agenda at the Summit of Americas

The adoption of the Declaration and Plan of Action of the Third Summit of the Americas (Quebec City, April 2001) by the heads of state revived ACHR ratification as an issue for Canada. The Summit of the Americas is not an OAS initiative but a stage in the summit process among the heads of state of the Americas with the aim of creating a Free Trade Area of the Americas (FTAA). Nevertheless, as the preamble to the *Declaration of Quebec*

City indicates, the cooperation between the OAS and the Summit process around this objective should not be underestimated:

We reiterate our firm commitment and adherence to the principles and purposes of the Charters of the United Nations and of the Organization of American States (OAS).

...

Our commitment to full respect for human rights and fundamental freedoms is based on shared principles and convictions. We support strengthening and enhancing the effectiveness of the inter American human rights system, which includes the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. We mandate the XXXI General Assembly of the OAS to consider an adequate increase in resources for the activities of the Commission and the Court in order to improve human rights mechanisms and to promote the observance of the recommendations of the Commission and compliance with the judgments of the Court.

Similarly, Section 2 of the Plan of Action stipulates that member states shall “consider signing and ratifying, ratifying, or acceding to, as soon as possible and as the case may be, all universal and hemispheric human rights instruments.”

This commitment, although still unmet by Canada, must be perceived as an acknowledgement by the states of the Americas of the need to counterbalance economic integration with enhanced guarantees of democracy and human rights. Trade integration without hemispheric integration and consolidation of human rights protections would indeed be dangerous.

Moreover, civil society and the feminist movement, meeting under the aegis of the People’s Summit, forthrightly expressed their concerns as to the link between economic integration of the Americas, human rights and essential needs related to women’s security, equality, and dignity:

Free trade agreements aggravate inequalities between the rich and the poor, between men and women, between countries of the north and countries of the south... [they] encourage the systematic privatization of public goods such as health, education and social programs along with Structural Adjustment Programs in the South and budget cuts in the North... We want states... to guarantee universal and free access to quality public education, to social and health services, including services especially for women (motherhood, contraception and abortion); states must eliminate violence against women and children; they must ensure respect for the environment on behalf of current and future generations.

It is our view that both the context of regional economic integration and the new manifestations of women’s rights violations warrant sustained attention and fruitful dialogue in order to determine the desirability of Canada’s ratifying the ACHR.

2. *ACHR Ratification: Characteristics, Issues and Difficulties for Canada*

2.1 Characteristics

Certain provisions of the ACHR represent significant departures from other human rights instruments. These differences, discussed below, have implications for the protection and promotion of women's rights.

Prohibited Discrimination

Article 24 ACHR provides that all persons are equal before the law and that they are consequently entitled to equal protection of the law without discrimination. Although sex discrimination is prohibited, the ACHR does not offer any specific guarantees of gender equality. However, as we shall see below, women's equality rights under the Canadian *Charter of Rights and Freedoms* and the Quebec *Charter of Human Rights and Freedoms* would be protected by Article 29 ACHR against regressive interpretation.

In addition to the usual prohibited grounds of discrimination, Article 1 ACHR prohibits discrimination on the grounds of "economic status" and "any other social condition." These grounds are missing from Canadian human rights law outside Quebec. In view of the Canadian government's resistance to implementing the recommendations of the *Canadian Human Rights Act Review Panel* (La Forest Report), one can reasonably suggest that in this regard the ACHR would have the effect of a levelling upward of Canadian domestic law.

Economic and Social Rights

Article 26 ACHR constitutes an equivalent of Article 2 of the *International Covenant on Economic, Social and Cultural Rights* of the United Nations. It establishes the commitment of state parties to take steps to progressively achieve the full realization of the rights arising from the economic and social standards provided by the OAS Charter, and for that purpose to adopt the appropriate legislative measures. Unlike the United Nations covenants, which offer separate protections for civil and political rights, on the one hand, and economic, social and cultural rights on the other, the ACHR effectively guarantees the interdependence of all human rights, including women's rights.

No Restrictive Interpretation of Domestic Law

Article 29(b) ACHR stipulates that no provision of the Convention may be interpreted as restricting the enjoyment and exercise of any right or freedom granted not only by the *legislation of the state party* but also by any convention to which the state is a party. The ACHR represents a "levelling upward" in that it preserves

national and international advances of law. This provision is more substantial than its equivalent in the *International Covenant on Civil and Political Rights* (Article 5(2)).

Right to Life

Article 4(1) ACHR stipulates as follows: “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”

Does this provision imply that, if Canada ratifies the ACHR, it would have to introduce legislative provisions restricting abortion rights or even recriminalize the practice? This question is so fundamental that Article 4(1) ACHR can be said to be the main reason why the Canadian feminist movement might argue against ratification.

For this reason, we devote the remainder of this report to this issue, examining it from both sides: not only the apparent or potential contradiction between Canada’s domestic law and the ACHR’s right to life provision but also the possible approaches to resolving it, as seems only desirable. After all, the ACHR must be seen as central to the movement for the integration of human and women’s rights throughout the Americas.

2.2 The ACHR, the Right to Life and the Abortion Prohibition

Ambiguous Language

Article 4(1) ACHR was drafted in the late 1960s, while the *American Declaration of the Rights and Duties of Man* was adopted in 1948, and there is an important difference in the wording of their right-to-life provisions. Article 1 of the Declaration simply provides, without further clarification, that “every human being has the right to life.” But when does a foetus become a human being? In this regard, the document is silent. Article 4(1) ACHR specifies that the right to life of every “person” (defined as “every human being” in Article 1(2) ACHR) must be respected “in general, from the moment of conception.” It thereby introduces a new ambiguity while failing to resolve the old one: what exactly does “in general” mean? We may well wonder whether Article 4(1) protects the foetus’s right to life “in general.” This question is fundamental in that the foetus is not, as things stand, a human being in Canadian criminal law, Quebec civil law, or the common law of the other provinces and territories, as we shall see below. Moreover, prohibitions and restrictions on the practice of abortion have been nullified by the Canadian courts as constituting a violation of women’s security, autonomy, and liberty, which are guaranteed by the *Charter*. For this reason, some analysts see an irreconcilable incompatibility between Canadian law and Article 4(1) ACHR.

The Baby Boy Case

In the late 1970s, in the only case brought before it by an American pro-life association (*Baby Boy*, 1981), the IACHR saw fit to interpret Article 4(1) ACHR. The association argued that Article 1 of the *American Declaration of the Rights and Duties of Man* must be interpreted in light of Article 4(1) as protecting fetal rights in all cases. Since the United States, like Canada, has not ratified the ACHR, the complaint was based on Article 1 of the Declaration, which is binding on the United States by virtue of its membership in the OAS. The Commission dismissed the association's complaint.

There are differing interpretations of the Commission's decision. Some observers interpret it as indicating the view that Article 4(1) ACHR recognizes the foetus's right to life "in principle," with certain exceptions (e.g., where the mother's health is endangered or the pregnancy resulted from sexual assault). The relativism and ensuing uncertainty around fetal rights in the context of Article 4(1) is worrisome. Women have no absolute guarantee that they will be allowed to interrupt an unwanted or dangerous pregnancy without restriction or punishment.

For others, the Commission merely took the opportunity to specify that the wording of Article 4(1) reflects the diversity of national legislations. Still today, certain Latin American countries maintain a total ban on abortion. In consideration of this diversity, it is argued, the Commission affirmed that the inter-American system had undertaken to respect states' "margin of appreciation" to decide on whether to ban abortion and other methods of pregnancy interruption outright, partially, or not at all. It refrained from setting a regional standard in this area. This second view is inspired by a pragmatism that acknowledges the present limits of international human rights law, which has not yet explicitly enshrined women's positive right to reproductive health, including access to abortion, in a treaty. Thus, this approach goes no further than to determine whether the current text of Article 4(1) ACHR is likely to impose a regional standard (for the Americas) on the prohibition, regulation, criminalization, or recriminalization of abortion.

The IACHR's position that it would not get involved in the domestic law of Convention parties is similar to that of other regional human rights courts, such as the European Court of Human Rights. Though it was not called on to examine whether the foetus has a right to life "from the moment of conception," the European Court held that it should refrain from interfering in the internal affairs of a state as they concern access to information on reproductive health and abortion. In *Open Door and Dublin Well Women v. Ireland* (246A Eur. Ct. H.R. (ser. A) (1992)), the Court ruled that a Supreme Court of Ireland injunction prohibiting a women's centre from distributing information on abortion services abroad contravened the freedom of expression provisions of Article

10 of the *European Convention on Human Rights* and could not be upheld because it did not constitute a reasonable infringement of this right in a free and democratic society. The European Court further ruled that this restriction posed a threat to the health of Irish women. It refused to rule on the Irish government's argument that the foetus is encompassed by the "right to life" as contained in Article 2 of the European Convention.

In another case involving the United Kingdom (13 May 1980, Application 8416/79), in which a man challenged his wife's autonomous right to have an abortion, the European Commission on Human Rights held that the right to life protected by the European Convention is in no way absolute. It is not totally denied to the foetus but neither is it guaranteed under all circumstances. In this case, the Court eluded the problem by recognizing the therapeutic nature of the abortion.

In summary, all evidence suggests that the "regional courts" of justice will avoid deciding the matter of whether the foetus has a right to life, not because they consider the instruments unclear on this point but out of respect for the margin of appreciation of sovereign states. This position is consistent with the drafting history of Article 4(1) ACHR. The comparison between the positions of the Inter-American and European human rights systems is eloquent in showing how the status of legislation in Europe is no less diverse or contradictory than in the Americas. Still, the right of each state to interpret the scope of the right to life after its own fashion is slim consolation for women living in countries where abortion is banned or otherwise off limits.

Finally, it should be remembered that the ACHR is the only regional instrument that expressly refers to the right to life "from the moment of conception" and that the Inter-American Court has not yet ruled on the scope of this expression. Moreover, it seems clear that the ACHR does not grant women an explicit positive right to reproductive health, including abortion. At best, it offers positive protection of women's right to life — not a negligible affair, to be sure. It is to be hoped that the ACHR does not authorize or impose a rollback of gains made by the women's movement in terms of decriminalization of pregnancy interruption. This proposition follows from the principle of the interdependence of all human rights, including women's right to life, security, dignity, and equality.

2.3 The Right to Life "From the Moment of Conception"

Several experts on women's issues claim to have no fear as to the negative impact of Article 4(1) ACHR on women's right to voluntarily interrupt an unwanted pregnancy. Is this opinion motivated by incautious optimism or by a realistic interpretation of legal trends and the political context in which they will eventually be interpreted? We can shed further light on this matter with a brief review of the historical background to the adoption of the article and the contemporary political context.

In the drafting of the *American Declaration of Human Rights*, certain OAS member states attempted to insert into Article 1 a guarantee of the right to life “from the moment of conception.” This proposal was rejected because certain countries already allowed abortion, generally for therapeutic or eugenic reasons or because the pregnancy was the result of a rape. This campaign was revived during the discussions leading to the adoption of the ACHR in 1969. Although a total ban on abortion was not obtained, Article 4(1) ACHR was adapted in such a way to protect the right to life “in general, from the moment of conception.” This was a significant victory for the pro-life lobby, since the ACHR is the only regional or international law instrument offering such a guarantee. Judging by the statements of certain OAS member delegates in other international fora, such as the International Conference on Population and Development (Cairo, 1994) or the recent review of the World Conference on Women (Beijing +5), several states in the hemisphere think that Article 4(1) is a positive norm that protects the foetus’s right to life in general, the implication being a total ban on abortion. But it would be wrong to confuse these statements with the usual sources of interpretation of a treaty such as the ACHR.

Although the IACHR decided in 1981 in *Baby Boy* that Article 4(1) does not represent an “absolute ” ban on abortion, it implied that the practice of abortion for “arbitrary” reasons would be contrary to the spirit of the ACHR. Moreover, Article 4(1) explicitly obliges signatories to legislate protections of the right to life in general from the moment of conception. A minority position among women’s rights experts contends that this obligation to legislate does not concern the “right to life” but, more specifically, the “right to life from the moment of conception,” which would imply an obligation to regulate and, in some cases, prohibit the practice of abortion. In other words, this article means that abortion on demand as practiced now in Canada would violate Article 4(1).

Furthermore, it is clear that pro-life groups, the Vatican, and other right-wing and fundamentalist forces are leading a vigorous international campaign to exclude all direct or indirect references to abortion from action plans, recommendations, and other international resolutions relating to women’s rights, family rights, and population control. In this effort, they are backed by the anti-abortion policies of the U.S. government, such as the “global gag rule” which, wherever U.S. aid is provided, denies funding to any organization that merely offers information on abortion as part of its family planning programs.

In short, Article 4(1) ACHR is the source of legitimate concerns among feminists. However, a literal interpretation of human rights treaties is often counter-productive. If the ACHR is interpreted interdependently, that is, with reference to the development of law and all women’s rights protections offered by the inter-American human rights system (right to life, security of the person, health, and reproductive health), some of these concerns could be dispelled. Another consideration is that the furtherance of international women’s rights law helps break women’s isolation. It offers them extraterritorial remedies when their governments are politically or economically in thrall to fundamentalist ideology. In such a globalized (or regionalized) context,

the affirmative practices of states take on importance beyond their borders in that they come to the aid of women elsewhere who are victims of the worst forms of oppression. This argument explains the call for solidarity coming from our Latin American and Caribbean sisters, and should do much to reassure Canadian women. There is no doubt that, beyond its literal language, international human rights law has the capacity to level women's rights protections upward.

3. *Abortion, Reproductive Health and Women's Human Rights*

Throughout the Americas, but to differing degrees, the “two Ms” — morality and the market — hold societies in their grip. These forces in particular commodify women. They are victimized by unacceptable sexual violence and deprived of essential health (including reproductive health) services both in the name of morality and by means of economic inaccessibility. This strategic context provides the backdrop for our discussion, in this section, of the issues raised for Canadian law by Article 4(1) ACHR, which protects the right to life “from the moment of conception” but by the same token reaffirms women's right to life.

3.1 Canadian Law and Access to Abortion

Canadian abortion law is modeled on that of Britain, whose common law influence is felt in our legal system's categorization of abortion essentially as a crime. Under the *Constitution Act of 1867*, the federal government has jurisdiction over the definition of criminal conduct. In 1869, it passed a law prescribing life imprisonment for those who obtain abortions for women, and two years imprisonment for pregnant women who use any means to provoke their own abortion. The criminalization of abortion has caused the deaths of innumerable women. Indeed, the women's movement, in its abortion rights demonstrations, has productively wielded the images of coat hangers, knitting needles, and other domestic implements formerly used to perform clandestine abortions, causing infection, sterility, and suffering. Fortunately, clandestine abortion is no longer a significant source of mortality in Canada.

In 1939, an English jury acquitted a doctor of performing an illegal abortion because his motive had been to preserve the mental health of a fourteen-year-old girl who had been gang-raped (*Bourne*, 1939). The Crown's appeal was denied on the grounds that the doctor could invoke the defence of necessity; he had carried out the abortion for therapeutic reasons, specifically to prevent the girl from committing suicide.

In 1969, the Parliament of Canada wrote the therapeutic abortion defence into the *Criminal Code* as part of an omnibus act that also decriminalized homosexuality. Section 287 provides that abortion is an offence punishable

by life imprisonment, but exempts those who perform an abortion on the authorization of a therapeutic abortion committee composed of at least three doctors at an accredited hospital in whose opinion the pregnancy would, if continued, endanger the woman's "life or health." In its Constitution of 1946, the World Health Organization adopted a generous definition of health as being "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." In principle, then, a pregnant woman wishing to terminate her pregnancy should be allowed to obtain an abortion, since forcing her to bear an unwanted child endangers her mental health and, in some cases, her physical safety. But the majority of therapeutic committees — where they existed — were controlled by doctors opposed to abortion. The Badgley Report (1977) was unequivocal: access to abortion in Canada remained uneven, uncertain, and arbitrary, since only 20 percent of hospitals had therapeutic committees. The criteria varied from one committee to another, and the waiting period was often very long.

In that context, the Supreme Court of Canada ruled in 1976 that the defence of necessity is admissible against an accusation of performing an abortion without the authorization of a therapeutic committee (*Morgentaler*, 1976). But the Court adopted stringent criteria for the use of this defense. The abortion could only be allowed if the pregnancy posed an imminent threat to the life or health of the pregnant woman and the legal conditions for authorization could not be met within a reasonable time.

In the *Morgentaler No. 2* decision of 1988, the Supreme Court nullified the *Criminal Code* sections prohibiting abortion because they contravened Article 7 of the Charter, which protects the right to life, liberty, and security of the person. The Court found that denying a woman the right to interrupt an unwanted pregnancy, by threat of imprisonment and the use of arbitrary procedures, is a profound infringement of the security of the person. Women's human autonomy and dignity are at stake. Emphasizing that the state must not treat pregnant women as a means to an end, Madame Justice Bertha Wilson wrote eloquently that the right to liberty set forth in Article 7 encompasses a woman's right to interrupt an unwanted pregnancy. With this decision, we can define the "right to abortion" as one expression of women's right to life, liberty and security of the person — rights that are utterly fundamental to the Canadian Constitution and human rights law.

More recently, in *Dobson* (1999), the Supreme Court rejected the argument that a pregnant woman has a "duty of care" towards the foetus she is carrying on the grounds that such a recognition would severely restrict women's privacy and autonomy rights, limit their activities and professional choices, and restrict their freedom to make decisions about their own health.

Canadian courts have systematically refused to recognize the rights of fetuses or unborn children. In *Daigle v. Tremblay* (1989), the Supreme Court affirmed that under the *Charter of Human Rights and Freedoms* and the *Civil Code of Quebec*, the legal status of "person" is only granted to human beings who are "born alive and

viable.” Consequently, the foetus does not have a “right to life.” The Court added that only the pregnant woman has the right to decide whether a pregnancy will be carried to term and the father has “no interest” in the foetus. In the 1997 *Winnipeg Child and Family Services (Northwest Area) v. G (D.F.)* case, the Supreme Court confirmed that the foetus is inseparable from the mother; it is a part of the mother and does not have its own legal personhood. The Court refused to grant an order for substance abuse treatment against a pregnant woman as requested by the appellant agency in order to protect the interests of the foetus. On the contrary, the Court ruled that such a measure “would radically impinge on the fundamental liberties of the mother.”

This jurisprudence, hard won by the Canadian women’s movement, marked an essential stage in women’s effective acquisition of full-fledged citizenship. In Canadian law, abortion now partakes of the logic of human rights. It is integral to the family of civil and political rights, and equally so to the family of social and economic rights.

By striking down the *Criminal Code* section that banned abortion, the Supreme Court referred the matter back to Parliament. After one further unsuccessful attempt to impose criminal sanctions on abortion practitioners, the practice remains a medical act like any other, from a legal point of view. Looked at differently, the issue of abortion in Canada is now in the domain of health, social and economic rights. In fact, one ever-present threat to abortion rights in Canada is the wave of budgetary restrictions and the privatization of public health services and programs. The ratification of the ACHR would very probably help defend this right which, as discussed above, is also socioeconomic in nature.

3.2 International Law

No international human rights instrument recognizes the right to life of the foetus, nor a right to life “from the moment of conception.” Moreover, though there is no explicit reference to abortion rights in international law, it is now acknowledged that the criminalization or abusive prohibition of abortion infringes women’s human rights.

In its comments on member states’ fulfillment of their obligations, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee) has often stressed the need to amend legislation criminalizing abortion, and at times has even asked states to guarantee women’s access to quality abortion services. General Recommendation No. 24 (1989) encourages states to eliminate barriers that women face in gaining access to health services in order to respect their right to life. This recommendation suggests the repeal of punitive provisions affecting women who seek abortions.

The CEDAW Committee is an independent and impartial “convention committee” established under the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). It is mandated to review states’ implementation of the Convention and to interpret its provisions. In the United Nations system, the committee is the recognized authority for the monitoring and interpretation of women’s rights. Many of us have heard about the formidable efforts of the right and the Vatican around “Beijing +5,” the five-year review of the action plan adopted at the Fourth World Conference on Women in 1995. Without going into detail, certain states have worked tirelessly to delete all documentary references and strategic actions aiming to recognize women’s right to reproductive health. It is important to note, though, that this action, albeit concerted, is political and not legal in nature. It has no influence on the CEDAW Committee nor does it affect the committee’s interpretation of CEDAW provisions. As well, the CEDAW Committee remains the only committee authorized to review the implementation methods chosen by states and determine their compliance with CEDAW.

The UN Human Rights Committee has also deemed the criminalization of abortion, the practice of clandestine abortion, and the high rate of ensuing maternal mortality to represent violations of women’s right to life as guaranteed by Article 6 of the *International Covenant on Civil and Political Rights*. The committee has criticized states that adopt legislation criminalizing or restricting abortion and has often recommended that they review or amend it.

Finally, the Committee on Economic, Social and Cultural Rights, in its General Comment 14 (2000) on the right to health, recommended that states take specific measures to improve the health of mothers, guarantee equal and non-discriminatory treatment as regards health services and, accordingly, include a gender perspective in the relevant social services and health policies. It specifically recommended improving sexual and reproductive health services, including access to family planning. Although abortion is not specifically mentioned, some observers think that abortion services may be included in the concept of family planning, especially since the committee stresses the need to reduce maternal mortality and other risks to women’s health.

In view of the principle of the interdependence of all human rights, and hence women’s rights, and given recent progress on the specific definition of women’s human rights and possible violations thereof, it is impossible to state categorically, despite ambient political pressures, that a treaty protecting the right to life “in general, from the moment of conception” could have the consequence of denying women’s free access to abortion.

3.3 Inter-American Law

The IACHR’s interpretation of the rights set forth in the regional instruments broadly takes account of the norms of international human rights law. Based on these principles, the Commission currently interprets Article 4(1) ACHR as guaranteeing respect for women’s right to life and health. However, it must be admitted that the Inter-

American Court has not yet ruled on Article 4(1) and that the Commission is not totally impermeable to political pressure that might build around a new petition arguing for a foetus's right to life from the moment of conception. There is, as we have stated above, some uncertainty surrounding this provision.

Nevertheless, some of the "positive" features of the ACHR hold out the hope that freedom-of-choice gains made by Canadian women can be preserved. Article 29(b) provides that no provision of the Convention may be interpreted as "restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party." This provision represents the best guarantee offered to women by the Convention, despite the absence of specific language protecting women's right to equality.

In addition, Article 26 ACHR, entitled "Progressive Development" (in Chapter III, titled "Economic, Social and Cultural Rights"), obligates states to adopt measures with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the OAS Charter.

Article 4(1) ACHR must thus be read in the context of these positive features of the Convention and other instruments and declarations affirming women's right to life, security, health, and reproductive health. There is nothing abstract about this exhortation to adopt such an interdependent interpretation. Rather, it comes in a Canadian context in which it is not impossible that the ever-essential fight to safeguard women's fundamental right of free access to abortion services includes other dimensions of women's right to equality, health, and security, where reproductive rights are concerned.

An interdependent reading of Article 4(1) enables us to place the emphasis on the requirement of not "clawing back" existing rights recognized in domestic law and on the progressive realization of social rights as per Article 26 ACHR. In this way, Canadian women's right to reproductive health can be seen to encompass multiple aspects; it is all at once a freedom, a right to security, and a social right.

3.4 Reproductive Health and Abortion in the Era of Privatization

In Canada as elsewhere, potential infringements of women's right to reproductive health must be evaluated in terms of two negative forces discussed earlier: morality and markets. On the one hand, we have the moralizing strategies of the fundamentalist and sexist right wing; on the other, political and economic trends such as state disengagement from social affairs, institutionalized market liberalization, and privatization of social and health services. Women's right to security, equality and health, including reproductive health, falls within a broader

context in which the causes and consequences of discrimination are multifarious. While reproductive health and abortion were historically configured and constructed by criminal law, it is now evident that geographical and economic barriers to these services are factors in women's rights violations. It becomes necessary to weigh up the various guarantees offered by international human rights standards: the right to life, which is guaranteed to women, but also other women's rights and freedoms recognized in the ACHR, particularly the right to health and security of the person. It is for this reason that we should consider expanding our frame of reference with respect to Article 4(1) ACHR.

This intersection between women's right to life and their right to reproductive health underlies the need for a regionalized analysis of the ACHR in an era of economic integration in the Americas. Thus, beyond the admittedly worrisome language of Article 4(1) ACHR, an acceptable approach to Canadian ratification must be found. International law offers such solutions, and we shall explore them in the final section of this report.

4. *Ratifying the ACHR: Safeguards for Women's Rights*

The American Convention on Human Rights is a pillar of the inter-American human rights protection system, and its ratification by Canada could contribute to an integration of the Americas founded on the defence and promotion of women's human rights. Canada's ratification of this Convention as well as other instruments such as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belém do Pará Convention) and the San Salvador Protocol would give Canadian women additional and important instruments in the struggle against violence against women and for the defence of economic, social and cultural rights.

There is momentum at present in favour of ratifying the Convention among several women's and human rights advocacy groups, in the North as well as the South. In Canada, the Senate Standing Committee on Human Rights has just taken a position in favour of ratification, subject to measures being taken to protect women's acquired abortion rights and other rights. Furthermore, the representatives of the governments of the Americas made a clear commitment to ratification of the OAS human rights protection instruments in the Declaration of the Summit of the Americas adopted in Quebec City (2001).

Furthermore, it is clear that Article 4(1) ACHR ("Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.") is incompatible with the present state of Canadian abortion law. Nor does the IACHR's interpretation of it make it possible to recommend ratification unreservedly. It should also be borne in mind that the right wing is mobilizing continent-wide for a return to "traditional family values" and against abortion rights, as witness the

incessant lobbying by the “God squad” in Canadian Parliament and the recent enactment in the United States of a Draconian law banning second-trimester abortions. In such a context, can the ACHR be ratified while safeguarding Canadian women’s right to equality, security, and reproductive health? More specifically, how can we protect the women’s movement’s hard-won gains around abortion?

The answer to these questions potentially lies in the use of certain technical procedures associated with treaty ratification in international law relating. The Convention could be ratified with a “reservation” to Article 4(1), which would void or limit the applicability of this article to Canada. The Convention could also be ratified with an “interpretative clause” defining the scope or interpretation of Article 4(1).

4.1 Reservations and Interpretative Declarations

In international law, a state may make ratification of a treaty or convention subject to a reservation or an interpretative clause.

A **reservation** is a unilateral declaration whereby a state excludes or modifies the legal effect of a treaty provision as it applies to that state. A state may proclaim a reservation only at the time of ratification; subsequently, the state may withdraw it but may not issue another reservation. Thus, Canada could ratify the ACHR with a reservation regarding Article 4(1), such that this article could not be invoked to justify an attack on abortion rights.

In an **interpretative declaration**, a state unilaterally specifies or clarifies the meaning or scope of its commitments under a treaty provision; it does not, as with a reservation, exclude or modify the provision, and indeed it agrees to be bound by every provision of the treaty. Canada could ratify the ACHR but specify how it interprets women’s “right to life” as protected by Article 4(1). Unlike a reservation, an interpretative declaration may be made or withdrawn at any time.

A **conditional interpretative declaration** is one whereby a state subjects its consent to be bound by a treaty to a particular interpretation of the treaty or some of its provisions. The other parties to the treaty must therefore express their agreement with the interpretation put forward by the state making the conditional interpretative declaration. Such a declaration means that in the event of an interpretation contrary to the one maintained by the state, there would be no consent to be bound by the treaty. Thus, a conditional declaration could have an effect similar to that of a reservation.

Finally, the mere fact that a state proclaims a reservation or an interpretative declaration does not mean that international tribunals will recognize it as such. Only the bodies having the necessary powers — in this case the

Inter-American Court of Human Rights — may determine the nature of a reservation or interpretative clause. That is why the government must express in the clearest possible terms its interpretation of the Convention’s provisions in order to clarify that it in no way consents to placing limitations on women’s acquired abortion and reproductive rights.

4.2 Model Interpretative Clauses

The Mexican Model

When it ratified the ACHR in 1981, Mexico issued an interpretative declaration with respect to Article 4(1), which reads, “...the Government of Mexico considers that the expression ‘in general’ used in that paragraph does not constitute an obligation to adopt, or keep in force, legislation to protect life ‘from the moment of conception,’ since this matter falls within the domain reserved to the States.”

But if one of the objectives is to contribute to the development of inter-American case law and “universal” human rights protections, this formulation is not necessarily satisfactory, for it confirms the discretionary power of states in regard to abortion and reproductive health. If few states have made such a declaration, then it is because they are convinced either that the foetus’s right to life is protected by Article 4(1)² or that the matter is largely left to national discretion. This latter possibility has a better chance of giving way to regional law advances in favour of women’s rights, including their right to equality, security, and health.

In Reference to Non-discrimination

Professor Rebecca Cook believes that the Convention should be ratified subject to an interpretative declaration that would affirm Canada’s strong commitment to improving women’s status and creating the conditions necessary for the full realization of their rights. To this end, Professor Cook proposes two possible approaches incorporating various aspects of recent developments in international women’s rights law. The first involves a general statement of an anti-discriminatory norm that would make interference with women’s specific pregnancy and birthing needs tantamount to sex discrimination. The text reads as follows:

² El Salvador, for example, opted to criminalize abortion under all circumstances in 1998, even when the pregnancy is the result of rape or the abortion is required for therapeutic reasons. In 1999, El Salvador went so far as to amend its constitution to recognize that a human being exists “from the moment of conception.” In the campaign leading up to the adoption of this amendment, the ACHR was invoked as a justification for heightened protection of fetal rights. See *Persecuted: Political Process and Abortion Legislation in El Salvador: A Human Rights Analysis*, Center for Reproductive Law and Policy, New York, 2000.

Canada understands this Convention to be read as a whole, and consistently with the object and purpose of the Convention to ensure that women enjoy all the rights of this Convention on a basis of equality with men. Moreover, Canada understands that this Convention will be applied in Canada consistently with Canada's obligations under other international treaties to which it is a party, including the Convention on the Elimination of All Forms of Discrimination against Women. Canada understands that this Convention is to be interpreted to ensure that women's distinct needs with regard to pregnancy and childbirth will be respected, protected and fulfilled, and where they are not that constitutes sex discrimination contrary to object and purpose of the American Convention.³

Cook argues that this formulation would allow for an interpretation of the Convention in keeping with the norms developed under CEDAW, in particular the recent General Recommendation 24 on women and health, which states that "criminalizing medical procedures only needed by women is a form of sex discrimination." However, she does not specifically mention abortion, and given the prevailing political context, it might be appropriate to include an explicit reference to it.

In Reference to Women's Health Rights

Cook also proposes a second option that partakes more clearly of the right-to-health paradigm. This interpretative declaration would take account of the work done internationally to reduce pregnancy-related mortality and would seek to ensure that the interpretation of Article 4(1) guarantees women's freedom of choice with respect to maternity. This option reads as follows:

Canada interprets this Convention to ensure sexual nondiscrimination in access to health care. This requires access to services that are distinctive to women's health needs, and that enable the reduction of maternal mortality and morbidity. Such services include those that enable women to survive pregnancy and childbirth, including services to ensure women free choice of maternity, and access to basic obstetric care, prenatal care and nutrition. Moreover, Canada understands this Convention to mean that such services can be provided only consistently with women's rights protected under this Convention and under other Conventions to which Canada is party.

This proposal, which recognizes freedom of choice, ties women's right to health services to their right to equality; in addition, it has the merit of adhering to the letter and spirit of the ACHR as it relates to women's economic and social rights. It could prove useful in interpreting women's right to receive abortion services in Canada, particularly in the provinces, e.g., New Brunswick, where public health insurance only reimburses the costs of those abortions deemed "medically necessary" by two physicians.

It would also, surely, be appropriate to word the interpretative clause in such a way as to establish the interdependence between the recognition of women's abortion rights and their right to life, liberty, and security. To this end, it might be useful to lobby for Canada's interpretative declaration to cover both Article 4(1) and

³ Cook, Rebecca, "Canadian Ratification of the American Convention on Human Rights: Letter of Support from Professor Rebecca Cook," online at Rights & Democracy, <www.ichrdd.ca>.

Article 7 (right to personal liberty and security). This would entrench the full implications of the Supreme Court decision in *Morgentaler*. Furthermore, it would be desirable to specify that any restriction on women's right to interrupt an unwanted pregnancy jeopardizes their right to equality.

Clarify the Status of "Person" in Canadian Law

It might additionally be appropriate to enrich the declaration by specifying that Canada interprets the word "person" as a human being born alive and viable.

4.3 Issues for Discussion, Necessary Decisions

One of the stakes raised by the ratification of the Convention is the attempt to participate actively in the inter-American human rights protection system while seizing the opportunity to secure from the Canadian government an affirmation of women's full abortion and reproductive health rights. But it is clear that an outright ratification of the ACHR is insufficient to protect the acquired rights of Canadian women in this area. Two possible options suggest themselves.

Ratify the ACHR with a Reservation?

One possibility would be for the Convention to be ratified with a reservation regarding ACHR Article 4(1). The advantage of this option is its simplicity and clarity; the effect of a reservation would be to guarantee that the provisions protecting the right to life "in general, from the moment of conception" could not be invoked to limit abortion rights in Canada. This option is the one preferred by the Senate Standing Committee on Human Rights.⁴

However, a refusal to recognize the right to life of all persons is in itself problematic. In this regard, the Senate report mentions an Inter-American Court of Human Rights decision to the effect that even if, in principle, a reservation with respect to the right to life is incompatible with the purpose and object of the ACHR, "the situation would be different if a reservation sought merely to restrict certain aspects of a non-derogable right without depriving the right as a whole of its basic purpose."

Moreover, the fact of adopting a reservation regarding Article 4(1) could be interpreted as a concession to the most restrictive and defeatist interpretation of Article 4(1). In so doing, we would be abdicating our participation in the development of inter-American case law that acknowledges the dependence of women's right to life on

⁴ *Enhancing Canada's Role in the OAS: Canadian Adherence to the American Convention on Human Rights*. Report of the Standing Senate Committee on Human Rights, May 2003, p. 62.

access to legal abortion services. We would be declining to take part in an egalitarian, feminist reinterpretation of the ACHR.

Finally, it must be remembered that a new government might withdraw the reservation, leaving the general regime of Article 4(1) intact. There is a strong likelihood that a right-wing government would launch an attack on the “arbitrary” practice of abortion and attempt to reintroduce the concept of therapeutic abortion, limiting the procedure to circumstances in which it is deemed “medically necessary,” as witness a recent motion of the Canadian Alliance in the House of Commons.

Ratify the ACHR with an Interpretative Declaration?

This is why proposals for an **interpretative declaration** are particularly interesting. By subjecting ratification of the ACHR to one or more interpretative clauses, we would be laying the groundwork at the outset for the development of a progressive interpretation of Article 4(1) and, in fact, of the ACHR as a whole. The idea would be to propose an interpretive framework that would clearly establish the links between women’s reproductive rights and the civil, social, and economic rights guaranteed in the inter-American system as well as in the international human rights protection system. Starting from a desire to preserve our gains in the area of abortion, we could consolidate a progressive vision of the right to health, equality, liberty, and human dignity.

The addition of a conditional interpretative clause, as proposed by Action Canada for Population and Development,⁵ would theoretically be the best way to ensure that such an interpretation is subscribed to by all the countries that have ratified the ACHR. But in practice, it would no doubt be impossible to elicit certain countries’ support for such a progressive interpretation of Article 4(1).

Thus, Canada’s addition of an unqualified interpretative clause would be easier to achieve. But it would still be necessary to build a consensus among the various women’s groups and other groups of civil society on the exact wording of the clause, and the Canadian government would then have to be persuaded to adopt the proposed text. It would then be necessary to convince the players in the inter-American system to accept such an interpretation of Article 4(1), since they are not bound by the Canadian government’s interpretation.

Finally, as with a reservation, the Canadian government could at any time withdraw the interpretative declaration, creating a situation in which Article 4(1) would have to be interpreted as written.

⁵ *An Examination of the Possibility of Canada Ratifying the ACHR*, Action Canada for Population and Development, June 3, 2003.

For an Inter-American Convention on Reproductive Rights?

In Latin America, the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), in collaboration with various women's groups, is currently developing a draft convention on women's reproductive rights that links women's sexual and reproductive autonomy to the effective exercise of women's citizenship.⁶ They invoke the universality of human rights to counter the logic of the market and defend the progressive realization of economic and social rights. They denounce the rise of all manifestations of fundamentalism as being threats to women's human rights. This convention would be based on the principle of sexual equality and non-discrimination. CLADEM was a key group at the founding of the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women* and appears to be confident in the possibility of developing another regional women's rights protection instrument.⁷

Another way of showing our solidarity and our commitment to the promotion of women's rights in the hemisphere would clearly be to participate actively in the development of such a convention, which could compound the guarantees offered by the reservation or interpretative declaration to which Canada might subject its ratification of the ACHR.

Conclusion

In our view, the discussion within the Canadian women's movement and other human rights advocacy groups around the desirability of ratifying the ACHR ought to be grounded on the commitment to strengthening the inter-American human rights protection system and securing Canada's ratification of the ACHR. This commitment, however, must not be a mere formality. It must be made with a view to safeguarding and promoting Canadian women's reproductive rights in general and their abortion rights in particular, while contributing to the protection of the equal right of all women in the Americas to life, liberty, security, dignity, and health. It can be done!

⁶ See "Manifiesto: Nuestros Cuerpos, Nuestras Vidas," online at www.convencion.org.uy.

⁷ Valéria Pandjarian, "A Daring Proposal: Campaigning for an Inter-American Convention on Sexual Rights and Reproductive Rights" (2003) 11 *Gender and Development* 77).