

Vance Center Amicus Network: Supporting Democracy in Latin America

A lesbian judge fighting for custody of her children. A female police officer challenging gender discrimination in the work place resulting from an attempt to seek legal protection as a survivor of domestic violence. Two justice advocates working to guarantee access to public information involving genetically modified foods.

These three matters, originating in Chile, are pending before the Inter-American Commission on Human Rights, the Washington-based seven-member board – an autonomous organ of the Organization of American States created in 1959 – that hears cases brought by plaintiffs who allege human rights violations by governments throughout the hemisphere and who believe that they were denied justice in their country. Although decisions made by the commission are not binding, they carry moral authority and are widely acknowledged in Latin America. If governments rebuke decisions, the commission can appeal to the Inter-American Court on Human Rights, which was established in 1978 and whose decisions are binding on nations that have accepted its jurisdiction. The United States does not recognize the court's authority.

The cases described above are examples of a transformational movement across the region that seeks to invoke the law to ensure that justice prevails. As countries in the Americas advance toward democracy and inclusion, the influence of the Inter-American system has grown, as has the importance of adhering to international human rights norms and practices. In 2005 alone, the commission heard petitions originating in nine countries.

With the establishment of its "Amicus Network" in 2004, the Vance Center facilitates the preparation of amicus briefs in human rights cases before to the commission and court at the request of justice advocates throughout the Americas. The New York City Bar Association acts as amici in some of the matters and in others the Vance Center has recruited other organizations to serve as amici. Joan Vermeulen, executive director of the Vance Center, explains, "it is important for the evolution of democratic and human rights in the Americas that the Inter-American commissioners and judges are aware of developments taking place on these issues in other jurisdictions. Likewise, it is important for the strengthening of democratic rights and values that there is cross border collaboration among lawyers and advocates committed to advancing these issues and concerns."

The *Atala v. Chile* brief on custody rights and discrimination was prepared by lawyers in the New York and San Francisco offices of Morrison & Foerster LLP on behalf of the New York City Bar Association; Human Rights Watch; the International Gay and Lesbian Human Rights Commission; the International Women's Human Rights Law Clinic at the City University of New York; Lawyers for Children, Inc.; the Legal Aid Society of New York; Legal Momentum; and the National Center for Lesbian Rights. The case dates back to 2003 when the petitioner's husband filed a lawsuit against his former wife over custody of their three daughters. The daughters had been under their

mother's custody since she and their father separated, and continued to be under her custody after she began to openly live as lesbian and brought her female partner to the house where she lives with her children. The petitioner's husband claimed that under the Political Constitution of Chile and the United Nations Convention on Children Rights, the best interests of the children are to be furthered and protected, and that in order to achieve such goals the three girls should be under his custody. The petitioner's husband prevailed at the level of the Supreme Court when the Court ruled that the girls are surrounded by social, familial and educational distress, and could be the subject of discrimination because of the homosexual relationship of their mother. The Court also stated that by freely and publicly assuming her lesbianism, she had given preference to her interest before those of her daughters, especially when she decided to live together with her partner. Amici curiae presented psychological studies and decisions from U.S. and foreign jurisdictions to show that sexual orientation has no bearing on a person's ability to be a good parent, and that depriving the petitioner of custody of her children constitutes discrimination on the basis of sexual orientation.

In two other cases, the matter of *Valdes v. Chile* and the matter of *Gonzalez v. Chile*, the Vance Center facilitated the submission of amicus briefs to the commission. The Houston office of Mayer, Brown, Rowe & Maw LLP developed the *Valdes v. Chile* brief in collaboration with Legal Momentum, which acted as amicus curiae. The petitioner in the case was a member of the Chilean police force who filed a claim of domestic violence against her husband. Instead of investigating the claim, the police dismissed her from the force. The brief argued that the petitioner's termination violated international laws and norms governing gender discrimination and the obligations employers have to assist rather than punish victims of domestic violence.

In the matter of *Gonzalez v. Chile*, Dechert LLP drafted a brief in collaboration with both U.S. and Latin American public interest organizations. The case concerns several Chilean court decisions in which the public was denied access to information on government policies about genetically modified food. The brief presented U.S. and international precedents in support of a government's obligation to provide the public with information on transgenic cultivation as it relates to protecting the public.

A fourth brief the Center is facilitating, which Torys LLP is developing, involves a Chilean journalist's accusation of corruption against a senator. The courts failed to address journalistic freedom of expression and found that the damage to the senator's honor was actionable because the journalist had not proven the truth of his charges against the senator. The brief is due to be filed at the commission this summer and addresses issues concerning criminal defamation and the procedural and substantive safeguards that should be adopted to ensure free and open debate on the issues of public concern.

Currently, the Vance Center facilitates the preparation of briefs to support public interest and human rights efforts in Latin America, although it hopes to extend this strategy to benefit other regions. For more information on the Vance Center's Amicus Network, and

to learn how to participate, please visit www.vancecenter.org or send an e-mail to vance@nycbar.org.