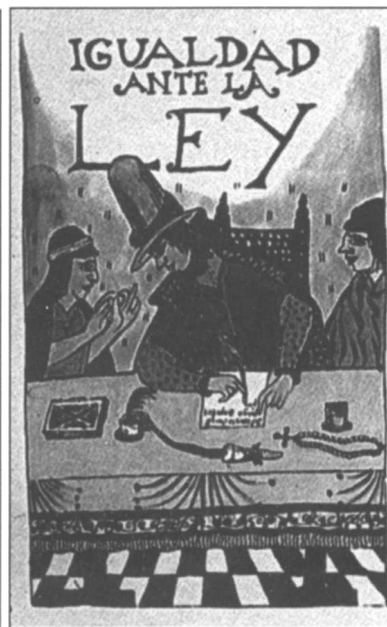
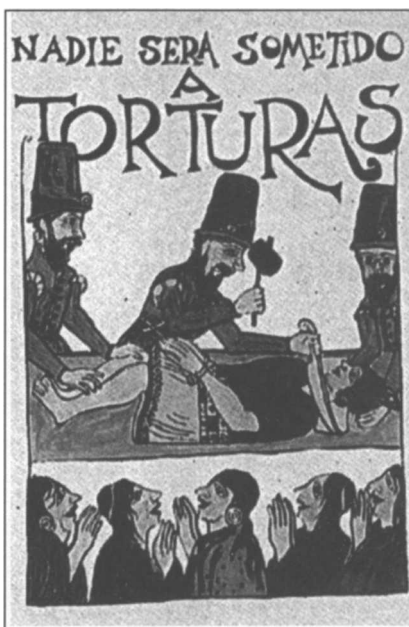


# LOOKING AHEAD

## NEW CHALLENGES FOR HUMAN RIGHTS ADVOCACY

Under the dictatorships, activists faced severe repression, but the challenges they confronted were clear cut. Now, democracy and neoliberalism have made their work much trickier.



(Left): No one shall be subjected to torture. (Right): All are equal before the law.

BY CARLOS BASOMBRÍO

A tightrope walker must maintain balance while moving steadfastly along a wire, with the constant danger of falling into the abyss below. This is precisely the nature of the challenge facing the Latin American human rights movement today: how to balance the work of promoting and defending human rights in the face of multiple demands, tensions and contradictions.<sup>1</sup>

Nearly a quarter of a century after its founding, the Latin American human rights community today faces

fundamental challenges of redefinition, both in terms of the nature of its mission and of the strategies it adopts to achieve its defined goals and objectives. It faces tensions on multiple fronts that are not easily resolved. For example, the human rights movement must simultaneously address human rights issues relating to the past as well as new problems linked to present rights violations. The balancing act also involves operating at different levels—the local, national and international—as well as intervening in the public and the private spheres at once, and figuring out how to deal with rights that are seemingly contradictory. And often, the pressures and demands of reality come up against the movement's own limitations to act. The following is a reflection on some of these challenges, tensions and balancing acts.

The tension between past and present human rights issues was aptly summarized by Martín Abregú, director of the Argentine Center for Legal and Social

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*Translated from the Spanish by NACLA.*

Studies (CELS), one of the region's pioneering human rights organizations, at a seminar on the new human rights agenda for Latin America. "How can we continue doing the same thing," he asked, "while not continuing to do the same thing?"<sup>2</sup>

Clearly much has changed since the human rights movement became a decisive actor in Latin American politics. Most countries in the region were governed by military dictatorships, and systematic human rights violations—forced disappearances, extrajudicial executions, torture, arbitrary detention—were the norm. Today, though democratic institutions are fragile and often ineffective, the region is ruled by elected governments (with the exception of Cuba and the ongoing and complex problem of an openly fraudulent electoral process in Peru). And while it is true that human rights violations continue throughout the region, and that in some countries, such as Colombia and Mexico, they are increasing, in most countries, this is not the result of systematic state policy as it was in the past.<sup>3</sup>

Furthermore, all the countries of South and Central America have signed the International Treaty on Civil and Political Rights and the American Convention on Human Rights, the most important international human rights documents dealing with civil and political rights. "Although it would be an exaggeration to state that the UN Committee on Human Rights, the UN High Commissioner for Human Rights, the Inter-American Human Rights Court and the Inter-American Commission of Human Rights have forced the hemisphere's governments to end systematic violations of human rights," notes George Vickers, director of the Washington Office on Latin America (WOLA), "these multilateral and regional institutions have played an important role in drawing international attention and criticism to denounce such violations."<sup>4</sup>

Yet despite these positive developments—and some significant achievements—violations of the rights to life and basic liberties persist, and those who perpetrate such abuses enjoy almost total impunity. Access to justice remains unequal for both economic and political reasons, and cultural and social discrimination is widespread. Latin America is the world's most unequal region, meaning that most of the population lacks the basic opportunities to lead a dignified life.

At the same time, while many of the problems that the Latin American human rights movement con-

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**Under democracy, the challenge is not to leave past human rights problems behind and "forget" them, but to link them with today's concerns.**

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fronted in the 1960s and 1970s have been resolved and many chapters have been closed, in many cases the way they were resolved did not contribute to the healing of the wounds of the past or establishing the bases for national reconciliation. Indeed, finding ways to address the legacies of dictatorship and internal war is a pending task in much of the region, one demanded by justice and ethics, and the need to ensure that such crimes are not repeated.

The issue of impunity is the most compelling example. Dictatorships came to an end, but many of the legacies of repressive rule remain, and the consequences of this can often surface in unexpected ways. In Argentina, for example, ten years after a series of laws were passed granting impunity to human rights violators, a new wave of indignation and judicial activism has emerged in relation to the still-unknown fate of the children of the victims of repression of the 1970s. In Chile, spurred in part by the London arrest of General Augusto Pinochet, human rights and impunity have once again become major issues. The question of impunity has also come to the fore in Peru, and has become a key element in denouncing the fundamentally antidemocratic nature of the Fujimori government. And in Guatemala, the risks of not punishing those responsible for the crimes of the past are illustrated by the assassination of Monsignor Juan Gerardi 48 hours after he released a critical human rights report, and by the widespread wave of criminality.

Given the history of the Latin American human rights movement, it is perhaps natural that it dedicate itself to issues related to past human rights violations. But it is impossible to deal with the problems of the past without taking into account those of the present. The challenge is not to leave those past problems behind and "forget" them, but to link them to today's concerns. This is precisely what many human rights groups are seeking to do, through public education campaigns that draw the connections between the impunity surrounding past human rights violations and the generalized climate of impunity this tends to create in which corruption and other crimes can flourish. In Peru, for example, human rights groups argue that it will be impossible to deal successfully with tax evasion or to compel drivers to respect basic traffic rules as long as people perceive that the government itself does not respect the Constitution, and that when it violates the law, nothing happens.

Another key issue facing the Latin American human rights movement is the question of social, economic and cultural rights and how to link the struggle for these rights with civil and political rights. It is unnecessary to underscore the importance of social, economic and cultural rights and the priority we should place on them. The point I wish to highlight here has to do with the contradictions that emerge in the day-to-day struggles to implement those rights in poor countries with extreme inequality and weak democratic traditions, as is the case in Latin America.

Two opposing lines of reasoning which lead to similar political practices provide compelling reasons to analyze this issue from a human rights perspective. One perspective, sustained by conservative politicians, entrepreneurs, international technocrats and some sectors of the armed forces, suggests that it is not possible to advance economic, social and cultural rights given the constraints of modern democracy. According to this reasoning, irresponsible politicians with an eye towards the next electoral season undermine sensible economic programs, which often take years to yield results, through populist measures geared toward keeping themselves in power. Social and economic rights must be sacrificed now so that eventually, with the "correct" application of neoliberal economic measures, everyone will benefit. After all, how can domestic or foreign investors trust their money in countries full of powerful unions ready to call strikes? Endless debates in Congress, constitutional norms, and even judicial decisions impose real limits to the implementation of crucially needed economic measures. Consistent economic results—which alone will ensure social, economic and cultural rights for the population—will be difficult to obtain if presidents and policies change every four or five years. In sum, this view sees democracy and civil rights as the privilege of rich countries, while in poor countries like those of Latin America, such rights should be postponed until a basic level of development has been achieved.

Another line of reasoning, often expressed by human rights activists, grassroots leaders, left-wing politicians, and reformist sectors within the armed



*Universal suffrage.*

forces, suggests that democracy and civil and political rights can have little real significance when the majority of people live in extreme poverty. The rule of law and democratic institutions have little meaning to a population living on the verge of starvation. Why should we waste our energies fighting for democracy if it cannot bring an end to social injustice? Elections, parliaments and other formal aspects of democracy have little importance if politicians do nothing about the real problems of the people. Advocates of this view believe that it is hypocritical for developed countries to extol Latin American democracies while at the same time imposing economic policies that increase the suffering and exclusion of millions

of people. In short, it makes little sense to worry about "formal democracy" when we should be striving for "real democracy," understood as equal access to basic economic, social and cultural rights for the majority of the population.

The paradox is that in spite of different—or even opposing—motivations, both lines of reasoning may lead to acceptance of the idea that democracy is not a concern that can or should be addressed in the present. In other words, both arguments may lead to the conclusion that poor countries should wait and deal with the question of democracy only when economic conditions improve or when inequalities diminish.

These types of issues are increasingly at the heart of political debates in Latin America, and they confront the human rights community with a serious dilemma. First is the question of how and whether it is possible to devise, both in theory and in practice, creative strategies and agendas based on the notion of the indivisibility of human rights. Related to this is the challenge of convincing the majority of people that the best political environment to fight for economic, social and cultural rights is one in which civil and political rights are respected, and vice versa.

Over the past decade, violence and crime have surfaced as seemingly insoluble problems in Latin America. El Salvador, for example, with an average of 120 homicides per 100,000 inhabitants, has the highest murder rate in the world. The figure is even higher in Colombian cities such as Medellín, and in the country as a whole an average

of 30,000 people are assassinated each year. Homicide is not the only problem: There has been a dramatic increase in robberies and assaults, and youth gangs, kidnapping rings and drug traffickers terrorize many cities in the region. In Guatemala and Jamaica, for example, crime has reached such levels that it is usually perceived as the primary social problem, even before poverty or inequality. The situation is similar in countries as diverse in levels of socio-economic development as Brazil, Venezuela, Mexico, Haiti and Nicaragua. And even in countries with the lowest rates of criminality in the region, such as Bolivia and Chile, the common perception is one of increasing danger.<sup>5</sup>

The impact of this crime wave on human rights is visible. Anti-crime legislation and policies designed to deal with crime often do not meet international standards for due process or police accountability. "Get tough" measures frequently lead to police abuse, and impunity continues to be a serious problem. In the face of what is perceived as ineffective policing in some countries, the armed forces have been placed in charge of internal security. Ineffective law enforcement has led to an epidemic of vigilantism, in which ordinary people take "justice" into their own hands through lynchings and the rise of "social cleansing" death squads. In this context, new forms of discrimination are increasingly evident, particularly in terms of police repression and biased sentencing practices based on age, race and socio-economic status.

But while the nature of the problem is clearly evident, it is extremely complex to address from a human rights perspective. In fact, the crime issue presents us with an apparent clash of rights. On the one hand, civil and political rights ensure citizens protection from state abuse and guarantee the accused free and equal access to due process and a fair trial. On the other hand, citizens have a right to live in a secure environment that protects their lives and their property from the aggression of others. To simplify the problem even further, a growing number of people in Latin America believe that the first category of rights—civil and political—should, if necessary, be sacrificed to guarantee the latter. In other words, the rights of alleged criminals to fair treatment by the state, including freedom from physical violence and due process, can be sacrificed to ensure order for the majority.

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**A growing number of people believe that civil and political rights should, if necessary, be sacrificed to guarantee their right to live in a secure environment that protects their lives and property.**

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It would be difficult, for example, to ask the father of a teenage girl from a low-income neighborhood who has been raped and killed to reflect on the social, economic and cultural causes that led the perpetrators to carry out such a brutal act. And it is understandable that the parents of other teenagers who heard about such an incident would support leaders and politicians who promise "get tough" measures and claim that if given the chance, they could solve such problems immediately even though such proposals are patently inconsistent and may make the situation worse. The task for human rights

advocates is to convince the father in this case that his support for "get tough" measures may inadvertently be creating the conditions for his son—who because he is young, male and poor is considered "suspicious" by definition—to be arbitrarily detained, or in extreme scenarios, disappeared.<sup>6</sup>

This poses a terrible dilemma for the human rights community: how to continue defending human rights and not lose the support of the "good citizen" who might perceive us as protecting criminals instead of supporting victims. There are no easy answers to this question, but the ongoing struggle to uphold the human rights community's legitimacy throughout the region will turn on this difficult issue.

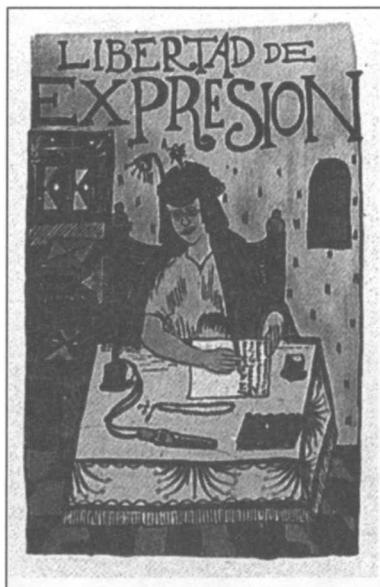
**T**hese new and complex challenges confronting the Latin American human rights community today can lead almost logically to a desire to take on new and more diverse struggles. This tendency is reinforced by the argument for universality: Since human rights are universal and indivisible, the human rights community should not divide them and focus only on one aspect, that is, civil and political rights. A further argument supporting the need to expand our work is that for the majority of the population, violations of civil and political rights are not as relevant or frequent as abuses of economic, social and cultural rights.

These are impeccable reasons in theory, but in practice many questions emerge. How far should existing human rights organizations expand their horizons and the scope of their actions? What is it that these groups know how to do, and what, if any, are the limits of their mandate? How far can their reach extend into other fields, and to what extent do they risk incursions into the work of other organizations?

Martín Abregú has spoken of the necessity of “building a human rights movement that transcends its beginnings and yet maintains the legitimacy derived from those earlier struggles.”<sup>77</sup> There are at least three difficulties in achieving this goal, according to Abregú. First, it is necessary to identify the specific mandate for human rights work and what distinguishes it from the work of trade unions, political parties, churches and other organizations of civil society. Second, it is important to figure out how to maintain the radical nature of the movement’s mission as it attempts to be perceived as a valid intermediary with the state. This is important since, with the advent of elected governments and the subsequent opening of (some) political spaces, human rights groups have new opportunities to promote their agendas. Finally, there is the question of representation. We must remember that the movement originally represented victims of state terror. But today, says Abregú, it is not necessary for the movement to represent anyone in order to promote and defend human rights, because that is the right— and duty— of all citizens.

The human rights movement in Latin America is in the midst of a process of redefinition regarding all of these issues. This effort to clearly define the human rights mandate stems from a broad agreement that we are living in a period of dramatic change in which all truths are questioned. But the consensus stops there; from then on there are very different ideas as to how and to what degree the human rights community’s “historical” mandate should be expanded or constrained. Two principal risks arise from this dilemma that may be more easily grasped by grossly simplifying the two extreme possibilities. On the one hand is an absolute indifference to any type of change and an insistence on always doing the same thing, no matter how much reality changes. On the other hand is the risk of thinking we can intervene in all arenas and at all times because human rights are indivisible and universal. The answer must come from an intelligent search for equilibrium between these two extreme poles.

**I**n this search for balance, it is necessary to clearly define the goals of the movement and to strive for legitimacy and effectiveness. We live in a



*Freedom of Expression.*

very particular historical era which itself poses challenges to the struggle for human rights. We live in a “new world order” in which human rights, as a philosophy and a world view, are no longer marginalized and stigmatized—they have become, as North Americans would say, “politically correct.” In some parts of the world, human rights activists even speak of the danger of human rights becoming the “official ideology.” (In Peru and in Latin America in general, we yearn to have such difficulties!) Along with this broad recognition of the importance of human rights is a context in which the struggle for human rights is perhaps no more risky or difficult than before, but it is certainly more

complex. As the threats and dangers become less obvious and less defined, it is more difficult to wage battle against them and construct legitimacy for the human rights movement based on the actions carried out in the process.

This is where the link between legitimacy and efficacy comes into play. The human rights movement must be effective, but from a human rights perspective. Understood this way, legitimacy and efficacy can be acquired only by maintaining a radical critique of power, in combination with a capacity to contribute towards concrete solutions to immediate problems people face on a day-to-day basis. In other words, we must figure out how to construct a link between human rights issues typically located in the private sphere—such as domestic violence—with larger debates about power and accountability in the public sphere. In this sense, the human rights movement must be willing to challenge people’s fears and conventional wisdom without losing their support, and learn to tap into their intuitive perceptions. We must figure out how to explain to the father of the rape victim that a human rights perspective—defending due process, for example—is the best path to follow even in such a dramatic and painful situation. In the end, if legitimacy and effectiveness are not linked, the human rights movement’s radical critique of the status quo will have little meaning for the average citizen.

The tightrope walker must be very good at his art. And though the possibility of wavering is ever present, the cause—the struggle for human dignity—is a powerful stimulus to continue the balancing act. ■

**Looking Ahead: New Challenges for Human Rights Advocacy**

- Ernesto de la Jara, International Symposium, "En Camino al Siglo XXI: Desafíos y estrategias de la comunidad latinoamericana de derechos humanos," Organized by the Washington Office on Latin America (WOLA) and the Institute for Legal Defense (IDL), Lima, July 23-24, 1999.
- Martín Abregú, International Symposium, "50 años después... ¿y ahora qué?" Organized by Diakonia, Lima, November 6-8, 1998.
- George Vickers, International Symposium, "En Camino al Siglo XXI: Desafíos y estrategias de la comunidad latinoamericana de derechos humanos."
- Vickers, "En Camino al Siglo XXI."
- Carlos Basombrío, "Crime: A Latin American Challenge for Human Rights," *Human Rights Dialogue* (Carnegie Council on Ethics and International Affairs), Vol. 2, No. 1 (Winter 2000).
- Basombrío, "Crime."
- Martín Abregú, International Symposium, "En Camino al Siglo XXI: Desafíos y estrategias de la comunidad latinoamericana de derechos humanos."

**Human Rights After the Dictatorship: Lessons from Argentina**

- See *Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas* (Buenos Aires: EUDEBA, 1999, Fifth Edition); and Eduardo Luis Duhalde, *El estado terrorista argentino: Quince años después, una mirada crítica* (Buenos Aires: EUDEBA, 1999).
- Derechos humanos en la Argentina: Informe anual 2000* (Buenos Aires: EUDEBA-CELS, 2000).
- See Carlos Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996); Carlos Acuña and Catalina Smulovitz, "Militares en la transición argentina: Del gobierno a la subordinación constitucional," in Carlos Acuña et. al., eds., *Juicios, castigos y memorias* (Buenos Aires: Editorial Nueva Visión, 1995); Marcelo Sancinetti, *Derechos humanos en la Argentina post-dictatorial* (Buenos Aires: Lerner Editores, 1988); and Jaime Malamud-Goti, *Game Without End* (Tulsa: Oklahoma U. Press, 1996).
- Juan Méndez, Guillermo O'Donnell and Paulo Sérgio Pinheiro, eds., *The (Un)Rule of Law and the Underprivileged in Latin America* (South Bend: University of Notre Dame Press, 1999).
- See Nino, *Radical Evil*; Acuña and Smulovitz, "Militares"; Sancinetti, *Derechos humanos*; Goti, *Game Without End*; and Hugo Frühling, "From Dictatorship to Democracy: Law and Social Change in the Andean Region and the Southern Cone of South America," in Mary McClymont and Stephen Golomb, eds., *Many Roads to Justice: The Law-related Work of the Ford Foundation Grantees Around the World* (New York: Ford Foundation, 2000).
- Martín Abregú, "La aplicación del derecho internacional de los derechos humanos por los tribunales: Una introducción," in Martín Abregú and Christian Courts, eds., *La aplicación de los tratados sobre derechos humanos por los tribunales locales* (Buenos Aires: Editores del Puerto-CELS, 1997).
- See Manuel Garrido, "Informe sobre Argentina," in Jorge Correa Suti, ed., *Situación y políticas judiciales en América Latina* (Santiago: Universidad Diego Portales Escuela de Derecho, Serie Publicaciones Especiales No. 2, N.D.).
- See *La inseguridad policial: Violencia de las fuerzas de seguridad en la Argentina* (Buenos Aires: EUDEBA-Human Rights Watch-CELS, 1998).

**Military Rumlblings in Argentina**

- Daniel Gallo, "Un tribunal castrense rechaza la justicia civil," *La Nación* (Buenos Aires), March 31, 2000.
- The military tribunal reports to the Executive and is an administrative body responsible only for sanctioning narrow military infractions. It is not part of the judicial branch of government.
- The Human Rights secretariat is within the Justice Ministry.
- See "Argentina: Army Intentionally Destroys Documentation Regarding Human Rights Abuses," *Latin America Data Base*, Vol. 10, No. 11 (March 24, 2000).

**Building a Culture of Rights**

- Among other institutional settings, this debate has been promoted by and carried out under the auspices of the Instituto Latinoamericano de Servicios Legales Alternativos (ILSA) of Bogotá, Colombia. National research and seminar proceedings appear in various publications of the Institute. See, for example, *El Otro Derecho*, No. 17, ILSA (1996).
- See Martha C. Nussbaum and Amartya Sen, eds., *The Quality of Life* (London: Oxford University Press/The United Nations University, 1993).
- The fundamental text is T.H. Marshall, *Class, Citizenship and Social Class* (New York: Doubleday, 1963). For a critique of the idea of

- "generations of rights" see Asbjorn Eide, Catarina Krause and Allan Rosas, eds., *Economic, Social and Cultural Rights* (Dordrecht: Kluwer Academic Publishers, 1995).
- While the use of the term "neopopulism" is questionable, it refers to "a regime and a style of doing politics in which the relationship of the leader to the masses does not involve the mediation of autonomous institutions." See Aldo Panfichi and Cynthia Sanborn, "Democracia y neopopulismo en el Perú contemporáneo," *Márgenes*, V. 8, No. 13/14 (November 1995), p. 45.
  - Javier Iguñiz, *Desigualdad y pobreza en el mundo* (Lima: Centro de Estudios Peruanos, 1999), pp. 84 and 110.
  - For the Peruvian case, see Sinesio López, *Ciudadanos reales e imaginarios* (Lima: Instituto Diálogo y Propuesta, 1997).
  - From the beginning of modern philosophy the right to security was considered a human right. Locke, for example, mentions this right together with the right to freedom and to property. In recent decades, most notably in UN documents, the concept of security has been broadened to include the aspects mentioned. It could be said that the "negative view" of security, restricted to protection in the face of external aggression, is being transformed into a more "positive" view of human security.
  - This idea draws on the work of the noted economist Amartya Sen. A Spanish-language anthology of his work, published in English between 1985 and 1995, is Amartya Sen, *Bienestar, justicia y mercado* (Barcelona: Paidós, 1997).
  - Iguñiz, *Desigualdad y pobreza en el mundo*, p. 112.

**"Gender Equity" Without Social Justice**

- I would like to thank Linzi Manicow, Melanie Randall, Elizabeth Riddell-Dixon, and Malcolm Blinco for their useful suggestions for this article.
- See Miriam Abramovay and Mary García Castro, *Engendrando um novo feminismo: Mulheres lideres de base* (São Paulo: UNESCO/Cepia, 1998); and Verónica Schild, "Market Citizenship and the 'New Democracies': The Ambiguous Legacies of Contemporary Chilean Women's Movements," *Social Politics* (Summer 1998), pp. 232-249.
- See Lucía Rayas, "Criminalizing Abortion. A Crime Against Women," in *NACLA Report on the Americas*, Vol. XXXI, No. 4 (January/February 1998), p. 25.
- William Roseberry, "Hegemony and the Language of Contention," in G. M. Joseph and D. Nugent, eds., *Everyday Forms of State Formation* (Durham, N.C.: Duke University Press 1994), p. 361.
- Author's interview, Santiago, October 1991. See also Verónica Schild, "Recasting 'Popular' Movements: Gender and Political Learning in Neighborhood Organizations in Chile," in *Latin American Perspectives*, Vol. 21, No. 2 (1994), pp. 59-80.
- See Verónica Schild, "Neoliberalism's New Gendered Market Citizens: The 'Civilizing' Dimension of Social Programs in Chile," *Citizenship Studies* (forthcoming 2000).
- In Jonathan Franklin, "Recession puts Chileans in the mood to punish coalition at polls," *The Guardian*, December 10, 1999, p. 21.
- For regional figures in women's participation in formal employment, see Teresa Valdés and Enrique Gomariz, *Mujeres latinoamericanas en cifras: Tomo comparativo*, (Santiago: Instituto de la Mujer/Facultad Latinoamericana de Ciencias Sociales, 1995), p. 63.
- See F. Marquéz and M. Schkolnik, "La reinvencción del trabajo y del espacio privado: Para una mayor equidad entre hombres y mujeres" (Santiago: SUR, Centro de Estudios Sociales y Educación, documento no. 163).
- Author's interview, Santiago, December 1997.
- Author's interview, Julia, community leader from La Pintana, and Miriam Ortega, Director of Centro Ana Clara, Santiago, December 1997.
- Author's interviews with women leaders of popular women's organizations in Santiago, December 1997; and Mary García Castro, "Gender and Power: Voices of Brazilian Women in Community Based Organizations (CBOs)," Paper presented at the pre-LASA conference organized by LASA's Gender Section, "An Assessment of Gender Policies in Latin America," Miami, Fla., March 14-15, 2000.
- Author's interviews with members of REMOS, and of Centro Ana Clara, Santiago, December 1997; see also Mary García Castro, "Gender and Power," p. 18.
- Rosalva Aida Hernández Castillo, "Construyendo la utopía: Esperanzas y desafíos de las mujeres chiapanecas de frente al siglo XXI," in Rosalva Aida Hernández Castillo, ed., *La otra palabra: Mujeres y violencia en Chiapas, antes y después de Acteal* (Mexico: CIESAS, 1998) pp. 125-142.
- Rosalva Aida Hernández Castillo, p. 136.