

Legislative Advances Ten Years after Cairo - A Report.

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A FOREWORD

This coming September marks the tenth anniversary of the United Nations International Conference on Population and Development (ICPD) and its Program of Action adopted in Cairo in 1994.

The follow-up and evaluation of the Cairo Consensus included numerous actions. One of them consisted of the ICPD+10 Meeting of Regional Networks and Campaigns held in La Paz on 30 and 31 August 2003. At this meeting, much emphasis was placed on the importance of comparing the steps forward, achievements and challenges of the past ten years with the commitments made by States regarding the implementation of the Cairo Agenda. At that meeting, CLADEM undertook a commitment to prepare a systematization document on normative advances made in our region over the past decade regarding the Cairo Program of Action.

Highly conservative and fundamentalist positions have emerged and gained strength to the point that currently they hold sway in key bodies of some of the most influential governments within the United Nations system. The resulting situation is one of considerable vulnerability which actually puts the advances achieved in the region in the area of the Cairo Consensus (the points of consensus achieved by governments on the issues debated within the framework of the Cairo Conference) at risk of dismantling. It is necessary to reaffirm and uphold whatever measures have been adopted to recognize and expand the legislative framework for the defence of women's human rights.

Conservative tendencies have exercised various forms of pressure on Latin American governments to make them halt the process of recognition of these rights. Uruguay and Bolivia provide clear and very recent examples of such actions. In Uruguay, intense external and internal lobbying played a role in defeating a reproductive health bill in the Uruguayan Senate. In Bolivia, the bill of a framework law on sexual and reproductive rights was approved unanimously by Parliament, but its ratification and passage as a law is being blocked by the President of the Republic in response to pressure from conservative sectors of the Catholic Church. It seems that mediation in Bolivia's serious social conflicts was offered in exchange for vetoing the law.

To this should be added that, as a rule, our governments feature extreme political, social and economic fragility, and a democratic institutional framework in its infancy.

In spite of these unfavourable circumstances, during the decade since 1994 women movements' demands have been a major driving force behind numerous governmental efforts that have resulted in a number of normative changes for the better. Albeit at various levels and with different scopes, these have either conformed to or been aimed at formalizing

the commitments undertaken within the framework of the Declaration and the Program of Action agreed on at the Conference.

Follow-up monitoring reports produced in the region to evaluate the degree of compliance with the commitments undertaken by our governments within the framework of the Conference provided valuable information on each country's situation. Nevertheless, this information was dispersed, which made it very difficult both to analyze legislative trends prevailing at the regional level, and to show achievements in a systematic, organized fashion.

In view of this, of the challenging circumstances attending the ICPD+10 process, and of the need for instruments enabling us to highlight any steps forward and successes achieved on the women's rights issue, we have decided it appropriate to produce material illustrating the state of progress in this area as a way to encourage our governments to uphold the landmark Cairo Consensus.

It is our hope that this document will be of use to all those who work to ensure people's full enjoyment of their sexual and reproductive rights. We also believe it will be a necessary tool in the hands of women's organizations in our region. Indeed, we believe that upholding and complying with the Cairo Platform for Action is an ethical commitment of our States to future generations.

Each piece of legislation put into being to protect women's health is the result of the joint efforts of thousands of people from various social sectors. Each step forward is preceded or followed by wide-ranging social debates on the issue of men's and women's rights to integral health. This is a process that started ten years ago and cannot be stopped. Nor, however, is it a quick or easy one. It is likely to require, in fact, another decade of hard work. Thanks to the debate elicited by this process, however, many people now know that health is a human right they are entitled to enjoy fully and in every area.

Accordingly, we take this opportunity to again remind our governments that the Cairo Consensus marked a political turning point. Although we are a long way from our goal, there can be no backtracking on the implementation and enforcement of men's and women's human rights in our region.

Lima, May 2004



AN INTRODUCTION

The objective of this report is to provide a tool enabling decision-makers to evaluate the progress achieved towards the implementation of the Cairo Program of Action. It is also an attempt to identify and analyze normative advances in 20 countries in the region.

The specific issues addressed are those developed in the ICPD Program of Action, with the exception of those relating to HIV/AIDS prevention and violence against women. This exclusion is largely due to the fact that both issues have been discussed in other documents.

This report contains information obtained through the Internet and by systematizing diagnostic studies on sexual and reproductive rights prepared by individual national CLADEMs¹. It also considered governmental reports to UN Committees monitoring compliance with international human rights treaties, and alternative reports prepared by social organizations.

The developments occurred over the ten years elapsed since the International Conference on Population and Development was held in Cairo in 1994 have changed the way human rights are generally understood and perceived. In Latin American countries, the struggle for translating them into practices is fierce, for it entails transforming cultural and religious approaches and practices.

All Latin American and Spanish-speaking Caribbean countries are included. They appear in alphabetical order.

This study is focused on sexual and reproductive rights and sexual and reproductive health. The reference document used is Chapter Seven « Reproductive Rights and Reproductive Health of the Cairo Program of Action, which deals with reproductive rights proper, family planning, human sexuality and gender relations, and advances in recognizing the rights of adolescents of both sexes. In the sections devoted to the last two points, special emphasis is laid on sexual rights. Chapter VII of the Cairo Program of Action is reproduced in the Annex.

The legislative situation has been reviewed independently of enforcement or actual impact, except in those countries where alternative reports have been prepared for Committees monitoring compliance with United Nations conventions and treaties. The intention is to establish a baseline of the legal situation 10 years after Cairo, to be used as reference for purposes of comparative follow-up across the region.

In countries with a federal government structure, such as Argentina, Brazil, Mexico, and Venezuela, presenting an accurate overview of their enormously complex legislative situations turned out to be impossible due in part to a lack of data. In fact, the differences found inside each of them are so vast that it is appropriate to speak of several countries in

one. The most glaring inequalities were found between the capital, where legislation and services are quite advanced, and the farthest-flung provinces or states, lacking either innovative legislation or appropriate services, or both.

¹ The information collection period for those studies was 1995 –2000. Some countries produced updates in 2002 and 2003.

LEGISLATIVE TRENDS

The United Nations Program launched by the ICPD has been among the most productive in terms of social debate, legal change, programs and policies. As we reviewed the current legal context in the area of health, we found that the Cairo Consensus has provided the basis on which a complex legal structure has been built by means of constitutional changes, new domestic legislation and ministerial resolutions in several areas: education, health, social development, gender equality, and more.

Six years after the ICPD, at the Millennium Summit, the United Nations member States launched the Millennium Development Goals (MDGs) and committed themselves to work towards eight goals which, if fulfilled, will make it possible to achieve sustainable development, equity, and the elimination of poverty. Each and every one of the MDGs intertwines with the Cairo Program of Action. In order to follow-up compliance with those objective, indicators are being developed, programs and policies are being designed and progress is being made towards each objective, albeit slowly and partially.

As a result of the ICPD and the Millennium Summit, all States in our region have a commitment to: promote gender equality within the family as well as society at large; reduce poverty; guarantee enjoyment of the human right to health; draw up sexual and reproductive health plans; reduce maternal mortality; revise existing legislation; guarantee access to information, and take whatever measure may be necessary to guarantee the enjoyment of sexual rights and reproductive rights.

We are discussing a region where inequalities of every type are absolutely outrageous, where «*over 500 000 women suffer from chronic health problems due to poor care during pregnancy, childbirth and puerperium*»¹. Still, in spite of numerous difficulties, the combined efforts of social organizations, governmental agencies and the pressure exercised by social movements, have produced normative advances that are bringing about important qualitative changes in women's health.

The first advance is that all States mentioned in this study are signatory to the Cairo Programs and the United Nations Millennium Declaration.

The second advance is that all of them have ratified international human rights treaties enshrining the principle that health is a human right²; and that women have the right to be free from discrimination in the field of health care, and the right to access to reproductive health services³.

The third advance is that several States –Argentina, Brazil, Ecuador, Mexico, Paraguay, Peru and Venezuela– have already recognized reproductive rights as human rights, thereby granting constitutional status to their relevant treaty obligations. This is a great step forward

indeed, even though a vast deal remains to be done before a regional plan can be carried out to ensure full implementation of these rights.

At this point in time, high-level norms guarantee enjoyment by the entire population of the human right to health across the region, free from any discrimination, and including access to reproductive health services. In other words, the normative cover is adequate. What remains to be seen is the extent to which individual countries have incorporated respect for the human right to health into domestic legislation, to ensure that international commitments are translated into a reality benefiting all citizens of both sexes.

Most advances in implementing the Cairo Program of Action recommendations have to do with the reproductive health services implemented in the twenty countries whose legislation has been reviewed for this study. The term «reproductive health services» is used for all such services, even though not all of them include the gender perspective adequately, nor is there any uniformity in the levels of assistance provided to ensure access to exercise of the human right to reproductive health by the population.

Reproductive rights are now protected by constitutional or statute law in a number of countries, mostly in South America. This is in itself a great step forward in the region, even though a regional plan based on formal legal recognition of such rights is yet to be implemented.

The family planning issue is still steeped in traditional ideas regarding the family and decision-making rights on procreation. This state of affairs affects the implementation of governmental programs controlled by the Executive Power, in that it limits in practice the rights recognized by the Legislative Power.

As the women's movement has pointed out, in no country does the population at large have guaranteed access to the full range of existing contraceptive methods. Gaps in managing and performing procedures impinge on the right to choose the contraception method, not to mention that a number of countries require the partner's consent. As a result, low-income population –an average 60% of the total in our region– do not have much choice when it comes to contraception.

In Central American countries, significant progress has been achieved in the fight against sexual exploitation, a serious social phenomenon showing clear signs of proliferation. Users or customers of adolescent victims of sexual exploitation are now liable to prosecution in Costa Rica, Panama, Nicaragua, El Salvador. In Peru, Congress has recently passed a bill of similar import. Puerto Rico statutes have long considered patronage of adolescent prostitutes a criminal offence. In Central America, measures have been adopted to improve procedures for the investigation and prosecution of patrons, and efforts have been made to implement mechanisms for assisting and protecting victims. This points to a tendency to address serious social problems by means of laws and law enforcement instead of investing in responsible prevention policies.

Most countries have in place labour legislation that tends to protect the rights of working mothers. A trend can be perceived towards legal recognition of family responsibilities, albeit one small step at a time. Economic reasons probably contribute to such slow progress, but

a lack of commitment in favour of implementing women's human rights is the main cause. A growing tendency to include paternity leave has also been observed.

In their conclusions, studies carried out in the region strongly recommend involving young and adult men in contraception decisions by means of reproductive health information, education and communication activities especially focused on this population. For this, it is absolutely necessary, to strengthen reproductive health programs by means of training activities on gender and reproductive health⁴.

The legal treatment of sexuality is very far from adequate in view of the scope and importance of ensuring the full enjoyment of human rights. Sexual education programs are elementary, and fail to address all topics required to meet the needs of the target population, which includes young boys and girls, most of them in their teens. Wherever, in each country, an attempt was made to go beyond traditional ideas about sexual roles and conduct, conservatives groups, linked to Churches in most cases, have used their influence to modify messages by centring them on the need to delay early sexual activity. Such has been the case in Mexico, Honduras, El Salvador, Guatemala, Panama, Peru, Uruguay, Bolivia and Argentina.

Progress has definitely been made in sexuality legislation dealing with the violation of sexual rights, and sexual freedom. Penal codes have been modified to increase rape penalties in relation to the victim's age and the type of criminal behaviour associated to the case, and generally expand the area of activity configuring a criminal offence. As to procedural codes, improvements include court appointment of counsel for the victim, and enabling public prosecutors to bring criminal action.

Regarding violence against women, which is among the concerns of the Cairo Program of Action⁵, all countries in the region with the sole exception of Brazil have in place domestic laws on family violence or violence against women.

Most countries have eliminated legislation exempting rape from punishment where the perpetrator offers matrimony to his victim. In other countries, however, discrimination remains, either because such exculpatory provisions are maintained outright, or because rapists are given the possibility of reaching an agreement with their victims where there had been a previous emotional involvement. These countries are Argentina, Bolivia, Brazil, Costa Rica, Guatemala, Nicaragua, Panama, Venezuela and Uruguay. Before the International Conference on Population and Development, as many as 15 Latin American countries had this discriminatory legislation in place. Although this marks considerable progress, work remains to be done in this area.

Today in most countries, according to indicators used to measure progress towards achieving the MDGs, boys and girls have achieved virtually equal access to formal education. However, this is not enough. It is also necessary to review teaching contents, for there is little to be gained by little girls being educated on discriminatory contents and stereotypes that keep them in a subordinate position.

Furthermore, although most countries are adopting provisions aimed at providing adolescents of both sexes with information on health, sexuality, sexual and reproductive health, we have a long way to go before these provisions are actually implemented.

The reality is that the requirements and needs of adolescents of both sexes in our region «and they make up a very considerable portion (a little more than 40%) of our population» are not adequately attended to. Policies regarding them have scored more setbacks than advances, and suffered too much intervention from many sectors of society. This is one area where Governments will permit most external influence, especially in the area of education, in the absence of consistent programs or policies and to the evident detriment to this segment of the population. The main underlying cause of this state of affairs is lack of a political will to ensure the enjoyment of sexual and reproductive rights by adolescents.

Even assuming such legislation were perfect and actually implemented, it would still be necessary to remove other inconsistencies from the legal system. In many countries in the region, the rights of children and adolescents of both sexes are regulated by laws enacted in the early years of the XX century, when minors were not considered as holders of rights, but only beings with a sort of *capitis deminutio*, that is to say, of diminished legal capacity, subject to the State's guardianship. In several countries, these old laws exist to this day, side by side with modern health legislation. Such is the case of Argentina, where the status of children is regulated by *Ley del Patronato*, under which the State institutionalizes children of both sexes for welfare reasons, just as it does in the case of juvenile criminals. As a result, 82% of all institutionalized children and adolescents are welfare cases (on account of being poor, or orphans, or victims of abuse or violence), versus only 18% who have committed a crime. In other words a high percentage of little girls and adolescents are being deprived of freedom for the only reason that they are poor.⁶

No serious integral health policy is possible unless these contradictions are overcome and all legal institutions are harmonized in line with human rights principles.

Sexual Rights and Reproductive Rights

Both sexual rights and –even more particularly– reproductive rights are central to the Cairo Program of Action. The population and development policy approach recommended by the latter is based on the recognition of the human rights of individuals. It is important to point out here that this approach helps improve the economy, which is in fact one more aspect of human development.

What distinguishes the human rights-based concept of sexual and reproductive rights is the fact that it puts the decision-making power in the hands of individuals. Under such a policy approach, it is for individuals to decide about the sexual and reproductive dimension of their lives, not for governments; and any policies adopted to implement State legislation is designed with due account of human needs, so that these can be met using resources provided by the State.

Effective respect for human rights is guaranteed when the decision-making process is supported by responsibility on the part of individuals and by the provision of all necessary information and services on the part of the State. Responsibility involves mutual respect and gender equity, which are both fundamental principles of the Cairo Program of Action.

Recognition that sexual rights are closely bound to reproductive rights is the necessary premise for recognition of adolescents' rights. It is important that people learn from

adolescence to take charge of their own sexuality in a positive way. The Cairo document particularly emphasizes adolescents' additional requirements and need for special services.

Accordingly, one way to measure compliance with the recommendations of the Cairo Program of Action by countries politically committed to it, is to look into how these countries have attended to the special needs of their adolescent populations regarding the human dimension of sexuality.

Countries that can boast the greatest normative progress regarding sexual and reproductive rights include Mexico, Brazil, and Peru. Although normative progress does not necessarily guarantee development of these rights for the entire population, it does provide the necessary framework for implementing public policies that actually reach citizens.

It must also be mentioned that in some countries advances have been followed by setbacks. Such has been the case in Peru. This was the result of the strong pressure exercised by conservative groups that have mobilized to counteract the forces at work to attain the legal recognition and enforcement of sexual and reproductive rights.

Historically, sexual and reproductive human rights have been controlled by entities other concerned individuals, whether they be the State, or Churches, families or partners. This has been even more so in the case of women.

Sexual and Reproductive Health

The Cairo Program of Action has established the principle that reproductive health includes sexual health. Reproductive health means physical, mental and social well-being involving every aspect of the reproductive system. The attainment of reproductive health involves the entire life development of the person exercising his/her rights to sexual and reproductive health as well as the development of his/her personal relations.

Sexual and reproductive health is the sexual and reproductive right on which the Cairo Consensus places the strongest emphasis. Deciding the number, spacing and timing of one's children requires access to information and services. The exercise of such individual rights involves the highest possible standards of sexual and reproductive health.

The United Nations have set 2015 as the year by which all countries are urged to make reproductive health services available. These services are specified to include information, counselling, education and communication regarding human sexuality, as well as family planning, prenatal and postnatal care, safe delivery, children and women's health care, breastfeeding, infertility, abortion, and responsible parenthood.

Reproductive health is the area where the countries included in this study have advanced most. Family planning and children and women's health care policies have been implemented, without, however, guaranteeing access to the full range of existing contraceptive methods. Regarding children and women's health care, the woman is not given priority as such but only as a mother, and up to the moment of delivery only.

The most notable advances regarding reproductive health have been made in countries that have expressly incorporated sexual and reproductive rights into their legislation.

Regional Trends

Countries in the region have chosen different, although always gradual, approaches to dealing with sexual and reproductive rights. However, the Cairo Program of Action recommendations regarding reproductive rights are clearly present in the normative systems of all twenty countries reviewed.

The present section presents an overview of trends prevailing in the region, classified by degree of recognition of sexual rights and reproductive rights in the respective legal systems; by situation in the Central American, Caribbean, Andean and South Cone subregions; and, finally, by thematic development of contents.

The following table shows legislative advances gained in individual countries in the area of sexual rights and reproductive rights.

#	Description	Countries
1	Explicit recognition under constitutional law of sexual rights and reproductive rights.	Ecuador.
2	Implicit recognition under constitutional law of sexual rights and reproductive rights.	Argentina, Brazil, Mexico, Paraguay, Peru and Venezuela.
3	Integral programs or laws on reproductive health.	Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay.
4	Programs or laws recognizing reproductive rights.	Argentina, Brazil, Guatemala, Mexico, Paraguay, Peru.
5	Law amendments or programs providing for abortion care.	Brazil, Colombia, Ecuador, Honduras, Guatemala, Nicaragua, Paraguay.
6	Family responsibilities «paternal leave.	Brazil, Colombia, Peru, Mexico, Paraguay, Uruguay.
7	Family planning programs.	Argentina, Bolivia, Brazil, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Uruguay.
8	Legislation favourable to emergency contraception.	Argentina, Bolivia, Chile, Ecuador, Nicaragua, Paraguay, Peru.
9	Elimination of decriminalization of rape on account of marriage.	Colombia, Ecuador, Peru.
10	Improved definition of the offence and/or procedure for the prosecution of rape.	Argentina, Colombia, Cuba, Ecuador, Honduras, Peru.
11	Legislation against sexual exploitation.	Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Venezuela.
12	Legislation against sexual harassment.	Argentina, Bolivia, Brazil, Chile, Ecuador, El Salvador, Honduras, Panama, Puerto Rico, Peru, Uruguay, Venezuela.
13	Recognition of sexual orientation.	Argentina, Brazil, Colombia, Ecuador, Peru, Puerto Rico, Uruguay.
14	Services for adolescents.	Argentina, Brazil, El Salvador, Guatemala, Mexico, Dominican Republic, Venezuela.
15	Sexual education programs.	Argentina, Brazil, Bolivia, Chile, Colombia, Costa Rica, Cuba, Ecuador, Honduras, Mexico, Nicaragua, Paraguay, Peru, Puerto Rico, Venezuela.
16	Legislation favourable to pregnant adolescents.	Argentina, Brazil, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, Venezuela.

Degrees of Recognition of Rights

Sexual and reproductive rights are explicitly recognized as such⁷ by the Constitution of Ecuador. The constitutional charters of Argentina, Brazil, Mexico, Peru, Venezuela and Paraguay⁸ enshrine the right to make family planning decisions, to choose contraception methods and the spacing of children. Apart from that, sexual and reproductive rights as such are provided for in a number of specific legal provisions or national plans of Guatemala, Colombia, Peru and Paraguay.

On the strength of their normative advances and steadily increasing recognition and conceptual integration of these rights into relevant legal provisions and public policies, today Brazil, Ecuador, Argentina and Mexico are the most advanced in the area of sexual and reproductive rights. In those countries, reproductive health is promoted by national programs and plans that are an integral part of the legal system; family responsibilities have been explicitly incorporated into labour legislation; penal laws have been amended to punish violations of sexual rights; sexual orientation-based discrimination is not allowed; measures have been taken to mitigate the consequences of abortion; and adolescents of both sexes benefit from sexual education programs and services for pregnant girls.

In another group of countries including Guatemala, Puerto Rico, Colombia, Venezuela, Peru, Bolivia, Paraguay and Uruguay, which regulate sexual and reproductive rights, hardly any ground has been gained –or, rather, some has been lost– in their development. These countries have embedded the concept and content of reproductive health into their family planning programs and/or maternity programs; sexual education programs exist for adolescents of both sexes in theory, but not always in practice, and pregnant adolescents have access to care services. Colombia and Peru have succeeded in improving the definition of the offence and the procedure for the prosecution of sexual violence. Regarding sexual orientation-based discrimination, Uruguay, Puerto Rico, Colombia and Peru have laws against it, while other countries, including Venezuela and Paraguay, have laws contributing to it. In Puerto Rico, although a law makes prejudice based on the victim's sexual orientation an aggravating circumstance if it served as motive for a crime, sodomy is still penalized by law. This sends a contradictory message to the population, with restricted exercise of their sexual rights as the end result.

It must be mentioned here that Chile, Honduras, El Salvador, Peru, Puerto Rico and Venezuela have suffered setbacks regarding abortion.

Honduras, El Salvador, Costa Rica, Panama, Dominican Republic, Cuba and Chile have scored few normative advances over the period considered and/or have introduced a few isolated laws worthy of note but unaccompanied by adequate development of sexual and reproductive rights at the core of the country's legal system. In these countries, reproductive health is considered in national health legislation. Pregnant adolescents are a concern and care services have been provided for them.

Attaining the highest degree of development of sexual and reproductive rights in the region implies having made the recommendations of the Cairo Program of Action a prevailing component of the four areas identified, namely reproductive health and reproductive rights,

family planning, sexuality and gender relations, and adolescents. The greater this component in each area, the more evident becomes the human rights content and validity of these rights.

Situation in the Subregions

Central American countries, including Honduras, Guatemala, El Salvador, Nicaragua, Costa Rica and Panama, have few normative advances. Most have incorporated the concept of sexual and reproductive health into their national programs regarding prenatal care, maternal health care, and perinatal care, and Guatemala does recognize sexual and reproductive rights by a special law. Not being provided for in family planning programs, the right to contraception is not guaranteed as such.

In the matter of sexuality, although some amendments have been introduced into penal laws, revisions and amendments have fallen short of improving the legal definition of rape as a criminal offence. This is what has happened in El Salvador and Honduras. On the other hand, an important step forward has been made in El Salvador, Honduras and Panama by regulating sexual harassment.

In the matter of adolescents, the issue of adolescent pregnancy has elicited much interest, for it is a latent reality in those countries. Honduras and Panama have shown greater concern by ensuring pregnant adolescents' right to education in addition to providing health care services for them. Sexual education programs are few and centred on delaying early sexual activity. Worthy of note is these countries' emphasis on health care services and introducing stronger penalties for sexual exploitation.

Neither sexual and reproductive rights nor the right to reproductive health are explicitly recognized in the national programs or public policies of **Caribbean countries**.

In the area of labour law, Cuba, the Dominican Republic and Puerto Rico are worthy of note as having in place legislation in favour of working mothers in addition to provisions for maternity leaves on account of pregnancy, childbirth and breastfeeding. Existing legislation reflects concern for responsible parenthood and the protection of children of both sexes. Puerto Rico has made valuable normative advances regarding sexual harassment.

In the matter of sexual orientation, Puerto Rico has introduced two pieces of legislation, one discriminatory and the other inclusive.

All three countries have in place sexual education programs recognizing rights for the adolescent population. In countries in this group, the main focus is on the family and labour rights.

Andean countries have made considerable normative advances in the area of sexual and reproductive rights. Although Ecuador is the only one granting these rights the protection of constitutional law, Bolivia has enacted legislation enshrining them. The remaining three countries –Colombia, Venezuela and Peru– have incorporated reproductive health into maternal health care programs and family planning programs. Some, e.g. Ecuador, Peru and Bolivia, have in place explicit legal provisions providing for emergency oral contraception. This is important even in the absence of compliance, as is the case in Peru.

Significant amendments have been introduced into the penal legislation of Colombia and Peru regarding sexual violence. Nearly all countries have in place labour and penal legislation regarding sexual harassment. Colombia, Ecuador and Peru now have some legislative recognition of sexual orientation, while Venezuela and Bolivia have adopted discriminatory legislation. Regarding adolescents, all countries have sexual education programs in place along with services for pregnant adolescents. In Peru and Bolivia, these also benefit from legal provisions promoting their education. The same cannot be said, however, regarding services for adolescents. These countries have focused on legislative changes regarding problems that affect sexual rights –in other words, in the penal sphere.

South Cone countries present marked differences among themselves. Advances have been great in Argentina, very small in Chile. Uruguay and Paraguay are somewhere in between these two extremes, with the development of sexual and reproductive rights showing an upward trend. Reproductive rights are explicitly recognized in Argentina alone, but reproductive health is recognized in all.

Domestic penal legislations present differences in the treatment of abortion and rape. Argentina⁹, Paraguay and Uruguay have made progress in decriminalizing abortion, whereas Chile reaffirms the opposite position at the constitutional level. Regarding rape, Argentina has perfected the definition of the offence for indictment purposes, whereas Paraguay and Uruguay have lost ground in recognizing the seriousness of the crime, and Chile has made progress in criminalizing conjugal rape and improving prosecution procedures. Regarding adolescents, all countries have programs in place for this age group –indeed, this is the only point they have in common.

Mexico and Brazil have achieved advances truly worthy of note, comparable only to those of Argentina. Their federal government structure enables them to produce legislation at various levels, so as to take better account of needs at the grassroots level. These countries have in place human rights-based programs regarding reproductive health. Their penal legislation –on sexual rights and sexual violence, and reproductive rights and abortion–has been submitted to a review that has led to the gradual abolition of discriminatory legislation. In these countries, consideration for the situation of the adolescent population has been translated into public policies.

Thematic Development of Contents

Most countries have set up reproductive health programs. Indeed, reproductive health has been the most worked component, having been introduced into both family planning programs and safe and healthy motherhood programs. This makes it the concept with the greatest area of influence. When conceived of as a reproductive right, reproductive health, rather than being limited to treatment of diseases or complaints, is about achieving the maximum level of all-around well-being, and includes a human being's reproductive functions.

The main advances concerning reproductive rights are the possibility to decide the number and spacing of one's children, and the official acceptance of access to the full range of existing contraceptive methods. The freedom to choose from the full range of existing

contraceptive methods amounts to reproductive autonomy. Regarding reproductive rights in a more general sense, achievements include acceptance of de facto unions, approval of new grounds for divorce, and use of DNA in paternity suits.

As to the voluntary termination of pregnancy, it is considered an offence under the name of abortion in all countries included in the study, with the sole exceptions of Cuba and Puerto Rico. Exculpatory and extenuating circumstances vary according to country. In some, abortion is exempted from punishment in certain circumstances –e.g. Brazil, where terminating a pregnancy produced by rape is not considered a crime. In others, as in the case of El Salvador, new legislation has actually abolished previous exculpatory and extenuating circumstances. It should be added that Brazil has public policies of aid to women in such a situation.

Moving in the opposite direction, new offences described as injuries to the conceived have been created in Colombia, El Salvador, Nicaragua and Peru; and a decree or a law has declared March 25th as Day of the Unborn Child in Argentina, Costa Rica, Nicaragua and Peru¹⁰. In this sense we find that the most evident limitation of reproductive rights consists of impediments to decide about procreation as from the moment of conception without a prior analysis of competing rights.

Although reproductive rights have been developed more than sexual rights, certain specific issues have had greater repercussions. Most countries have revised their penal legislation regarding rape, and have raised penalties where the victim is under 18 years of age, and in cases of child sexual exploitation. Evolution of sexual rights is still notoriously limited, since advances have rather to do with governmental intervention in response to increasingly acute social problems. As to sexual education, this, too, is focused on preventing adolescent pregnancy and STI propagation. There has been no progress in affirmative recognition of sexual rights as access to sexuality knowledge and to decision-making power over one's own body.

Legislation implying a degree of recognition of sexual orientation by providing for the elimination of sexual orientation-based discrimination in certain spheres are encouraging signs. In this regard, Ecuador has achieved the greatest advance in the region by conferring constitutional protection to the right to equal treatment under the law, free from any sexual orientation-based discrimination; by decriminalizing homosexual intercourse between adults and identifying it as a medical problem. In Puerto Rico, sexual orientation motive is considered an aggravating circumstance for any crime against individuals. In Colombia, rape driven by discrimination based on sexual orientation or other characteristics is punished by a stiffer penalty. Peru has adopted legislation prohibiting sexual orientation-based discrimination in the labour and education spheres. The legalization of *de facto* unions between homosexuals in the Autonomous City of Buenos Aires, Argentina, marks the high point of progress attained in the region with regard to the sexual orientation human right. In Uruguay, sexual orientation-based discrimination is considered an offence.

¹ Ministerio de Salud de Argentina. «Mortalidad Materna en la Argentina.» Boletín abril 2004, **Buenos Aires**.

² International Covenant on Economic, Social and Cultural Rights, UN, 1966; Convention on the Rights of the Child, UN, 1989

- ³ Convention on the Elimination of All Forms of Discrimination against Women, UN, 1979, Article 12.
- ⁴ CEDES – Ministerio de Salud de Argentina, «Mortalidad Materna en la Argentina», *Boletín abril 2004*, Buenos Aires
- ⁵ Programme of Action of the International Conference on Population and Development, Principle 4.
- ⁶ CELS - Centro de Estudios Legales y Sociales. *Informe sobre la situación de la niñez en Argentina*. Buenos Aires, April 2004.
- ⁷ By explicit recognition we mean that these rights are recognized as such, namely as «reproductive rights», «sexual rights». The explicit mention implies a stronger recognition and a greater commitment than the mere mention of the components of a given right, as in the case of «right to plan one's family».
- ⁸ *Constitución Nacional de la República Argentina*, Article 75, Article 22. *Constituição da República Federativa do Brasil*, of 5 October 1998, Article 226, Section VII. *Constitución Política de los Estados Unidos Mexicanos*– Latest reform of 05 April 2004, Article 4. *Constitución de la República de Paraguay* signed into law on 20 June 1992, Article 61. *Constitución Política del Perú*, ratified by referendum on 31 October 1993, Article 6. *Constitución de la República Bolivariana de Venezuela*, *Gaceta Oficial* number 36860 of 30 December 1999, Article 76.
- ⁹ In Argentina, the advance consists solely of a new law allowing termination of pregnancy when the foetus presents anencephalia. The law in question only applies in the Autonomous City of Buenos Aires.
- ¹⁰ Argentina, by Decreto 1406/98 of 07 July 1998; Peru, by Ley 27654 of 25 January 2002; Nicaragua, by Decreto Presidencial N. 10-2000 adopted on 25 January 2000. By Decreto Ejecutivo 28043 of 27 July 1999, Costa Rica has declared July 27th as National Day of Unborn Life.

In Argentina², the 1994 reform of the National Constitution³ has incorporated nine treaties and two international declarations on human rights. The conventions incorporated into the Constitution include the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Article 12 of the latter guarantees women's right to reproductive health and family planning services. Treaties incorporated into the Constitution have constitutional status, which means that they can be enforced by courts based on the principle of constitutional legality, e.g. by an *Acción de Amparo*. This means that reproductive rights enjoy implicit constitutional recognition.

In addition, the reformed National Constitution has maintained Article 19, which guarantees the right to intimacy and states that the Judiciary has no authority over actions that violate neither public order nor public morality and cause no damage or injury to any third party.

Reproductive Rights and Reproductive Health

On 30 October 2002 *Ley 25.673* was enacted, establishing the National Program of Sexual Health and Responsible Parenthood as an agency of the Ministry of Health. The program in question pursues the following objectives:

- a) To achieve the highest attainable level of sexual health and responsible parenthood for the population with the purpose of enabling them to make decisions free of discrimination, coercion, or violence.
- b) To reduce mother-child morbi-mortality.
- c) To prevent unwanted pregnancies.
- d) To promote sexual health in adolescents.
- e) To contribute to the prevention and early detection of sexually transmitted diseases, of HIV/AIDS, and of genital and mammary pathologies.
- f) To ensure for the entire population access to information, orientation, methods, and the provision of services related to their sexual health and responsible parenthood.
- g) To build women's participation in decision-making processes regarding their sexual health and responsible parenthood⁴.

The law in question makes it compulsory to offer HIV diagnostic tests to pregnant women –and prohibits performing them without the concerned woman's informed and explicit consent.

In 2004 the Ministry of Health published its *Guía para Atención de Parto Norma⁵*. This normal childbirth assistance manual was written for public and private health care units to help them update and improve quality of care for women and newborns during the perinatal period.

The Autonomous City of Buenos Aires's Municipal Charter of 1996⁶ guarantees the right to integral health. It also makes it incumbent on the City Legislature to approve a Basic Health Care Law [*Ley Básica de Salud*] promoting responsible parenthood by making available information, education, methods and services to guarantee enjoyment of reproductive rights; ensuring guaranteed comprehensive care during pregnancy, childbirth,

puerperium, and childhood until completion of the first year of age. Such care must include comprehensive assistance in the form of nutrition and social protection, promote breastfeeding for normal growth, and be especially focused towards population centres where wants and vulnerability are greatest.

Among the Provinces, Río Negro can be generally considered to be a pioneer in the area of sexual and reproductive rights. The example set by its three Provincial laws is yet to be followed by the other Provinces. Reference is made here to the 1997 law on STD prevention and care, the 2000 law modifying the practice of medicine for health professionals and other professionals engaged in ancillary activities, and the 2002 law⁷ on the administration of folic acid to the female population of reproductive age.

With regard to pregnancy, the main advances have been made at the Provincial level. By a law enacted in 2003⁸, the Autonomous City of Buenos Aires has recognized a woman's right to be accompanied during pre-delivery and delivery labour, and confinement. A Cordoba law of 2003 makes it mandatory for public institutions and agencies to give priority care to pregnant women. Again, a law enacted by the Autonomous City of Buenos Aires in 2004⁹ has created a system for identifying newborns and their mothers in order to guarantee identity rights as well as protect the mother-child link.

With regard to abortion, a Decreto Nacional de 1998 has established March 25th as the Day of the Unborn Child. It would appear, however, that this amounts to little more than a symbolic victory for the opponents of voluntary termination of pregnancy, since in 2003 the Autonomous City of Buenos Aires issued a law that¹⁰, although it does not permit abortion as such, it makes it possible to induce childbirth upon completion of the 24th week where a pregnancy is made incompatible with life by anencephalia. Although far from ideal, given that Argentinean legislation generally prosecutes abortion as a crime, this law can be considered a step forward.

Family Planning

At the national level a law enacted in 2002¹¹ has created the National Program of Sexual Health and Responsible Parenthood. The application of this law is governed by the provisions of a *Decreto* issued in 2003¹². At the Provincial level, a large majority of Argentinean Provinces have similar programs in place.

The Municipal Charter of the Autonomous City of Buenos Aires recognizes reproductive and sexual rights free of coercion and violence as basic human rights; more particularly, it recognizes the right to make responsible decisions regarding parenthood and the number, spacing and timing of one's children; it guarantees equal rights and responsibilities for both parents, and promotes comprehensive protection for the family.

Province	Law	Date (dd/mm/yy)	Content
La Pampa	<i>Ley</i> 1363	27 /11/9	Provincial responsible parenthood program
Cordoba	<i>Ley</i> 8535	09/08/96	Reproductive health and sexuality program
Santa Fe	<i>Ley</i> 11888 <i>Decreto</i> 2442	20/05/01 ¹³ 18/10/02	Creation of Provincial reproductive health and responsible parenthood program Regulations under <i>Ley</i> 11888
Mendoza Chaco	<i>Ley</i> 6433 <i>Ley</i> 4276 <i>Decreto</i> 426	22/10/96 29/08/96 24/3/97	Provincial reproductive health program Creation of education program for human health and responsible parenthood Regulations under <i>Ley</i> 4276
Neuquen	<i>Ley</i> 2222 <i>Decreto</i> 3331	12/12/97 25/09/68	Creation of Provincial Sexual and Reproductive Health Program Regulations under <i>Ley</i> 2222
Rio Negro	<i>Ley</i> 3059	13/01/97	Provincial reproductive health and human sexuality program
Misiones	<i>Decreto</i> 92	02/02/98	Provincial comprehensive family planning program
Jujuy	<i>Ley</i> 5133 <i>Decreto</i> 2139	03/06/99 27/10/00	Provincial parenthood and STD prevention program Regulations under <i>Ley</i> 5133
Chubut	<i>Ley</i> 4545 <i>Decreto</i> 1518	23/11/99 10/11/2000	Creation of Sexual and Reproductive Health Program. Regulations under <i>Ley</i> 4545
C.A.Bs.As.	<i>Ley</i> 418 ¹⁴	22/06/00	Law on reproductive health and responsible parenthood.
Tierra del Fuego	<i>Ley</i> 509	01/02/01 ¹⁵	Law on sexual and reproductive health
San Luis	<i>Ley</i> 5344 <i>Decreto</i> 127	30/10/02 ¹⁶ 21/01/03	Law on sexual and reproductive health Regulations under <i>Ley</i> 5344
Prov. Bs. As.	<i>Ley</i> 13066 ¹⁷ <i>Decreto</i> 2327	28/05/03 ¹⁸ 31/12/03 ¹⁹	Reproductive health and responsible parenthood Regulations under <i>Ley</i> 13066
Entre Ríos	<i>Ley</i> 0501	22/06/03 ²⁰	Sexual and Reproductive Health and Sexual Education Law
Santa Cruz	<i>Ley</i> 2656	26/06/03 ²¹	Acceptance of <i>Ley Nacional</i> 25673

Clearly, the proliferation of these programs can be considered a legislative advance by Argentina with regard to the protection of sexual and reproductive health and the right to decide the number and spacing of one's children freely and responsibly. Indeed, this legislation did not go unnoticed, particularly in the Autonomous City, but also in the Province of Buenos Aires, where their enactment was followed by reaction movements directed at

modifying them. Generally speaking, all of these programs envisage reversible and temporary contraceptive methods. As a result, legislation began to be adopted that allows the use of informed and consensual sterilization as contraception method. These are:

Province	Pieces of legislation	Date (dd/mm/yy)	Content
La Pampa	<i>Ley 2079 and Decreto 156</i>	26/11/03 16/12/03 ²²	Regulates health care activities; repeals <i>Decreto Ley 504/69</i> , modifies a number of current laws; legalizes surgical contraception.
Neuquen	<i>Ley 2431</i>	02/07/03 ²³	Modifies <i>Ley 2222</i> : Surgical contraception
Rio Negro	<i>Ley 3450</i>	23/10/00	Modifies <i>Ley 3059</i> : Surgical contraception
Chubut	<i>Ley 4950 Decreto 932</i>	10/12/02 ²⁴ 18/07/03 ²⁵	Surgical contraception Regulates Bioethics Committees
Tierra del Fuego	<i>Ley 533</i>	11/10/01 ²⁶	Modifies <i>Ley 509</i> : Surgical contraception

Municipalities, too, have begun to dictate regulations regarding reproductive health, sexuality and family planning. By a 1996 municipal ordinance, the City of Cordoba (Province of Cordoba) has established the Municipal Reproductive Health, Sexuality and Family Planning Program. Also in 1996 the City of Rosario (Province of Santa Fe) approved a municipal ordinance establishing the Municipal Responsible Parenthood Program. This ordinance was followed in 2001²⁷ by another, pursuant to which health care providers are authorized to prescribe any currently existing contraceptive methods, and the Public Health Secretariat is given the power to regulate the incorporation of new methods, subject to proper investigation and approval. The ordinance in question also makes it compulsory to provide information on emergency contraception (ECP), its action mechanisms and modes of use.

In the area of marriage legislation, it is worth noting that *Ley 24453* of February 1995 has abolished adultery at the national level as an offence.

Another advance was made by abolishing an anachronistic article in Argentina's Civil Code that granted the husband control over property of doubtful origin or whose origin cannot be determined. A law approved in 2003²⁸ established that when the origin of property cannot be identified or proof of title is doubtful, the property in question shall be administered jointly by both spouses.

At Provincial level, advances are being made with regard to the protection of homosexual unions. A law adopted in 2003²⁹ made the Autonomous City of Buenos Aires the first to recognize civil unions with the same rights and obligations as marriage, independently of

sex or sexual orientation. This law also established a Public Registry of civil unions. Regulations under the law in question were adopted by a *Decreto* of the same year³⁰. In 2003³¹, the Buenos Aires example was followed by Rio Negro Province's adoption of a law regulating homosexual cohabitation.

Human Sexuality and Gender Relations

In its Article 19, Argentina's National Constitution enshrines respect for intimacy and privacy. Furthermore, it incorporates international treaties protecting human rights, including the human right not to suffer discrimination on any account.

The Municipal Charter of the Autonomous City of Buenos Aires makes it incumbent upon the City to: take whatever measures are required to prevent sexual violence against women, supply specialist care services, and protect and provide care services for sexual exploitation victims; and to give priority to public policies favouring children and adolescents of both sexes, preventing violence within the family and ensuring protection for the victims of violence and sexual exploitation.

A national law of 1999 modified Argentina's Penal Code and changed the definition of the offence from "crimes against honesty" to "crimes against sexual integrity". Individuals of either sex can be considered victims. Sexual intercourse in whatever manner is treated as an aggravating circumstance; so is sexual abuse where sexual subjugation, whether in terms of duration or circumstances, is gravely humiliating or degrading for the victim. The law in question has broadened the definition of rape by including situations where no vaginal or anal penetration took place. Relations of power are considered aggravating circumstances and raise the penalty from 8 to 20 years where the abuse has produced serious harm to the victim's physical or mental health; or where the perpetrator is the victim's ascendant, descendant, relative by direct line affinity, tutor, curator, religious minister, appointed teacher or guardian; or where the perpetrator was aware of carrying a serious STD and acted in a manner entailing danger of contagion; or where the crime has been committed by 2 or more armed individuals, or by law enforcement or security personnel when on duty; or where the victim is a minor (a person under 18 years of age), and the perpetrator was taking advantage of a pre-existing situation of cohabitation with same. The reform replaced the provision abolishing marriage to the raped woman as an exculpatory circumstance with another allowing the defendant to negotiate an agreement with the victim on equal footing. It also enabled the victim to request the Public Prosecutor to initiate criminal proceedings, and to receive advice from or be represented by not-for-profit public or private organizations that engage in protecting or helping abuse victims.

It is unfortunate that the Penal Code, though abolishing rapists' exemption from punishment by marriage to the victim, also enables rapists to negotiate an agreement with the victim where there had been a previous emotional involvement. Apart from its practical consequences, this possibility has serious implications at the cultural level, since it supports the idea that raping a partner or former partner is of less serious import than raping a stranger. Another consequence of such a provision is that it makes it very difficult to ensure criminal court punishment for marital rape.

This same law has specifically defined sexual harassment as an offence punishable by 6-months to 4 years in prison where the victim is under 13, or where the perpetrator has used violence or threats or coercive or intimidatory abuse of a relationship of dependence or authority or power, or has taken advantage of the victim's inability to make a free choice.

By a law enacted in 2004³², the Autonomous City of Buenos Aires punishes any act of labour violence carried out by superiors against any individual in a subordinate position in any agency. The law in question punishes any action violating the dignity or physical, sexual, psychological or social integrity of a worker (whether a man or a woman) by means of threats, intimidation, abuse of power, harassment, sexual harassment, physical, psychological or social mistreatment or insults. It defines sexual harassment as use of a position of authority to request sexual favours for oneself or for a third party by any means. It establishes administrative penalties and the applicable procedure.

With regard to prostitution, national legislation establishes penalties of 4 to 10 years in prison for those who promote or facilitate the prostitution of minors (individuals under 18 years of age) even if the victim is consenting; penalties of 6 to 15 years if the victim is under 13, or independently of the victim's age if the perpetrator has used deception, violence, threats, abuse of authority or any other means of intimidation or coercion; and penalties of 10 to 15 years if the perpetrator is a descendent, spouse, brother, tutor or cohabiting partner or appointed teacher or guardian. It also punishes by 3 to 6 years in prison anyone economically exploiting a person's practice of prostitution by means of deception, coercive or intimidatory abuse of a relationship of dependence, authority or power; or of violence, threats or any other means of intimidation or coercion.

The Municipal Charter of the City of Buenos Aires specifically recognizes children and adolescents of both sexes as holders of rights, and makes them a public policy priority in terms of protection against violence and sexual exploitation or measures aimed at preventing and eliminating trafficking in children and adolescents. A law has been enacted that envisages the creation of a specialized agency in charge of promoting and coordinating policies in this area.

With regard to **sexual orientation**, the Municipal Charter of the Autonomous City of Buenos Aires expressly prohibits sexual orientation-based discrimination. In 1996, Río Negro Province enacted a law establishing the right to sexual orientation. This means that in both Provinces homosexuality can no longer be treated as a crime.

Adolescents

At the national level, the greatest normative advance regarding adolescent girls consisted of a law enacted in 2002³³ which prohibits all public education centres from engaging in any institutional action that might prevent **pregnant adolescents** from beginning or continuing their regular studies, or marginalize, stigmatize or humiliate them in any way on account of their state.

With regard to education, the Municipal Charter of the Autonomous City of Buenos Aires recognizes and guarantees an education system inspired by the principles of freedom, ethics and solidarity, and fostering integral development of the individual as member of a

fair and democratic society. The Charter makes it the City's undelegable responsibility to provide and fund free, public, secular, education forming individuals endowed with a critical conscience and the capacity to respond to scientific, technological and productive changes; and to make the gender perspective and human rights and sexual education programs a part of education curricula.

Among the Provinces, by a law enacted in 1992 Catamarca Province has introduced free health care for pregnant adolescents without health insurance, while Neuquen has expressly introduced mandatory sexual and reproductive health care for adolescents of both sexes.

¹ CEPAL - CELADE 2002.

² Information provided here for up to 2000 is quoted from Annex III to CLADEM Argentina's national diagnostic study on sexual rights and reproductive rights (Unpublished version).

³ Source: <http://www.georgetown.edu/pdba/Constitutions/Argentina/argen94.html>

⁴ Source: <http://infoleg.mecon.gov.ar/txtnorma/71528.htm>

⁵ Ministerio de Salud, Resolución N°647/2003 approving "Guía para Atención de Parto Normal", Boletín Oficial of 15 January 2004.

⁶ Source: http://www.legislatura.gov.ar/1legisla/constcba.htm#_Toc405121809

⁷ Source: <http://www.notivida.com.ar/legprovincial/RIO%20NEGRO%203704%20ACIDO%20FOLICO.html>

⁸ Source: <http://www.cedom.gov.ar/es/legislacion/normas/leyes/html/ley1040.html>

⁹ Source: <http://www.cedom.gov.ar/es/legislacion/normas/leyes/html/ley1226.html>

¹⁰ Source: <http://www.notivida.com.ar/legprovincial/Anencefalia%20CABA.html>

¹¹ Source: <http://infoleg.mecon.gov.ar/scripts1/busquedas/norma.asp?num=79831>

¹² Source: <http://infoleg.mecon.gov.ar/scripts1/busquedas/norma.asp?num=85450>

¹³ Source: <http://www.notivida.com.ar/legprovincial/SR%20Santa%20Fe.html>

¹⁴ Later, this law was amended by Ley 439 of July 2000 as a result of lobbying by conservative groups. The only two changes consisted of introducing a paragraph about "the duty to respect the beliefs and values of individuals", which opened debate about doctors' conscientious objection, and the provision that "any contraceptive methods prescribed shall be reversible, temporary, non-abortive, and approved by the National Ministry of Health".¹⁷ By Decreto 938 of June 2003, the Governor of the Province withheld enactment of this law on grounds of objection to the following paragraphs/sections: "Dictate such regulations as may be required to attain each and everyone of these objectives"; "The authorities of private educational establishments, whether denominational or otherwise, shall join efforts with enforcement authorities to ensure compliance with the objectives of this Programme"; and to its exhortation to municipalities to accept the new law.

¹⁵ Source: <http://www.notivida.com.ar/legprovincial/TIERRADELFUEGO509.html>

¹⁶ Source: <http://www.notivida.com.ar/legprovincial/SRSANLUIS.html>

¹⁸ Source: <http://www.notivida.com.ar/legprovincial/Ley13066,SRPciadeBsAs.html>

¹⁹ Idem

²⁰ Source: <http://www.notivida.com.ar/legprovincial/SRENTRERIOS.html>

²¹ Source: <http://www.notivida.com.ar/legprovincial/SRSantaCruz.html>

²² Source: <http://www.notivida.com.ar/legprovincial/LaPampaLey2079contracepcionquirurgica.html>

²³ Source: <http://www.notivida.com.ar/legprovincial/SRNEUQUEN2431.html>

²⁴ Source: <http://www.notivida.com.ar/legprovincial/ChubutLEY4950contracepcionquirurgica.html>

²⁵ Idem. These committees will serve in an advisory and supervisory capacity with regard to ethical issues arising from medical practices related to surgical interventions.

²⁶ Source: <http://www.notivida.com.ar/legprovincial/TIERRADELFUEGO533.html>

²⁷ Source: http://www.geocities.com/rima_web/ord_7282_pae_rosario.html

²⁸ Source: <http://www.edec.com.ar/Leyes/leyes/L25781PLN.htm>

²⁹ Source: <http://www.cedom.gov.ar/es/legislacion/normas/leyes/html/ley1004.html>

³⁰ Source: http://www.buenosaires.gov.ar/registrocivil/Normativa/Caps/Asp/dec556menu_id=962

³¹ Source: <http://www.notivida.com.ar/legprovincial/RIONEGROregistrodeconvivencialLey3736.html>

³² Source: <http://www.cedom.gov.ar/es/legislacion/normas/leyes/html/ley1225.html>

³³ Source: <http://infoleg.mecon.gov.ar/txtnorma/74073.htm>

Reproductive Rights and Reproductive Health

In 2004 Congress adopted a Framework Law on Sexual and Reproductive Rights [*Ley Marco de Derechos Sexuales y Reproductivos*], but the Executive Power has withheld enactment. The law in question provides for full decision rights regarding reproduction and the right to a free and pleasurable experience of sexuality.

Bolivia's National Sexual and Reproductive Health Programme³ is a part of its 1998 Strategic Health Plan, and aims to coordinate efforts in different sectors, on the premise that sexual and reproductive health is a multisectoral concern.

The 1998 Basic Health Plan⁴ provides for childbirth and post-childbirth care (puerperal haemorrhage, uterine atony, puerperal infection, obstetric sepsis)⁵. It includes 75 promotional, disease preventive and treatment benefits basically aimed at reducing child mortality and maternal mortality. Policies are defined by the Ministry of Health and carried out by departmental health services.

The National Plan to Accelerate the Reduction of Maternal, Perinatal and Child Mortality, also known as "Plan Vida" 1994 - 1997⁶ operates through health care services, involves people's participation, and its stated goal is to reduce maternal and child mortality by 50%. Pregnant women are among its beneficiaries.

Under Bolivia's labour laws, puerperium consists of a 45 consecutive days following childbirth, and childbirth assistance is free under the Basic Health Plan. Pursuant to the General Labour Law [*Ley General del Trabajo*], the beneficiary is entitled to receive a maternity allowance during up to 6 weeks before and 6 weeks after childbirth, provided she stops all paid work and complies with doctor's orders imparted by the medical services.

With regard to maternity allowance, *Decreto Ley* 13214⁷ provides that the beneficiary is entitled to receive it during pregnancy and puerperium during up to 45 days after childbirth, provided she performs no paid work during that time.

Bolivia's Social Security Code⁸ provides that the beneficiary is entitled to receive maternity allowance during pregnancy and puerperium during up to 45 days after childbirth, provided she performs no paid work during that time.

With regard to pregnant women's job security, *Ley* 975⁹ enacted in 1988 provides that any pregnant woman whether in the employ of a public or private entity shall enjoy job security for a period of up to one year following her child's birth. It also orders that any pregnant woman doing a job involving health-threatening efforts shall be entitled to whatever special treatment may be required to ensure that she does her work under appropriate conditions, without affecting either the amount of her wages or her work arrangement.

Abortion is considered a felony by the Bolivian Penal Code¹⁰. However, therapeutical abortion, or abortion where pregnancy was the outcome of sexual abuse, abduction not followed by matrimony, rape or incest is exempt from punishment, and it is now a question of having the appropriate regulations in place. Although, choosing to see abortion as a matter of public health and social justice, current legislation permits the practice of legal abortion by public health care centres subject to judicial authorization, to date this service is not fully implemented.

Family Planning

Marriage and de facto unions enjoy similar normative treatment with regard to property and social security rights.

Bolivia's family planning law defines this concept as a couple's right to freely and responsibly choose the number and spacing of their children, and stipulates that this right includes access to the information, education and means required to make its enjoyment possible.

The policies established under the 1999-2000 General Economic and Social Development Plan have resulted in new guidelines and strategies for the Bolivian health care system. The Plan in question stands on four action pillars –opportunity, equity, institutionality and dignity– that govern policies in the various sectors, including the health sector. A number of reform schemes have been proposed to continue decentralizing the health care system. In addition, the Basic Health Plan has been put in place, providing for the supply of sexual and reproductive health services.

In 2000, a national contraception law was introduced that made it compulsory for service providers to inform about barrier methods (male and female condoms), voluntary surgical contraception (vasectomy, bilateral tubal ligation), traditional methods (rhythm, LAM), intra-uterine contraceptive device, hormonal methods (oral contraceptives, and injectables), emergency contraception. Although the Basic Insurance Scheme envisages supply/application of these methods, it does not include any subsidized contraception for men. For surgical intervention, the spouse's signed consent is a requirement.

Human Sexuality and Gender Relations

The 1995 Law against Family or Domestic Violence¹¹ includes sexual intercourse among the forms of family violence, by stating that sexual violence includes conducts and threats infringing the victim's sexual self-determination.

The 1999 Law to Protect Victims of Crimes against Sexual Freedom¹² addresses sexual violence and sexual exploitation conduct, and provides for the creation of centres dedicated to providing care, protection, psychological orientation and support to victims of these crimes. This notwithstanding, penal legislation has maintained rapists' exemption from punishment by marriage to the victim.

This same law increases the punishment for pandering and pimping in accordance with the victim's age, and makes punishment particularly harsh for trafficking in minors, as well as conduct using threats or violence to force other people to engage in the practice of prostitution.

Under a 2000 *Resolución Ministerial*, control and registration of commercial sex work in Bolivia falls under the jurisdiction of the National Police [*Policía Nacional*]. In fact this regulation contradicted a previous *Resolución Biministerial* which introduced the health card. Still later, a *Resolución Defensorial* recommended use of the health card and brought suit against Police edicts on grounds of unconstitutionality.

Adolescents

The Educational Reform Law of 1994¹³ envisages education for health and sexuality as a cross-cutting subject of formal education. Students aged 5 to 19 are included. Sexuality is approached from a gender-based perspective. However, no sexual education plan is ready for implementation, even though the Ministries of Education and Health and the Deputy Ministry of Gender Affairs have made attempts in that direction.

Regulations enacted under the Educational Reform Law of 1995 prohibit the rejection or expulsion of pregnant students from educational facilities, regardless of civil status, thus allowing them to complete their studies. The regulations in question actually enumerate educational facility types according to zone, level, schedule, and **other characteristics**.

Beginning in 1998, the Ministry of Health and Social Welfare has set up special adolescent orientation and counselling services manned by interdisciplinary teams. In practice, however, these services have been used to control pregnant adolescents, since little effort has been made to make the adolescent population aware of their existence.

Bolivia has approved its 2000 – 2005 Strategic National Plan for the Development of Integral Adolescent Health. During 2000, a ministerial resolution approved its technical regulation [*Norma Boliviana, Reglas y Protocolos Clínicos*] on comprehensive adolescent health care, providing:

- Information on sexual and reproductive rights.
- Information on adolescent pregnancy risks.
- Education in negotiation techniques in couple relations.
- Information on available sexual and reproductive health services.
- Orientation on sexual and reproductive health.
- Orientation on contraception methods.

Unfortunately, according to non-governmental sources, this legislation has not been in effect since October 2003.

¹ CEPAL - CELADE 2002

² Instituto Nacional de Estadística - Censo de población y vivienda 2001 - Bolivia.

³ Ministerio de Salud y Previsión Social, Unidad de atención a las personas, *Programa Nacional de Salud Sexual y Reproductiva 1999-2002*, approved by Resolución Ministerial N° 134 of 31 March 1999.

⁴ Ley de Creación del Seguro Básico de Salud. Decreto Supremo N°25.265 of December 1998

⁵ Ministerio de Salud y Previsión Social, *Guía técnica para atención de la salud sexual y reproductiva*, La Paz, 1999.

⁶ Ministerio de Desarrollo Humano, Secretaría Nacional de Salud, PLAN VIDA - Plan Nacional para la Reducción Acelerada de la Mortalidad Materna, Perinatal y del Niño. Bolivia 1994-1997 [b], La Paz, UNFPA/ USAID/ UNICEF/ OPS, 1994, p. 20. See CRLP, *Mujeres del Mundo: Leyes y Políticas que afectan sus vidas reproductivas* " América Latina y el Caribe, Bolivia, 1997, p. 35.

⁷ Decreto Ley 13214, reforming the Código de Seguridad Social of 24 December 1975.

⁸ Código de Seguridad Social, enacted on 14 December 1956. "Article 37.- The beneficiary shall be entitled to receive a maternity allowance during up to 6 weeks before and 6 weeks after childbirth, provided she stops all paid work and complies with doctor's orders imparted by the Caja's medical services, provided she has duly made payment of contributions in accordance with Article 26 hereof."

⁹ Section 10 of Ley N° 975 of 2 March 1988 establishes that no pregnant woman may be dismissed during a period of up to one year following her child's birth. The said protection is afforded to both private sector employees subject to Ley General del Trabajo and civil servants of any rank, without exception. Section quoted in Sentencia Constitucional 0644/2004-R, Sucre, 28 April 2004. See <http://www.tribunalconstitucional.gov.bo/resolucion9302.html>

- ¹⁰ Código penal de Bolivia - Decreto Ley N° 10426, 23 August 1972, amended by Ley N° 1768 of 10 March 1997. Article 263°.- (Abortion). Causing the death of a foetus in the mother's womb or causing its premature delivery shall be punishable by:
- 1) a prison sentence of two to six years, if abortion is practised without the woman's consent, or if she is under sixteen years of age;
 - 2) a prison sentence of one to three years, if abortion is practised with the woman's consent;
 - 3) a prison sentence of one to three years for the consenting woman.
- Attempted abortion by the woman is not punishable.
- Article 265.- (Abortion "honoris causa"). Abortion practised to save the woman's honour, whether by herself or by a third party with her consent, shall be punishable by a prison term of six months to two years. In the event of the woman dying as a result, the penalty shall be increased by one third.
- Article 266°.- (Abortion with impunity). "Abortion deriving from rape, abduction not followed by matrimony, seduction or incest, shall be exempt from punishment, provided the relevant criminal action has already been initiated".
- "Neither shall abortion be punishable if it is practiced with the intent of avoiding danger to the life and health of the mother, provided this danger could not be avoided by any other means".
- "In either case, abortion must be practiced by a medical doctor with the woman's prior consent of the woman and judicial authorization in her case".
- ¹¹ Ley N° 1674 Ley de Violencia contra la familia o doméstica, adopted on 15 December 1995
- ¹² Ley No. 2033. Ley de Protección a las víctimas de delitos contra la libertad sexual, 29 October 1999
- ¹³ Ley N° 1565 adopted on 7 July 1994.

Reproductive Rights and Reproductive Health

The 1988 Federal Constitution recognized reproductive rights. By reproducing its text, several state constitutions have followed suit.

In 1998, the Ministry of Health established the National Commission on Maternal Mortality to address the country's high maternal mortality rate. This Commission was officially re-established in 2003³ with the mandate to update diagnostic assessments, propose guidelines, accompany Ministry of Health actions, provide subsidies, mobilize different sectors of public opinion regarding women's health in order to reduce maternal mortality. Another decree⁴ has made it compulsory to notify judicial authorities about any death at childbirth, and to open an investigation to identify the contributing factors and causes of death in each case, in order to adopt whatever measures may be appropriate to avoid their occurrence in future.

In 1999, a Ministry of Health resolution approved the Unified Health Care System's Model Childbirth and Maternity Houses Project, which serves the population without economic resources.

In Rio de Janeiro, a 1997 law ordered public facilities to create conditions facilitating transit by pregnant women, and authorities complied effectively.

Under regulations introduced in 1996, women who have suffered sexual violence receive medical care including access to a legal **abortion** service at the state and municipal levels. Abortion is punished, except in the case of therapeutical abortion and abortion for rape⁵.

Under a federal law enacted in 1995 has outlawed pregnancy tests, sterilization requirements and other discriminatory practices for job security. In 1999, labour laws were consolidated to facilitate and regulate women's access to the **labour market**.

In Santa Catarina, a state law enacted in 1996 grants maternity and paternity leaves of 120 and 8 days respectively to any civil servant adopting children of either sex aged less than six years.

With regard to imprisoned women, a 1995 regulation makes it possible for prison inmates to breastfeed their children while in prison.

Under the Unified Health Care System⁶, Congress has created the national health card for women in order to specifically promote prevention and control of gynaecological cancer and breast cancer by ensuring that women receive treatment in public health centres with the required confidentiality. A 2002 law provides for public education campaigns to promote effective use of health cards by users and service providers. A law dictated a year earlier has made breast repair plastic surgery compulsory for private health care providers in the event of mutilation following cancer treatment⁷. A National Prostate Cancer Control Program is in place⁸.

Family Planning

Under the Federal Constitution of 1988, family planning is based on the principles of dignity of the human being and responsible parenthood, as well as free decision of the individual. It is incumbent upon the State to provide whatever educational and scientific

resources may be needed to ensure enjoyment of that right, and any attempt at coercive family planning by public or private institutions is prohibited.

The constitutions of over twenty states reproduce the Federal Constitution. Whilst the constitution of Pará only makes reference to free access to natural or artificial contraceptive methods, without mentioning family planning by name, the State of Rio de Janeiro promotes free access to contraceptives and a proactive health care policy for women. In 1995, the state of Sao Paulo enacted laws establishing family planning plans, programs and services.

The Family Planning Law of 1996⁹ is a federal law and refers to sexual and reproductive rights by stipulating that family planning is comprised of all actions performed to regulate fertility. It guarantees men and women equal rights with regard to deciding whether to have any children of either sex, from a perspective of a global and integral vision of health. It provides for integral health care for women during their entire lifecycle. It permits sterilization in certain cases, such as multiparity or serious danger to health, whilst prohibiting sterilization for population control purposes.

In 1999 the Ministry of Health introduced financial incentives to promote access to basic health care under the Family Health Care Program, and established that it be implemented by municipalities, as the entities in charge of providing information on sexuality and reproduction¹⁰.

A law issued in 1997 abolished late birth registration fees.¹¹ With regard to responsible parenthood, in 1996 Rio de Janeiro enacted a state law that mandates the government to provide paternity tests to be used as evidence in filiation suits. This law authorizes the Executive Power to equip state health laboratories for carrying out the test in question. Moving in the same direction, since 2000 Santa Catarina has provided free judicial assistance for carrying out the test in question where the concerned party lacks the necessary means.

Stable unions received constitutional recognition in 1996. As a result, in the event of death of either party, his/her cohabiting party can enjoy property rights, alimony rights and inheritance rights. This law facilitates the conversion of cohabitation into marriage.

The law that required the husband's consent for a woman to exercise her right to file complaint in court was abolished in 1997. This is definitely an advance for it means that married women are no longer considered dependent. Nonetheless, the 2002 Civil Code anachronistically maintains the excuse from compliance with guardianship obligations for married women¹².

Human Sexuality and Gender Relations

In 1988 the Ministry of Health issued a Technical Regulation («Preventing and Treating Injuries Resulting from Sexual Violence against Women and Adolescents») to guide the care of sexual violence victims by health care services, so as to provide adequate and comprehensive health care including legal abortion and HIV/AIDS treatment.

In 1996, a Penal Code¹³ amendment increased penalties for sexual abuse crimes against minors aged less than 14 years. Another law introduced the same year¹⁴ has made sexual

abuse against persons with mental disabilities, children of both sexes and pregnant women an aggravating circumstance. In 2000, sexual violence against women was included in the definition of torture for indictment purposes at the national level. Unfortunately, rapists' exemption from punishment by marriage to the victim has been maintained.

The Ministry of Justice's National Program to Prevent and Combat Sexual and Domestic Violence provides for interministerial action to be undertaken at the state and municipal level. Under the Program, a thematic chamber was established in 1999 with the task of drawing up a national assistance plan for women victims of violence.

In 2001 the Municipality of Sao Paulo enacted a law that included gender violence data in health care system statistics. Pursuant to this law, health care personnel must identify and record the type of violence suffered by the woman in each case, and its consequences in terms of death or physical, sexual or psychological damage or suffering.

In 1997, Río de Janeiro made it compulsory for the Police, and more particularly for *Delegacias de Defesa da Mulher*, to inform rape victims that they are free to have a legal abortion where their pregnant state is the product of that rape. The same law was adopted in Sao Paulo in 1999.

In 2000, submitting a child or adolescent of either sex to sexual exploitation was defined a felony, and punishability was extended to owners, managers or administrators of establishments allowing the practice¹⁵. In the same year, a law declared May 18th National Day to Combat Child Sexual Abuse and Sexual Exploitation.

With regard to **sexual harassment**, since 2001 the Penal Code has made it an offence, defined as basing employment decisions on the satisfaction of a sexual demand.

Adolescents

The rights of adolescents of either sex to sexual and reproductive health information and services is promoted by current legislation.

In 1996, basic national education legislation was introduced and made sexual education, including the issue of sexual orientation, a cross-cutting part of school curricula. Core principles include human solidarity, freedom of ideas, and tolerance.

¹ CEPAL -CELADE 2002.

² Source - IBGE, Diretoria de Pesquisas, Departamento de População e Indicadores Sociais, *Censo Demográfico 2000*.

³ Portaria Nº652/GM-MS of 28 May 2003 revoked Portaria Nº3.907 of 1998 that had created the National Commission on Maternal Mortality.

⁴ Portaria Nº653/GM-MS of 28 May 2003.I – if there is no other way to save the pregnant woman's life;

Abortion where pregnancy was the result of rape II – if the pregnancy is the result of rape, provided if is performed with the prior consent of the pregnant woman or her legal representative.»

⁵ Código penal de Brasil- Decreto-ley N.º 2.848, of 7 December 1940:

«Abortion induced by, or with the consent of, the pregnant woman

Art. 124 – A woman who induces her own abortion or consents to a another person inducing it shall be subject to imprisonment for1 (one) to 3(three years).

Art. 128 – No penalty shall be imposed on a physician who induces an abortion:

Necessary abortion

I – if there is no other way to save the pregnant woman's life; Abortion where pregnancy was the result of rape

II – if the pregnancy is the result of rape, provided if is performed with the prior consent of the pregnant woman or her legal representative.»

⁶ Lei Nº10.516 of 11 July 2002.

⁷ Lei Nº 10.223 of 15 May 2001, modifying Lei Nº9.656 of 3 June 1998.

⁸ Lei N°10.289 of 20 September 2001.

⁹ Lei N°9.263 of 12 January 1996, regulating application of Article 226, Section 7, of the Federal Constitution.

¹⁰ *Ministério da Saúde, Portaria N°1.348/GM* of 18 November 1999.

¹¹ Lei N°9.465 of 7 July 1997.

¹² Lei N°10.406 of 11 January 2002, introducing changes into the Civil Code.

¹³ Lei N°9.281 of 4 June 1996 abolishing the relevant paragraphs of Articles 213 and 214 of *Decreto-Lei N°2.848* of 7 December 1940 – Penal Code.

¹⁴ Lei N°9.318/96 of 06 December 1996.

¹⁵ Lei N°9.975 of 23 June 2000.

Reproductive Rights and Reproductive Health

The Political Constitution of the Republic of Chile² in force since 1980 and amended in 2003 enshrines the right to life and to physical and psychic well-being of the individual, and establishes legal protection for the life of the unborn.

The Constitution also enshrines the right to protection of health, and to free and equal access to facilities for the promotion, protection and recovery of health and rehabilitation of the individual. It makes it incumbent upon the State to coordinate and control health related actions and guarantee their performance, whether through public or private institutions, in such manner and on such terms as may be determined by law. Compulsory contributions may be established to that effect. Each person shall have the right to choose whichever state or private health care system best suits his/her needs.

Abortion under any circumstance is treated as a crime under the heading «Crimes and Offences against the Family and Public Morality» of the Penal Code. Nevertheless, the consenting woman's desire to conceal her dishonour is considered an extenuating circumstance³.

In 1997, under its Women's Health Program, the Ministry of Health regulated the manner and quality of access to health care services with regard to birth control, reproductive health and STD prevention, as well as assistance during pregnancy, childbirth and breastfeeding.

In 2002⁴ a law suspends nighttime imprisonment during pregnancy and puerperium.

In the labour sphere, in 1996 the Labour Directorate⁵ declared all women workers employed in shopping malls or the like (whether forming a single legal entity or not), entitled to day nursery care services. This increased the number of workers with day nursery care coverage, for until then the obligation to provide it had been restricted to individual establishments with 20 or more women workers. In 2003, a new law⁶ amended the Labour Code by making it compulsory for industrial and service establishments to install day nurseries on their premises. A special law enacted in 1997⁷ introduced maternity or paternity leaves in the event of his/her child's serious illness.

The Labour Code was amended in 1998⁸ to establish that no employer is allowed to make change in working conditions, hiring, retaining, or renewal of contract conditional upon a worker's being pregnant or not pregnant. At the beginning of 2003⁹, Chile's Labour Code introduced the protection of motherhood in the labour sphere by unifying current legislation on the prohibition of pregnancy testing, rest periods, sick leaves, adoption, dangerous and unhealthy work during pregnancy, day nurseries, breastfeeding, etc.

A law enacted in 2000¹⁰ has extended maternity privileges [*fuero maternal*] to adopters of minors, even if they be single women and men, widows and widowers, and established paternity privileges for the father in the event of the mother's death at childbirth or in the postnatal period.

Family Planning

The Ministry of Health's 1997 Women's Health Program regulates contraceptives by establishing areas of work with regard to fertility regulation, a sexual and reproductive health consulting service and a specialist consulting service on reproduction.

Emergency oral contraception is envisaged as a part of the assistance provided for sexual violence victims in accordance with a guide especially designed for such cases, as explained with reference to the section of this text dealing with sexuality.

In 1998, new legislation¹¹ modified civil legislation on filiation by declaring equal rights for the newborn, whether conceived in or out of wedlock.

In 2000¹² the Family Abandonment and Alimony Law was amended to increase the efficiency of Chile's Carabineros and Investigations Police.

The Minors Law of 2000¹³ has consolidated provisions in the Civil Code, the Civil Registry Law, the Changes in Names and Surnames Authorization Law, the Minors Law, the Family Abandonment and Alimony Law, and more.

In 2001¹⁴, applicable legislation was modified to regulate visitation rights regarding children where only one parent has guardianship over them. Under the new rules, it will be for probate judges to determine who shall have custody of minor children; to establish, should the parents fail to reach an agreement, the manner in which the right provided for under the Civil Code shall be enjoyed as well as whether to suspend or restrict that enjoyment as the case may require; and to declare parental authority suspended or forfeited and authorize emancipation.

In 2001¹⁵ the Minors Law was amended also with regard to family abandonment and payment of alimony. Under the new rules, it will be for probate judges to hear suits for alimony and petitions for reduction, increase or cessation of alimony or child support due to minors, to the alimony or child support provider's spouse should he/she petition for it together with his/her minor children, or to relatives jointly petitioning for it, whether senior or minor even in the event they become of age while the suit is pending. The new rules also regulate summons to declare paternity and maternity.

In 1994¹⁶, new rules were introduced to govern the sharing of spouses in the property acquired by them during the marriage. This implied modifying the Civil Code, the Civil Marriage Law, the Penal Code, the Code of Criminal Procedure, and other legislation.

New laws were adopted on the adoption of minors in 1999¹⁷; again, in 2003¹⁸ several provisions regarding the adoption of minors were amended as to the rules governing probate court jurisdiction.

In 2003¹⁹ the Civil Marriage Law modified the Civil Code with regard to the grounds for incompetency affecting deaf-mute individuals unable to express themselves in writing, or any one unable for whatever reason to express his/her will clearly by spoken or written word.

With regard to **divorce**, in 2004²⁰ the new Civil Marriage Law admitted de facto marital separation, judicial separation of spouses and divorce for cause, divorce by mutual consent if the spouses have not lived together for over one year, and divorce at the request of either party if the spouses have not lived together for over three years.

Human Sexuality and Gender Relations

In 1999²¹ Chile's Penal Code and Code of Criminal Procedure were modified with regard to rape. Although provisions regarding sexual crimes in general were improved, they still consider them under the heading of crimes against morals and the family. The definition of

rape for indictment purposes is broad, and protects minors of both sexes victims of sexual abuse and pornography. It also includes conjugal rape. New legislation enacted in 2003²² has made it easier to report sexual assault and made more effective investigation of the crime possible.

In 2004, a Clinical Guide and Assistance Protocol to be used by Emergency Room Services Treating Sexual Violence Victims²³ was published with a view to integrating medical care with judicial and psychosocial actions in order to prevent repetition of aggression or abuse. The new rules seek to ensure that the victim be questioned no more than once; establish that emergency room services must ensure enjoyment by the victim of the rights to: receive care, be treated with respect, report the crime, request protection, obtain redress, be heard, file suit, file a complaint, etc. Implementing them requires joint, coordinated efforts by emergency room services, Carabineros, the Medical Legal Service, Public Prosecutors. They include **emergency hormonal contraception** to prevent rape-induced pregnancy, and the administration of antibiotics to prevent sexually transmitted infections.

With regard to **sexual orientation**, 1999 saw the repeal of the law that made a crime of consensual homosexual intercourse between adults.

The crime of trafficking in persons was introduced into the Penal Code in 1995²⁴ under the name of white slave trade. Under this new legislation, punishment is harsher if the victim is a minor; if violence or intimidation is involved; if deception or abuse of authority or trust is used; if there exist certain degrees of kinship between the victim and the perpetrator, or if the perpetrator is the victim's appointed guardian.

In 2002, under a new rule included into the Penal Code²⁵, Policía de Menores must keep places considered centres of corruption of minors under their watchful eye.

A law enacted in 2003²⁶ on film rating has established that minors are permitted to watch any film placed by the Rating Authority in a category immediately higher than the one corresponding to their age groups, provided they do so in the company of either parent or an appointed guardian, or a teacher in the context of their educational activities. In no case shall this exception apply to films with **pornographic or excessively violent content**. The manner of accreditation of the above-described persons will be established by regulations. Under the new law, furthermore, a person who participates in the production of pornographic material, on whatever support, where individuals under 18 years of age are employed, shall incur a prison sentence of 3 years and 1 day to 5 years. A person who commercializes, imports, distributes or exhibits pornographic material, on whatever support, where individuals under 18 years of age are used, shall incur a prison sentence of 61 days to 3 years. With regard to child pornography, amendments were introduced in 2004²⁷ into the Penal Code and the Code of Criminal Procedure.

Adolescents

The Political Constitution of the Republic of Chile guarantees all persons the right to **education**, conceived of as a means to attaining full development of the individual in the various stages of his/her life. Parents have a preferential right as well as a duty to educate their children. It is incumbent upon the State to provide special protection for the enjoyment

of that right.

Although the Constitution makes no direct mention of sexual education, in 2004²⁸ the Constitutional Organic Law on Teaching [*Ley Orgánica Constitucional de Enseñanza*] was amended to promote human rights by the addition of «promoting the study and knowledge of essential rights inherent to human nature» as a stated goal.

With regard to adolescent pregnancy, in 1995 the Ministry of Health and Education's JOCAS Programme regulated information on and prevention of adolescent pregnancy and STDs among school-age students.

The Constitutional Organic Law on Teaching was amended in 2000²⁹ with regard to pregnant or breastfeeding students' right to attend educational facilities.

¹ CEPAL - CELADE 2002.

² Source: http://www.bcn.cl/publicadores/pub_leyes_mas_soli/admin/ver_archivo_contitucion.contitu

³ Código Penal, COD -18742, pub. 12 November 1874

Article 342 – He who maliciously causes an abortion shall be punished:

1. Where he caused violence to the pregnant woman, by a prison term of five years and one day to ten years.

2. Where he acted without the consent of the women, by a prison term of three years and one day to five years.

3. Where the woman had given her consent, by a prison term of 541 days to three years

Article 344 – Any woman who causes her abortion, or who consents to another person causing it, shall be punished by a prison term of three years and one day to five years. If she did it to conceal her dishonour, she shall be punished by a prison term of 541 days to three years.

⁴ Source: <http://asistentesjudiciales.iespana.es/asistentesjudiciales/leyes/18216.htm>

⁵ Source: http://www.gtzgenero.org.ni/docs/3_8_3.pdf (p. 22)

⁶ Source: <http://www.sidarte.cl/ctrabajo.pdf> (p. 74)

⁷ Source: <http://www.cajpe.org.pe/RIJ/bases/legisla/chile/9505.pdf>

⁸ Source: <http://www.acnur.org/biblioteca/pdf/0893.pdf> (p. 76)

⁹ Source: http://www.bcn.cl/publicadores/pub_leyes_mas_soli/admin/ver_archivo_leyes_ley=321

¹⁰ Source: <http://www.un.int/chile/Documentos/leyesmujer>

¹¹ Source: <http://www.bcn.cl/imag/pdf/19585.pdf>

¹² Source: <http://www.anfitrion.cl/actualidad/20ulle/19693.html>

¹³ Source: http://www.bcn.cl/publicadores/pub_leyes_mas_soli/admin/ver_archivo_leyes_ley426

¹⁴ <http://www.anfitrion.cl/actualidad/20ulle/01011819711.html>

¹⁵ <http://www.anfitrion.cl/actualidad/20ulle/01072419741.html>

¹⁶ Source: <http://asistentesjudiciales.iespana.es/asistentesjudiciales/leyes/19335.htm>

¹⁷ Source: http://www.bcn.cl/publicadores/pub_leyes_mas_soli/admin/ver_archivo_leyes_ley20

¹⁸ Source: http://www.bcn.cl/publicadores/pub_leyes_mas_soli/admin/ver_archivo_ultimas_ultima=27

¹⁹ Source: http://www.bcn.cl/publicadores/pub_leyes_mas_soli/admin/ver_archivo_ultimas_ultima=34

²⁰ Source: http://www.bcn.cl/publicadores/pub_leyes_mas_soli/admin/ver_archivo_ultimas_ultima103. Ley N°19947 published on 17 May 2004.

²¹ Source: http://www.oas.org/juridico/MLA/sp/chl/sp_chl-int-text-cpp.pdf (pp. 39, 92 and 120)

²² Source: http://www.bcn.cl/publicadores/pub_leyes_mas_soli/admin/ver_archivo_ultimas_ultima64

²³ Published on April 2004.

²⁴ Source: <http://www.un.int/chile/Documentos/leyesmujer>

²⁵ Source: <http://www.anfitrion.cl/actualidad/20ulle/02053119806.html>

²⁶ Source: <http://www.anfitrion.cl/actualidad/20ulle/03010419846.html>

²⁷ Source: http://www.bcn.cl/publicadores/pub_leyes_mas_soli/admin/ver_archivo_ultimas_ultima

²⁸ Source: http://www.bcn.cl/publicadores/pub_leyes_mas_soli/admin/ver_archivo_ultimas_ultima=91

²⁹ Source: http://biblioteca.mineduc.cl/documento/ley19688_2000.pdf

Reproductive Rights and Reproductive Health

Under the Colombian Constitution of 1991², women and men enjoy equal rights and opportunities. Women shall not be subjected to discrimination of any kind. During pregnancy and after childbirth, women shall receive special assistance and protection from the State, as well as food allowance if she is unemployed or otherwise vulnerable and in need. The State shall be particularly attentive to the needs of women heading households.

With regard to health, the Constitution establishes health care and environmental sanitation are public services to be supplied by the State. All persons are guaranteed access to health promotion, protection and recovery services.

Legislation enacted in 1998³ established technical, scientific and administrative rules for the operation of human body parts banks, reproductive biomedicine units, centres or other like facilities⁴. It defined as reproductive biomedicine unit any facility engaged in the rendering of reproductive health-related study, assistance, treatment and research services, with a special emphasis on infertility of the couple, including diagnostic-related surgical actions and treatment using assisted reproduction techniques. These envisage the harvesting of preembryos to promote the recovery of fertility in man as well as in woman, the obtainment of biological material for the same purpose and the achievement of pregnancy.

Under a special law⁵ enacted in 1999 *madres comunitarias* are entitled to social security benefits which include a subsidy to help them pay their mandatory contributions to the national pension fund.

While punishing **abortion**, the 2000 Penal Code⁶ provides for a reduction of punishment where a pregnancy is the result of non-consensual sexual intercourse or other sexual act, or abuse, or non-consensual artificial insemination or transfer of a fertilized ovule. It also provides that a legal authority may dispense with the sentence where the specific case does not call for it⁷. The Code has also defined injury to the foetus as an offence⁸, and ordered that, where the act is committed by a health professional, he or she shall be suspended from practice for the same length of time as the prison term. Culpable injury to the foetus is treated differently.

Abandonment of a person aged less than twelve years or otherwise incapable of looking after him/herself by someone under legal obligation to look after them is considered an offence by the Colombian Penal Code.

Pursuant to a law enacted in 2002⁹ the Substantive Labour Code [*Código Sustantivo del Trabajo*] was amended to ensure that a woman worker entitled to paid maternity leave at childbirth actually enjoy the statutory 12 weeks of paid leave. Her husband or steady partner is entitled to four days of paid paternity leave if he alone is paying contributions to the General Health Social Security System (SGSSS). In the event both parents are paying contributions to the SGSSS, the father shall be entitled to eight working days of paid paternity leave, which, however, is incompatible with casual leave on account of domestic calamity. Where the latter has also been applied for on account of the child's birth, the days granted on that account must be discounted from paid paternity leave.

Under the law in question, the only supporting evidence valid for purposes of obtaining

a paid paternity leave is a birth certificate issued by the Civil Registry (*Registro Civil de Nacimiento*), which must be submitted to the Health Management Organization (EPS) of affiliation within 30 days of the child's birth.

Paid paternity leave is funded by the EPS of affiliation, subject to the father having effectively paid contributions during the one hundred weeks preceding recognized commencement of the leave in question. The National Government shall adopt such measures as may be necessary to ensure compliance with the above provision in the case of a premature or adopted child of either sex.

Pursuant to the provisions of the 2003-2006¹⁰ National Development Plan, «Towards a community State», paid paternity leave is funded by the EPS of affiliation, which recoups the funds via the Solidarity and Guarantee Fund's Compensation Subaccount in accordance with the rules and procedures established by current regulations governing maternity leave.

In the matter of health, the Equal Opportunities Law of 2003¹¹ mandates the Government to carry out actions aimed at improving and increasing women's access to comprehensive health care services, also covering sexual and reproductive health and mental health, throughout a woman's life cycle, and more particularly during childhood and adolescence; to promote affiliation to Colombia's subsidized health care system for women heading households, or in circumstances of manifest weakness resulting in discrimination or marginalization; to design and carry out responsible information dissemination programs on woman's reproductive capacity; and to use preventive means in order to reduce female morbidity and mortality rates related to sexual and reproductive health, mental health and disability.

Pursuant to a decree issued in 1997¹² domestic public law conventions [*Convenios de Derecho Público Interno*] entered into between various religious denominations and the State are noted, and marriages celebrated by their respective authorized ministers are recognized for purposes of recordal in the civil registry.

A law approved in 2002¹³ established a number of special rules to promote continued support of dependants by replacing prison terms with house arrest and community work for women heading households.

Family Planning

Under the Constitution, the State upholds the primacy of the individual's inalienable rights free from discrimination of any description, and the central value of family as the core institution of society, created by natural or legal bonds, by a man and a woman's free decision to enter marriage or responsible decision to create a family.

A law enacted in 1996¹⁴ created the National Family Protection Register for the registration of the names and other personal data of anyone failing to comply with their child support obligations without just cause. The law also included measures to ensure its enforcement. These included putting people in charge of drawing up procedures and processes for the punishment of noncompliance, and budgetary appropriations.

In 2002¹⁵, regulations were issued governing the operation of the Committee in charge of accrediting and supervising laboratories licensed to perform DNA tests. In the following

year¹⁶ the accreditation and certification of public and private laboratories licensed to perform paternity or maternity tests was regulated. A 2001 law reserves for the State the performance of scientific tests valid for paternity and maternity establishment purposes, and specifies that such tests must be performed by duly accredited and certified public or private laboratories. The new law aims at regulating the accreditation and certification of these laboratories and to set up a transition mechanism to handle the existing backlog of applications for such tests.

A law enacted in 2003¹⁷ has put in place special provisions that make urban real estate not attachable or garnishable in the case of a single property owned by a woman heading households. A woman heading a household is defined as a single or married woman with permanent economic or social dependents, whether they be her own minor children or other people unable to work through disability, due to her husband's or steady partner's permanent absence, or physical, sensorial, psychic or moral disability or virtual lack of help from the other members of the family unit.

Human Sexuality and Gender Relations

In 1997¹⁸, new provisions of the Penal Code defined crimes against sexual freedom and decency as «offences against sexual freedom and human dignity», established prison sentences for offences including violent sexual act, prohibited parole pending criminal sentencing for perpetrators, and established rights for victims.

Under the Penal Code of 2000, **violent sexual intercourse** occurring in the course and as a result of armed conflict, and violent sexual acts on a protected person are considered indictable offences. Aggravating circumstances include kidnapping for ransom, the victim's disability or pregnancy, torture. Violent sexual intercourse, violent sexual acts (not to be confused with sexual intercourse), and sexual intercourse with, or violent sexual acts against, a person unable to resist are treated as crimes against sexual freedom, sexual integrity and sexual formation. The Code also treats abusive sexual acts as offences, and punishes as such sexual intercourse with minors aged less than 14 years, sexual acts on minors aged less than 14 years, abusive sexual intercourse with or sexual acts on a person unable to resist or under other aggravating circumstances. The most important aspect of this Penal Code is that it considers oral, anal or vaginal penetration by the penis, as well as penetration of any part of the human body using any object, as violent sexual intercourse. This is, indeed, a very significant step forward in the recognition of sexual rights.

Regarding **sexual orientation**, the Penal Code of 2000 places motives of intolerance and discrimination based on the victim's race, ethnicity, ideology, religious or other beliefs, sex or sexual orientation, or a particular illness or disability among the most aggravating circumstances for any offence.

On the issue of **prostitution and sexual exploitation**, 1996¹⁹ saw the creation of an interinstitutional committee for combating traffick in women and children. Its remit is to serve as an advisory body in charge of coordinating design and follow-up of policies aimed at preventing and prosecuting exploitation, abuse and sexual trafficking in women and children, as well as helping, rehabilitating and resocializing victims of such crimes.

Under the Penal Code of 2000, forced prostitution or sexual slavery, inducement into prostitution, compulsion into engaging in prostitution, human trafficking are punished, and sentences are harsher if the victim is under 14 years of age. If victims are under 18 years of age, the Code punishes encouragement of the prostitution of minors, pornography involving minors, using, or allowing the use of, the media to advertise sexual services rendered by minors, and failure to report the above actions. In 2002, a provision that made sexual tourism an offence was abolished.

In furtherance of compliance with the Constitutional dictate, in 2001²⁰ a statute was enacted to prevent and counteract exploitation, pornography and sexual tourism involving minors. In 2002²¹, modifications and additions to the Penal Code defined human trafficking as an indictable offence and introduced other provisions.

In order to establish technical and administrative measures aimed at preventing access by minors to any pornographic content via the Internet or any of the various global information networks made accessible by computer technology, regulations were enacted in 2002²² governing compliance with the 2001 statute. Another purpose of this legislation is to discourage the use of the information systems in question for purposes of child sexual exploitation or to offer commercial services involving sexual abuse of minors.

Adolescents

In 1994, the General Education Act²³ made it a paramount objective for every level of the educational system to achieve the comprehensive development of pupils and students by means of structured actions aimed at a) developing a pupil or student's personality and ability to assume his/her rights and duties in a responsible and autonomous manner; b) providing pupils and students with a sound ethical and moral foundation, and encouraging practices of respect for human rights; d) fostering the development of healthy and wholesome sexuality as a way to foster self-knowledge and self-esteem, and sexual identity building in a spirit of respect for gender equity, affectivity, mutual respect, in preparation for harmonious and responsible family life.

The provisions of the 1997 Youth Act²⁴ guarantee young men and women full exercise of their rights and duties as enshrined in the National Constitution. The Law provides the legal basis for promoting comprehensive education, integration into economic life and active involvement of young people. It is also the main institutional framework for the design of policies and programs placing particular emphasis on the importance of involving young people in the formulation of comprehensive education policies and plans²⁵. In furtherance of the Law, through the sexual education project authored by the Deputy Minister for Youth Affairs, the Ministry of National Education has developed a proposal to transform the sexual culture prevailing in education centres in terms of knowledge, attitudes, behaviours and values.

In 1997²⁶, newly enacted provisions regarding HIV/AIDS and STD prevention introduced education for sexual and reproductive health. They make it incumbent on the Ministry of National Education, acting through its sexual education projects in coordination with the Ministry of Health, to promote responsible, healthy and wholesome, and ethical sexuality

among children and young people. Under the new provisions, sexual education shall be provided in educational institutions and involve the entire educational community, with due emphasis on promoting responsible attitudes and behaviours conducive to the development of autonomy, self-esteem, the values of peaceful coexistence and the preservation of sexual health as contributive factors to STD, and HIV/AIDS prevention.

¹ CEPAL -CELADE 2002.

² As amended up to 2001. Source: <http://www.georgetown.edu/pdba/Constitutions/Colombia/col91.html>

³ Source: <http://www.juridicacolombiana.com/pagina/legislacion/decretos/indicadedcretos1998.htm>

⁴ Legislation issued on 6 August 1998 by the Ministry of Public Health complements it « See <http://www.ags.com.co/boletines/boletin05.html#re3199>

⁵ Source: http://www.secretariassenado.gov.co/leyes/L0509_99.htm

⁶ Source: <http://www.secretariassenado.gov.co/leyes/L0599000.html>In any event envisaged in the foregoing paragraph, where abortion takes place under extraordinary and abnormal conditions of motivation, a legal authority may dispense with the sentence unless the specific circumstances of the case require otherwise.

⁷ Código penal de Colombia- Ley 599 of 24 July 2000:

Article 122. Abortion. any woman causing an abortion or allowing another person to cause an abortion shall be sentenced to a prison term of one (1) to three (3) years.

The same prison term shall be imposed on whomever has engaged in the conduct envisaged in the foregoing paragraph with the aborting woman's consent.

Article 124. Mitigating circumstances calling for reduced penalty. the prison term to be imposed for the offence of abortion shall be reduced by three fourths where a pregnancy is the result of non-consensual sexual intercourse or other sexual act, or abuse, or non-consensual artificial insemination or transfer of a fertilized ovule.

⁸ Ley 599 of 2000. published in Diario Oficial No 44 097 of 24 July 2000, reforming the Penal Code. Article 125. Injury to the foetus. Whoever causes bodily harm or otherwise affects a foetus's health to the point of impairing its normal development, shall be sentenced to a prison term of two (2) to four (4) years. Where the act is committed by a health professional, he/she shall be suspended from practise for the same length of time as the prison term.

⁹ Source: <http://www.secretariassenado.gov.co/leyes/L0755002.htm>

¹⁰ Source: <http://www.secretariassenado.gov.co/leyes/L0812003.htm>

¹¹ Source: http://www.laleycolombiana.com/lle_contenido/Normas/2003/Leyes/823.htm

¹² Source: <http://bib.minjusticia.gov.co/normas/decretos/1997/d14551997.htm>

¹³ Source: <http://www.secretariassenado.gov.co/leyes/L0750002.htm>

¹⁴ Source: http://www.secretariassenado.gov.co/leyes/L0311_96.htm

¹⁵ Source: <http://www.saludtolima.gov.co/noryley/decre1562.htm>

¹⁶ Source: <http://www.bienestarfamiliar.gov.co/espanol/juridica/dec2112.rtf>

¹⁷ Source: <http://www.secretariassenado.gov.co/leyes/L0861003.htm>

¹⁸ Source: http://www.secretariassenado.gov.co/leyes/L0360_97.htm

¹⁹ Source: <http://www.acnur.org/biblioteca/pdf/01027.pdf>

²⁰ Source: <http://www.secretariassenado.gov.co/leyes/L0679001.htm>

²¹ Source: <http://www.secretariassenado.gov.co/leyes/L0747002.htm>

²² Source: <http://www.internet-solutions.com.co/Decreto1524240702.pdf>

²³ Source: http://www.secretariassenado.gov.co/leyes/L0115_94.htm

²⁴ Source: <http://www.col.ops-oms.org/juventudes/Situacion/LEGISLACION/LEYDEJUVENTUD/LEY.htm>

²⁵ in furtherance of the Act, through the sexual education project authored by the Deputy Minister for Youth Affairs, the Ministry of Education has developed a proposal to transform and build the sexual culture of education centres in terms of feelings, knowledge, attitudes, behaviours and values of the respective community.

²⁶ Source: <http://www.minproteccionsocial.gov.co/msecontent/NewsDetail.asp?ID=8137&IDCompany=12>

Reproductive Rights and Reproductive Health

In 1999, Costa Rica², legislated³ that «it is and undelegable responsibility the Costa Rican State to ensure that people's rights to sexual and reproductive health are protected, and to protect and enforce its international commitments in this area, which include the recognition of every individual's right to control every aspect of his/her health and, in particular, his/her own reproductive capacity», and created the Interinstitutional Committee on Health and Sexual and Reproductive Rights [*Comisión Interinstitucional sobre Salud and Derechos Reproductivos y Sexuales*].

The Ministry of Health's National Health Policy 2002-2006 reflects these commitments. It includes a protocol for childbirth care. Its Health Care Regulations make specific reference, among other basics, to a woman's right to be informed, to make decisions regarding treatment and interventions, to be accompanied by a friend at all times in attending rooms of hospitals and clinics. Its implementation, however, is hindered by medical and administrative practice.

According to WHO information, «national food aid programs are directed toward mothers and children at risk»⁴.

In Costa Rica abortion⁵ is considered an indictable offence, liable to public prosecution even when deriving from rape or incest. Therapeutical abortion, however, is exempt from punishment. A 2002 addition to the Penal Code established a fine for anyone «marketing or advertising procedures, drugs or substances designed to induce abortion»⁶.

Family Planning

Costa Rica's family policy is a part of the National Agenda for Childhood and Adolescence (2002 – 2010)⁷ it has adopted within the framework of its public policy in that area.

In 1999, it recognized the right of every person of age to make free, informed decisions regarding his/her sexual and reproductive health. The new legal provisions allow surgical sterilization and recognize men's right to vasectomy. Their enactment was followed by an increase in the demand for surgical sterilization⁸.

In vitro fertilization has been pronounced illegal by a 2000 majority vote of the Constitutional Court of Costa Rica. By the same decision, the Court pronounced the human embryo to be a person and entitled to protection as such from the moment of conception⁹.

Human Sexuality and Gender Relations

In 2002, as a result of a reform of the Penal Code¹⁰, changes were introduced into the types of penalties and the section regarding misdemeanours was completely overhauled. , inappropriate or unwanted sexual touching, improper proposals, public indecency, and assault on a woman in a state of pregnancy¹¹. Rapists' exemption from punishment by marriage to the victim is maintained.

Legislation on sexual harassment in the workplace or of students by the teaching staff has been reformed¹², and specific labour law penalties have been adopted. However, effective enforcement of the new provisions is being prevented by several gaps and limitations in private and public spheres.

Adolescents

In 1997, the General Law for the Protection of Adolescent Mothers [*Ley General para la Protección de las Madres Adolescentes*] provided for the creation of a Council for Adolescent Mothers [*Consejo para Ayudar a las Madres Adolescentes*], and established rules guaranteeing comprehensive care for adolescent mothers. In addition, it regulates all governmental policies and programs in this area.

Under the Childhood and Adolescence Code approved in 1998, it is incumbent «upon the Ministry of Health to ensure the development of a national education policy on issues related to sexual education, reproduction, adolescent pregnancy, drug abuse, gender violence, STD and HIV/AIDS; establishing comprehensive social security programs, and issuing identity cards to uninsured individuals»¹³.

Sexual education guides were withdrawn in 1994, and the Young Love program followed in 1999, putting an end to the provision of sexual education for young people in Costa Rica. This was due to the Ministry of Public Education (MEP) resisting the development of programs of education for sexuality, as made manifest by the Ministry suspending in 2001 the teacher training program within the framework of the Young Love program, even though the necessary funds were available. According to the CEDAW Shadow Report on Costa Rica 2003, «although of the utmost importance, the work done by the National Adolescent Health Program (PAIA) in the area of sexual health and reproductive health for adolescents is not sufficient, for it only covers 29% of adolescent population».

The Shadow Report also points out that «the government has allowed the Costa Rican Episcopal Conference the power to review and withhold consent to educational texts and programs on sexuality, on the basis of Catholic beliefs and morals. Such was the case with the Young Love program, whose fate was decided by mutual consent between the parties»¹⁴.

¹ CEPAL - CELADE 2002.

² Article 75° of Constitución Política of Costa Rica declares that the Catholic, Apostolic, Roman religion is the religion of the State.

³ Decreto 27913-S of May 1999.

⁴ Regional Basic Health Data System, Costa Rica Country Health Profile 2002 at www.paho.org

⁵ Código Penal de Costa Rica, Ley N° 4573 of 4 May 1970.

Consensual or Forced Abortion

Article 118.- Causing the death of a foetus shall be punishable by:

1) a prison sentence of three to ten years, if abortion is practised without the woman's consent, or if she is under fifteen years of age. If the foetus had not had six months of intrauterine life when abortion occurred, the prison sentence shall be of two to eight years.

2) a prison sentence of one to three years, if abortion is practised with the woman's consent. If the foetus had not had six months of intrauterine life when abortion occurred, the prison sentence shall be of six months to two years.

In both cases the penalty shall be increased in the event of the woman dying as a result.

Abortion honoris causa

Article 120.- Abortion practised to save the woman's honour, whether by herself or by a third party with her consent, shall be punishable by a prison term of three months to two years.

Abortion with impunity

Article 121.- Abortion shall not be punishable if it is practiced with the woman's consent by a physician, or by a certified professional midwife if no physician is available, with the intent of avoiding danger to the life and health of the mother, provided this danger could not be avoided by any other means.

- ⁶ Regional Basic Health Data System, Costa Rica Country Health Profile 2002, at www.paho.org
- ⁷ Lic. Alvarado, Damaris, Member of the Governing Board of Patronato Nacional de la Infancia, Políticas públicas a favor de la familia - Costa Rica
- ⁸ Decreto 27913-S of June 1999, quoted in the Costa Rica Shadow Report submitted to the CEDAW Committee.
- ⁹ Shadow Report. United Nations Convention on the Elimination of Discrimination against Women, CEDAW Costa Rica, 2003 at <http://www.nu.or.cr/unfpa/publicaciones/Sombra2003.pdf>
- ¹⁰ Ley N°8250 published on 10 May 2002.
- ¹¹ CLADEM, «Legislación y jurisprudencia derechos sexuales y reproductivos en América Latina y El Caribe.» Boletín electrónico, Edición Especial No. 00 - OCT/2002, www.cladem.com/espanol
- ¹² Ley N°7476.
- ¹³ Leyes y políticas sobre salud y derechos sexuales y reproductivos de los adolescentes. 1999, www.sexualidadjoven.cl/legislacion/legislacion_monitoreo_cairo/beijing.htm
- ¹⁴ Shadow Report. United Nations Convention on the Elimination of Discrimination against Women , CEDAW Costa Rica, 2003, at <http://www.nu.or.cr/unfpa/publicaciones/Sombra2003.pdf>

Reproductive Rights and Reproductive Health

The Cuban Constitution³ of 1976, as reformed by the National Assembly in July 1992, establishes State protection for motherhood. It also enshrines the right of every citizen to receive treatment in any health care centre around the country without distinction on whatever basis including sex. As protector of health and healthy reproduction, the State grants leaves with pay to women workers both before and after childbirth, as well opportunities for part time work compatible with their duties as mothers.

In addition, Cuba has a National Action Plan of the Republic of Cuba for Follow-up to the Beijing World Conference, that was enacted as law in 1997 and provides for policies and actions aimed at promoting women's rights in Cuba. The Plan envisages 90 measures, including respect for human, sexual and reproductive rights of woman, and improving research on woman and gender relations.

Likewise, a Law-Decree issued by the Council of State in 2003 expanded the coverage of motherhood protection, and granted a number of rights to women workers. This new statute protects a woman's rights as a mother by ensuring and facilitating health care during pregnancy, providing for prenatal and post-natal maternity leave, accommodation for breastfeeding and child care, as well as special treatment in the case of disabled minor children. Likewise, it helps foster shared responsibility of father and mother in looking after and caring for their children, and the father's responsibility in the event of mother's death. Adoptive father and mother are likewise included in all respects concerning the protection of their children.

In Cuba abortion is legal. Health care centres must perform it in cases of rape, incest, danger to the mother's life and/or if the pregnancy is likely to produce a malformed child. In 1962, a ministerial resolution allowed it in every case. The pregnant woman's consent is required in every case, and abortion performed without it is punished by law⁴.

Among the main programs of the Cuban government's health care system, the Children and Women's Health Care Program and the STD Programme⁵ are particularly worthy of mention in that they give priority attention to woman-specific diseases and to such biological processes as pregnancy, maternity and menopause.

Family Planning

The Cuban health care system has in place a program to promote responsible fatherhood and motherhood, clearly centred on the objective of involving man in gender-specific activities that cause exhaustion and stress in women's daily lives⁶.

State protection of family, motherhood and matrimony is guaranteed by the Constitution. Marriage is defined as the voluntarily established union between a man and a woman, who are legally fit to marry, in order to live together. It is based on full equality of rights and duties for the spouses, who must see to the support of the home and the integral education of their children through a joint effort compatible with the social activities of both. The law regulates the formalization, recognition and dissolution of marriage and the rights and obligations deriving from such acts.

All children have the same rights, regardless of being born in or out of wedlock. Any qualification concerning the nature of the filiation is abolished. No statement shall be made with regard either to the difference in birth or the civil status of the parents in the registration of the children's birth or in any other documents that mention parenthood. The state guarantees, through adequate legal mean, the determination and recognition of paternity.

Under the Domestic Relations Code [*Código de Familia*] of 1975, both the mother and the father have the duty and the right, and a shared responsibility, to raise, protect, educate, assist, love and prepare for life their children.

A Law Decree of September 1994 established divorce by notary public. Its provisions changed the Domestic Relations Code by introducing a new way to obtain the dissolution of marriage, provided it is done by mutual agreement.

Human Sexuality and Gender Relations

The Cuban Penal was modified by law in 1999⁷. The first new provision of general import has established harsher penalties for crimes against life and corporal integrity, against normal development of sexual relations, family, childhood, and youth when the perpetrator is the spouse or a relative up to the second degree of affinity.

Another modification expanded the definition of aggravated **rape** to include cases where the victim is aged more than twelve and less than fourteen years. Penalties are harsher when the perpetrator is aware of carrying a sexually transmitted disease, or when the victim is aged less than twelve years. Pederasty with aggravated violence is also penalized.

Cuban law punishes any action promoting, inducing into or financing **prostitution**-related activities, child sexual commerce, human trafficking, etc. by prison terms and confiscation of property. The relevant provisions were modified by increasing penalties and defining new offences for indictment purposes.

With regard to corruption of minors, under the new provisions penalties include prison terms or death in cases where the perpetrator has used violence or intimidation to achieve his/her purpose; or where the minor involved has suffered injury or illness as a result; or where more than one minor are involved; or where the perpetrator is someone with parental rights and duties over, or has the guardianship or care of, the minor involved; or where the victim is aged less than twelve years, or is insane or in a state of temporary insanity, deprived of reason or consciousness by whatever cause, or incapacitated to resist; and where the act in question is performed by two or more people.

Lastly, the new law has added a third section to the Penal Code which places the **sale of and trafficking in children** among acts contrary to the normal development of a minor. The offence is punished by prison terms when it is committed in order to use the minor involved in any form of international trafficking related to acts of corruption, to the practice of pornography or prostitution, to trafficking in organs, to forced labour, or to activities linked to drug trafficking or illicit drug consumption.

Adolescents

The Cuban Constitution dictates that the State and society give special protection to

children and young people, and that it is the duty of the family, of schools, state agencies and social and mass organizations to pay special attention to the integral development of children and young people. It makes it incumbent upon the Institutions of the State to educate everyone from the earliest possible age in the principle of equality among human beings.

With regard to sexual education programmes⁸, a decision was made in 1999 to establish a Guideline Program for its provision. The Program defined contents as well as objectives and modes of implementation for each level of education and for each territorial division, so as to ensure adaptation to local characteristics and needs. The Program was designed to promote responsible sexuality through recourse to multiple educational strategies, interpersonal and group communication. The approach of choice is small group discussion as the most effective way to achieve emotional commitment and, with it, behavioural change.

In fact, sexual education became a cross-cutting part of Cuban education curricula in 1986, as a result of intersectoral e interdisciplinary work carried out by the Ministry of Education, the National Sexual Education Centre (*Centro Nacional de Educación Sexual*) and the Ministry of Public Health. The 1996 Program redesigned and updated education curricula on sexual education in terms of theory and methodology, and came to cover every plan of studies in every education centre, from preschool to teachers' training, also including post-graduate courses. Universidad Pedagógica de la Habana and the National Sexual Education Centre offer Master's Programs in Sexual Education.

¹ CEPAL- CEÑADE 2002.

² Source: UNDP Human Development Index 2000

³ The text of Constitución de la República de Cuba was published in Gaceta Oficial de la República de Cuba, Edición Extraordinaria (extra edition) number 3 of 31 January 2003.

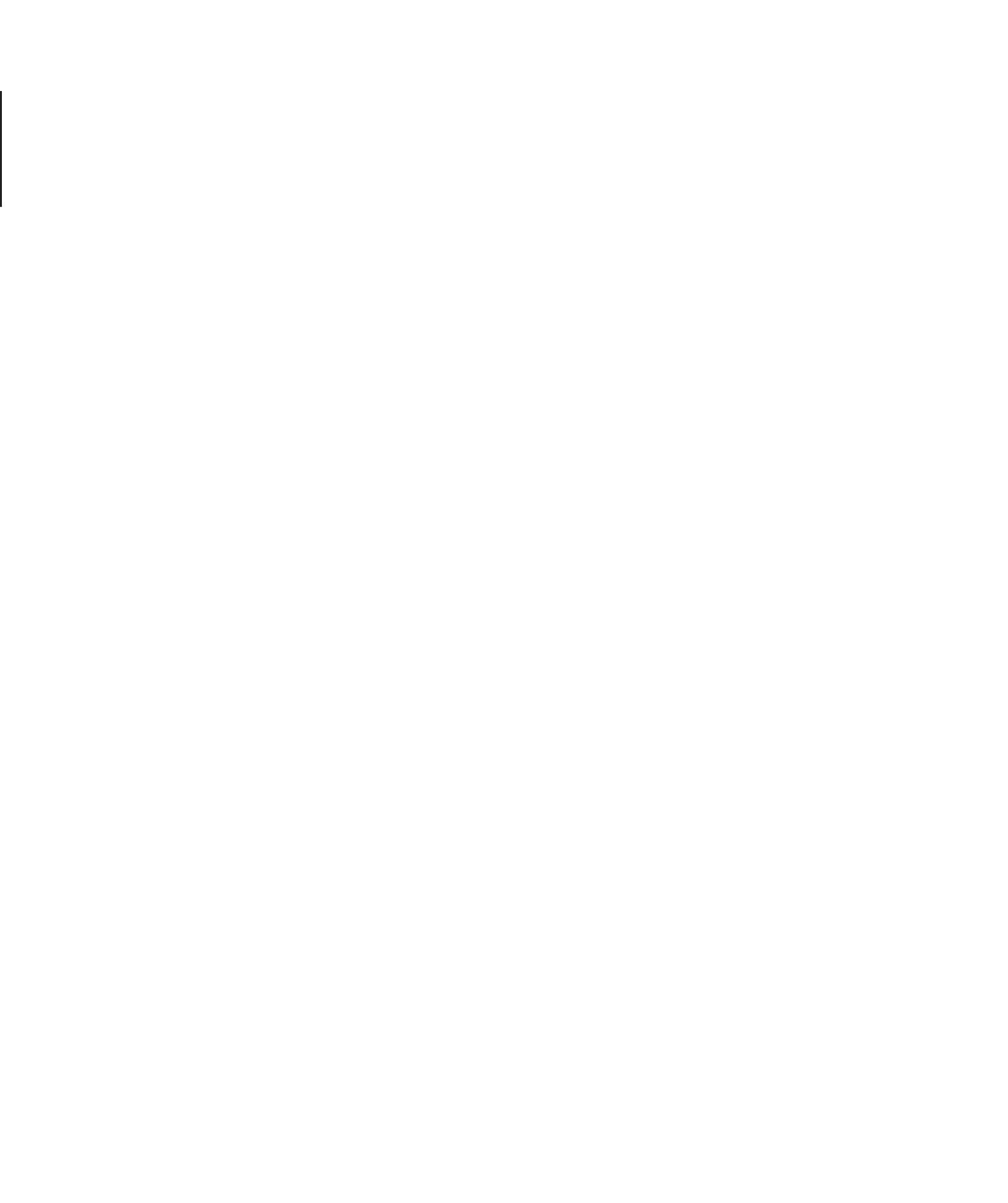
⁴ Ley N. 62, Código Penal de Cuba, 29 December 1987. Articles 267, 268, 269, 270 and 271.

⁵ Source: http://www.infomed.sld.cu/sistema_de_salud/estrategias.html

⁶ Source: http://www.cubaminrex.cu/Enfoques/dhh_woman_tc.htm#_ftn1

⁷ Published in Gaceta Oficial de la República de Cuba, Edición Extraordinaria number 1, dated 15 March 1999.

⁸ Source: http://www.rimed.cu/sal_educ.asp#salud



Reproductive Rights and Reproductive Health

The Constitution of 1998 expressly enshrines sexual and reproductive rights and makes it incumbent for the State to promote sexual and reproductive health and respect for reproductive rights in the labour sphere.

Beginning in 1998, under legislation providing for free maternity and childcare², the Ministry of Public Health has been developing a health and family planning project, with one component specifically aimed at reducing maternal mortality, by protecting pregnant women during childbirth and puerperium and children under five. A tax was introduced to fund implementation of free maternity and childcare-related programs and projects. In the allocation of available resources, maternal and child mortality reduction and reproductive health were treated as priorities³.

In 1994, the Law for the Provision of Free Maternity and Child Care was approved⁴, followed in 1995 by a law for promoting, supporting and protecting breastfeeding.

Both criminal rules⁵ and rules of criminal procedures⁶ prohibit imprisoning pregnant women and provide for the replacement of jail by home confinement at the judge's discretion.

In Ecuador, **abortion**⁷ is penalized except in cases of therapeutical abortion, and where the pregnancy had resulted from rape of an «idiot» woman, subject to third party consent to be produced for the physician performing the abortion in accordance with the Medical Code of Ethics⁸. Shorter prison terms are established in cases where the woman has had an abortion to conceal her «dishonour».

The Equal Opportunities Plan 1996 – 2000 recognizes abortion as a social rather than criminal problem.

Under the Labour Code⁹, **pregnant working woman** can not be dismissed on that account, which means that employers are forced to grant maternity leaves.

A Constitutional dictate establishes the principle that domestic work is productive work¹⁰.

Family Planning

The right to decide how many children to have is protected by the Constitution and Ministry of Health policies are in line with respect for it.

In 1998 a recommendation was issued to use emergency contraception (ECP) in cases of unprotected sexual relations or rape.

Reproductive health care regulations and procedures have been in place since 1999. In practice, the approach chosen places responsibility on the woman and favours surgical contraception.

Both matrimony¹¹ and de facto unions are recognized in the 1998 Constitution as means for guaranteeing procreation. Thus the roles traditionally allocated to man and woman within the couple prevail, and homosexual persons are denied the right to enter marriage or a de facto union.

Even though the Constitution recognizes de facto unions¹², the law regulating them is

two decades old¹³, restricts property rights regarding properties acquired in common and leaving paternity rights to children unprotected.

Human Sexuality and Gender Relations

In the 1998 Constitution, **sexual violence** and sexual harassment were included among violations of personal integrity.

In the same year, the definition of sexual crimes in the Penal Code was expanded by no longer penalizing only conducts involving vaginal penetration by the penis. Other forms of sexual contact, such as indecent exposure, sexual aggression and sexual harassment are now included, and the latter two offences are punished as harshly as rape. The victim's age was raised from 12 to 14 years. The word «honest» was maintained. In 2001, penalties were raised to a maximum prison term of 25 years.

Prostitution is not an offence. Its exploitation is penalized by the Penal Code under the name of pimping. However, the conduct of a customer paying for sexual services rendered by adolescents is not penalized, which creates a gap in the law.

Even though prostitution is not an offence, the Health Code¹⁴ prohibits its clandestine practice, brothels are subject to sanitary regulations, and women must carry a health card. The health approach regarding women in prostitution is focused on sexually transmitted infections, not on integral health.

The regulations for implementation of the Minors Code [*Código de Menores*] provide for the implementation of programs designed to prevent the sexual exploitation of children, defined by the law as one of the worst forms of child labour.

The article of the Penal Code that penalized homosexuality was declared unconstitutional in 1997 by the Constitutional Court¹⁵, on the grounds that homosexual conduct called for medical treatment instead of criminal penalties. Article 23 of the Constitution in force since August 1998 enshrined the right to equality before the law, free from sexual orientation-based discrimination.

The National Human Rights Plan¹⁶ approved in 1998 includes a chapter on «Sexual Minority Rights», defining the right to no sexual orientation-based discrimination and mandating state institutions –and security agents in particular– not to harass any one on that account.

Adolescents

The Law on Sexual Education and Love [*Ley sobre Educación Sexual y el Amor*] enacted in 1998 addresses issues of sexuality, abortion, homosexuality, adolescent pregnancy from a gender perspective. However, it stresses the link between sexuality and love rather than the importance of principle of free choice in one's sexual life enshrined by the Constitution.

Two years later, the Ministry of Education launched the National Sexuality and Love Plan [*Plan Nacional de la Sexualidad y el Amor*], designed to provide all persons and entities involved in education and work with adolescents with information and training on sexual and reproductive health.

¹ ECLAC - CELADE 2002

² *Ley Reformativa a la Ley de Maternidad Gratuita* of 10 August 1998.
[http://www.conamu.gov.ec/Ley%20de%20Maternidad%20Gratuita%20\(Link\).htm](http://www.conamu.gov.ec/Ley%20de%20Maternidad%20Gratuita%20(Link).htm)

³ *Ley N°129* published in August 1998.

⁴ *Ley de Maternidad Gratuita y atención a la infancia*. R.O. 523-S del 09-09-94.

⁵ *Código Penal* as reformed in 1998.

Article 58.- No pregnant woman shall be deprived of freedom. Process of a judgment imposing her a prison term shall be served her no sooner than 90 days following childbirth.

⁶ *Código de Procedimiento Penal* of 13 January 2000.

Art. 171.- Substitution of Penalty.- (...) Whatever the offence, temporary detention pending trial shall be replaced by home confinement in all cases where the defendant is aged more than sixty-five years, or is a pregnant woman, or during the first ninety days following childbirth. Compliance with this provision shall be additional to custody time limits as per Art. 169 of this Code.

⁷ *Código Penal de Ecuador, Suplemento del Registro Oficial* 147, 22 January 1971.

Art. 443.- Anyone who performs an abortion by administering drinks, food, drugs or by any other means with the consent of the pregnant woman shall be subject to imprisonment for two to five years.

Art. 444.- Any woman who has voluntarily submitted to, or has performed an abortion on herself, shall be subject to imprisonment for one to five years.

If she has voluntarily submitted to, or has performed an abortion on herself to conceal her dishonour, she shall be subject to imprisonment for six months to two years.

Art. 447.- An abortion performed by a physician with the consent of the pregnant woman or her husband or immediate family members should her condition make it impossible for her to give it, shall not be punishable:

1o.- If it was performed to avert a threat to the life or health of a pregnant woman, when this danger cannot be averted by other means; and, 2o.- If the pregnancy is the result of a rape or statutory rape of a woman who is an idiot or insane. In this case, the consent of the woman's legal representative shall be required.

⁸ *Código de Ética Médica* http://www.bioetica.org/ecuadoretica.htm#_Toc4912216

⁹ *Código de Trabajo. Registro Oficial* No. 162 – of 29 September 1997

<http://www.dlh.lahora.com.ec/paginas/judicial/paginas/CodTrabajo.T1.html>

Art. 154.- Incapacity to work on account of illness due to pregnancy or childbirth.- In the event that a woman is absent from work for up to one year due to an illness certified by a physician to have been the result of pregnancy or childbirth and to have incapacitated her for work, her labour contract cannot be terminated on that account, but wages shall be paid only for the period of twelve weeks provided for in the previous article, or for whatever period is established in an applicable collective labour contract, whichever is longer.

The provisions of the foregoing article shall not apply to the exceptions provided for by Art. 14 hereof. Except in a case provided for in Art. 172, no pregnant woman shall be unfairly discharged or notified dismissal as from the moment her pregnancy begins, to be certified by a Instituto Ecuatoriano de Seguridad Social physician or, if none is available, by another physician.

In the event of unfair discharge or notice of dismissal as per the previous paragraph, the Labour Inspector shall order the employer to pay compensation in an amount equivalent to one year of wages to the worker in question, without prejudice to whatever other rights she may have.

¹⁰ *Constitución Política de la República de Ecuador* of 05 June 1998.

<http://www.dlh.lahora.com.ec/paginas/judicial/paginas/ConstitucionPolitica.htm>

Article 36° « (...) Work done at home by a spouse or cohabiting partner shall be given fair consideration for purposes of equitable remuneration whenever a special situation places the spouse or cohabiting partner in question at economic disadvantage. Unpaid domestic work shall be recognized as productive work.»

¹¹ *Ibidem*, Article 81.- «Marriage is a special contract by which a man and a woman form a union for the purpose of living together, having children and aiding one another».

¹² *Ibidem*, 38.- De facto union. «A stable and monogamous union between a man and a woman who have no marriage ties with any other person and who form a de facto household for the period and under the conditions and circumstances laid down by law shall give rise to the same rights and duties as for a family created by marriage, including without limitation community of assets and statutory presumption of paternity.»

¹³ *Ley* dated 22 December 1982, regulating de facto unions.

¹⁴ *Código de salud* dated 08 February 1971.

Article 77.- Clandestine prostitution is prohibited.

Prostitution is tolerated behind closed doors. Those who engage in it must submit to appropriate prophylactic tests on a regular basis.

Article 78.- Brothels or premises with a like function, by whatever name they are known, may not operate without a health permit, and shall be regulated.

¹⁵ The first paragraph of Article 516 of the Penal Code [*Código Penal*], defined homosexuality as a criminal offence: «Consensual homosexual sex between adult men shall be punishable by imprisonment for 4 to 8 years for both offenders».

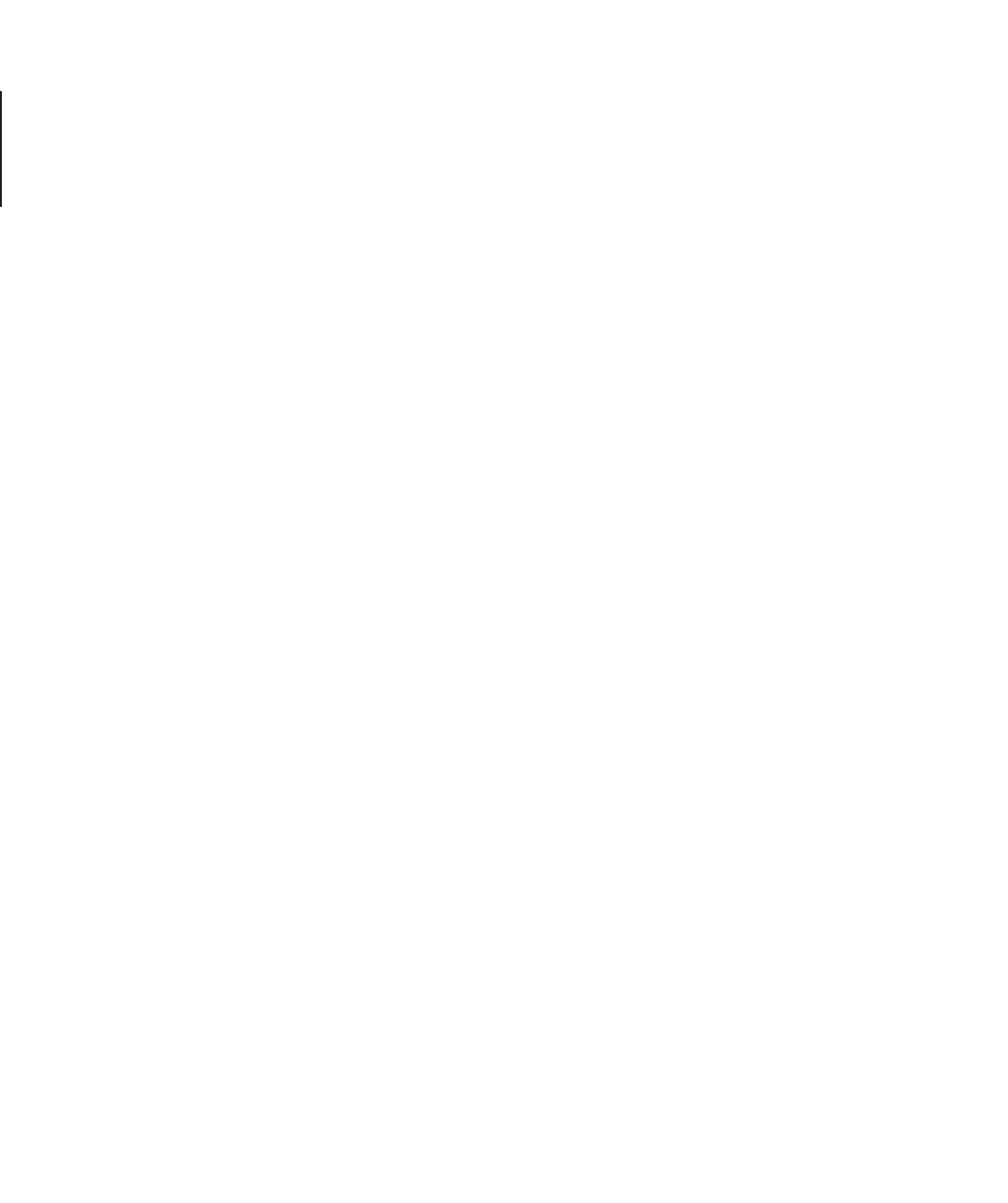
This paragraph has lost its effectiveness pursuant to a ruling (*Resolución* 106-97 of 25 November 1997) of the Constitutional Court (*Tribunal Constitucional*) that declared it in violation of the Constitution, following an unconstitutionality suit brought by over one thousand citizens. In its ruling, the Constitutional Court reasoned that «there is no established opinion as to whether homosexual practice is deviant behaviour or the product of an individual's genetic makeup. Rather, medical theory tends to define it as a dysfunction or hyperfunction of the endocrine system, which means that this abnormal behaviour should receive medical treatment (albeit not of the type used to fight a disease) rather than be penalized. Jailing an individual homosexual does nothing to promote his readaptation; on the contrary, it places him in a milieu that will foster the further development of his dysfunction (...) As persons, homosexuals are fully entitled to their human rights, and to enjoy them in conditions of complete equality. This does not imply absolute identity, but rather proportionate equivalence between two or more entities, meaning that, just as for the rest of us, their rights enjoy the protection of the law to the extent that their manifestation as conduct does not infringe on the rights of others.»

¹⁶ *Plan Nacional de Derechos Humanos de Ecuador*, R.O. No. 346 OF 24.06.1998

Article 25.- Ensure every person's right not to be discriminated against on grounds of their sexual option, by establishing non-discriminatory laws and regulations that accommodate the social, economic and cultural demands of such persons.

Article 26.- Take appropriate measure to ensure that State security mechanisms and agents do not engage in actions of persecution and harassment against any person on account of their sexual options.

<http://www.ildis.org.ec/planddh/ddhhpnc.htm>



Reproductive Rights and Reproductive Health

The 1983 Constitution of El Salvador reformed in 2000 protects marriage, the family and stable union between man and woman, and dictates that the State's duties and services to be delivered in order to protect motherhood and childhood, and to support paternity research, shall be governed by law.

The Ministry of Health is the government body in charge of ensuring compliance with health legislation. It should be pointed out that a bill for a new Health Code which includes provisions regarding sexual and reproductive rights has been before the country's Legislative Assembly since 1999.

Efforts in this area by the Ministry of Public Health and Social Welfare have been based on Reproductive Health Plans and the STI Prevention and Care Plan which give priority to sexual education, especially among adolescents of both sexes. The Comprehensive Health Care for Adolescents Office has defined care standards and a strategic plan, and given impulse to the implementation of pilot programs by Health Care Units².

In El Salvador, the National Family Secretariat is fighting to prevent pregnancies among adolescents, sexually transmitted diseases, and HIV/AIDS, by promoting health-conscious and responsible behaviours and providing consulting and care services under the «País Joven» Programme³.

According to CLADEM El Salvador's diagnostic study on the situation of sexual rights and reproductive rights in 1995-2002 in El Salvador⁴, «the Ministry of Education has made sexual education-related topics a part of formal educational curricula. The «Cipotes» book series, officially approved primary education books, Adolescent Psychology programs and texts for high school students, and Third Cycle (grades 7 through 9) programs and texts on this subject matter, they all show a biologicistic bias regarding sexuality. The biggest sexual education problem in school rooms is posed, in fact, by the gaps created by teachers' prejudices and by educational authorities' policy of impeding the free flow of objective information en sexual and reproductive health».

The same diagnostic study points out that «as a part of the implementation of the said policy and with the support of international agencies as well as women's organizations, a number of initiatives have been carried out in different fields. These include the National Plan for the Prevention and Control of STIs/HIV/AIDS, the National Comprehensive Health Care for Women Program, the National Cervical-Uterine Cancer Prevention and Control Program, the National Plan against Intrafamily Violence, among others».

According to CLADEM's 2003 report on women's rights in El Salvador, even though the National Women's Policy approved in 1997 emphasizes the State's commitment to «use the gender approach to promote attention to women's sexual and reproductive health, sexual and reproductive rights and to combat risk practices affecting their health», «no policies are in place to promote self-awareness and self-analysis among educators, health care personnel, government officials, who, on the other hand, critically need both in order to perceive and understand their own sexuality, myth-based beliefs and false concepts, and thus be able to better understand the attitudes and conduct of other people»⁵.

With regard to abortion, the 1997 Penal Code⁶ included it among crimes against the life of a human being in the first stages of development, and removed all exceptions to the general prohibition of abortion, which today, as a result, is penalized in all cases, eugenic or therapeutical abortion, or termination of a pregnancy produced by rape included. This state of affairs makes it impossible to work with statistics of any accuracy, and to design and implement effective policies addressing this problem. In 1999, conservative groups within the Legislative Assembly succeeded in a reform of the Constitution that established the principle of recognition «of any human being as a human person from the instant of conception». This constitutional reform was the outcome of a petition to depenalize therapeutical abortion that was rejected and in fact caused a backlash against women's sexual and reproductive rights.

Articles 138 and 139 of the Penal Code establish the legal definition of malicious or culpable detriment to the unborn. In the latter case, the woman is not penalized⁷.

According to CLADEM El Salvador's diagnostic study on the situation of sexual rights and reproductive rights in 1995-2002 in El Salvador⁸, «in theory, the National Health Care System network provides coverage for 80% of the population, for which purpose it has 547 first- and second-tier care centres, and 30 hospitals, only one of which, located in the country's capital, specializes in providing reproductive health care for women.» Care services include childbirth care, as well as specialist outpatient and inpatient health care for the detection and treatment of cervical-uterine and breast cancer. Towards the end of the year 2000, the hospital started a cervical-uterine cancer reduction program.

The above report also points out, however, that although the vision pursued by the El Salvador Ministry of Health is one of comprehensive health care service for women, actual coverage provided still leaves much to be desired regarding specific aspects of reproductive health. This is evidenced by the fact that doctor's prenatal check-up visits average 4 per woman during the entire pregnancy, and that no more than 59% of all pregnant women are covered.

The conceptual limitation of existing health programs is reflected by the areas covered: prenatal check-up, childbirth, breastfeeding, puerperium and family planning, a clear indication that the entire issue of women's health is still conceived of in terms of mother and child health care. An additional obstacle consists of difficulties in accessing first-tier health care services and, even more, specialized second- and third-tier specialized medical care.

In the year 2000, a manual that contained information for adolescents on sexual and reproductive health was withdrawn from circulation, limiting the scope of activity for health and education ministries.

Family Planning

Family planning programs are the responsibility of three institutions, namely the Ministry of Public Health and Social Welfare, Instituto Salvadoreño del Seguro Social (with jurisdiction over urban areas) and Asociación Demográfica Salvadoreña (with jurisdiction over rural areas). The 1999 Family Planning Law [*Norma de Planificación Familiar*] regulates the availability and range of contraceptive methods, including emergency contraception and

contraception for adolescents, based on eligibility and medical considerations.

According to CLADEM's 2003 report on women's rights in El Salvador, the rate of use of contraceptive methods by women in rural areas is negligible, a state of affairs that can be safely attributed to inadequate dissemination of reproductive health information and a lack of means to make use of such methods⁹.

Article 2 of the Salvadoran Domestic Relations Code [*Código de Familia*], enshrines the family as a permanent social group established by marital union, non-marital union and kin, and governed by the principles of equal rights for men and women and equal rights for daughters and sons.

The Domestic Relations Code recognizes the non-marital union as one established by and consisting of a man and a woman free from any legal impediment to marrying each other, living together freely, openly, continuously, stably and monogamously for three or more years. For purposes of enjoyment of rights inherent to non-marital unions under the law, a judicial declaration is required as a prior condition for its existence. This declaration is mandatory in the event of death of either partner or breakup of the union.

In a non-marital union, the relevant statement of cohabitation (*declaratoria de convivencia*) is effective proof of its existence with regard to property rights, housing protection, inheritance rights and civil action rights. Other legal schemes, such as social security legislation and regulations governing affiliation to and taking of private insurance coverage, grant equal rights to the insured person's cohabiting partner. As regards divorce, the Domestic Relations Code recognizes other important aspects as areas relevant to divorce proceedings (e.g. equal rights for both spouses, domestic work as valid contribution to the family, and respect for one's spouse). However, the Code does not expressly recognize intrafamily violence as just cause for divorce.

On the other hand, the National Women's Policy envisages action aimed at promoting public education campaigns on values that help ensure harmony and stability within the family and foster legal security for women through marriage.

Through its Unit for the Protection of the Family and Minors, the El Salvador *Procuraduría General de la República*, which is one of Salvadoran institutions in charge of enforcing the law in this area, has developed and implemented a marriage promotion program throughout the country, and reports having exceeded the established goal of 200 new marriages¹⁰.

Human Sexuality and Gender Relations

The 1997 Penal Code punishes sexual violence as a felony within the general category of crimes against sexual freedom, comprised of three types, namely rape and other forms of sexual aggression, seduction, and other attacks against sexual freedom. Sexual intercourse achieved through the use of violence is considered rape when it takes place by way of vaginal or anal penetration, another form of sexual aggression when it takes place by way of oral penetration or the introduction of objects into the vagina or the anus. Incest is no longer considered a felony.

Instituto Salvadoreño del Seguro Social has in place a pilot comprehensive care scheme

for victims of sexual violence. The scheme offers women workers appropriate medical and psychological care, assistance in contacting the Public Prosecutor's Office and encouragement to undergo forensic medical examination. The Ministry of Public Health and Social Welfare's Program of Comprehensive Health Care for Women includes actions aimed at preventing sexual violence and assisting its victims.

Sexual harassment is included among sexual conducts undesired by the person receiving them, whether it consists of touching or other unequivocally sexual manifestations. The law punishes it by a prison term of less than two years, thereby making it possible for the offender to avoid prison altogether. The Municipality of San Salvador has issued a municipal ordinance that punishes sexual harassment on the public street as a violation of public morals.

Penal legislation criminalizes inducement to, promotion and exploitation of prostitution, and severely punishes perpetrators where their victims are sexually exploited minors (under 18 years of age). The municipality of San Salvador has issued an ordinance penalizing «trade in sexual services « on the public street.

Adolescents

The Salvadoran State has designed and implemented the El Salvador National Reproductive Health Plan, including such specific measures as the National Comprehensive Health Care Program for Adolescents (1990)¹¹.

In 1999, the Ministry of Public Health and Social Welfare (MSPAS), acting through its Comprehensive Health Care for Adolescents Office and using technical and financial support from the United States Agency for International Development (USAID), launched the Salvadoreños Saludables (SALSA) Project. The SALSA project included the MSPAS Plan of Action for Reproductive Health 1999, whose strategic approach consisted of «giving adolescents better and warmer care», particularly centred on meeting their need for a more human approach in providing information and other services.

The Project's main components were actions aimed at building up services for pregnant adolescents, at preventing pregnancies and sexually transmitted infections through primary health care personnel intervention and community involvement. Its achievements to date include the following: baselines have been established to identify adolescents' needs; service channels have been defined; specific areas have been adapted to deliver adolescent services; expressions of censure regarding adolescent conduct have been reduced; educational and promotional material has been designed and produced; adolescent leaders have received training as young health promoters (PJS « *Promotores Juveniles de Salud*»), whose referrals have brought about an increase in the demand for adolescent services¹².

Nevertheless, official data also show an urgent need for a policy aimed at disseminating Ministry of Health norms, for beliefs based on taboos, religious prejudice and concepts still persist that are hardly conducive to the prevention of pregnancies, sexually transmitted infections or HIV/AIDS¹³.

In November 2001, the Ministry of Health and Social Welfare inaugurated a pilot clinic specializing in the delivery of health care services to adolescents in a densely populated district of San Salvador¹⁴.

On the other hand, although Ministry of Education national school curricula have included a sexual and reproductive health education component since 1999, the actual coverage of this component is still low in rural areas, and is still wanting with regard to such important topics as sexually transmitted diseases and contraceptive methods¹⁵.

The National Women's Policy envisages actions aimed at increasing women's access to formal and informal education with due account of their needs and interests, and at modifying sexist practices that continue to be present in the educational process, both in national curricula components and contents, and in socialization processes within the educational system¹⁶.

The year 2000 saw the consolidation of the Education for Life Program, in which the Ministry of Education and the Ministry of Public Health and Social Welfare cooperate. A cross-cutting, human rights-based approach has been adopted in all activities carried out under the program in the field of education (curricular development and further training for teachers and education consultants), as well as regarding HIV prevention, violence, sexuality. The same approach was used in campaigns launched under the «Be smart, wait! » slogan.

In 2001 the Ministry of Education, responding to pressure from conservative sectors, withdrew from the entire educational system a Manual entitled «*De Adolescentes Para Adolescentes*» that contained information about sexual education and had been prepared as a joint effort with the Ministry of Health, cooperation agencies and women's organizations¹⁷. The educational experience in El Salvador boasts an exceptionally successful initiative, namely the Community-Managed Schools Program (EDUCO, from the original Spanish). EDUCO schools are managed by parents of the students, who directly allocate resources, hire teachers, perform quality control and evaluate results, with the State providing counsel and support.

¹ CEPAL - CELADE 2002.

² CLADEM El Salvador. «Diagnóstico de la situación de los derechos sexuales y los derechos reproductivos 1995 - 2002 de El Salvador», at www.cladem.com/espanol.

³ Informe especial: Implementación del programa de acción de la ICPD, 1997.

⁴ CLADEM El Salvador. «Diagnóstico de la situación de los derechos sexuales y los derechos reproductivos 1995 - 2002 de El Salvador», at www.cladem.com/espanol.

⁵ CLADEM, «Derechos de las mujeres en el Salvador. Un reporte alternativo. 2003», at www.cladem.com/espanol Art. 133.- A person who induces an abortion with the consent of the woman or a woman who induces her own abortion or consents to another person inducing it shall be subject to imprisonment for two to eight years.
Inducement or aid to abortion.

Art. 136.- A person who induces a woman to have an abortion or who provides the means or any other form of aid for her to have an abortion shall be subject to imprisonment for two to eight years.

If the person aiding or inducing a woman to have an abortion is the father of the unborn, the prison term in question shall be increased by one third of the maximum sentence provided for in the previous paragraph.

⁷ Código Penal de El Salvador.

Injury to the unborn.

Art. 138.- A person who causes an unborn child an injury or illness seriously detrimental to his/her normal development or a serious physical or psychological defect shall be subject to imprisonment for two to four years.
Culpable injury to the unborn.

Art. 139.- A person who culpably causes an unborn child detriment as per the previous article shall be

subject to payment of a fine for an amount equal to no less than fifty and no more than one hundred days-equivalent.

The pregnant woman concerned shall not be penalized pursuant to this article.

⁸ CLADEM El Salvador, «Diagnóstico de la situación de los derechos sexuales y los derechos reproductivos 1995 - 2002 de El Salvador», at www.cladem.com/espanol

- ⁹ CLADEM, Derechos de las mujeres en el Salvador. Un reporte alternativo. 2003, at www.cladem.com/espanol
- ¹⁰ CLADEM, Derechos de las mujeres en el Salvador. Un reporte Alternativo. 2003 at www.cladem.com/espanol
- ¹¹ Helen Centeno / Rhina Cáceres. Resumen: La Salud Sexual y Reproductiva de las Jóvenes de 15 a 24 años en El Salvador, Un reto para las políticas de Salud. 2003, in <http://ccp.ucr.ac.cr/noticias/conferencia/pdf/centeno.pdf>
- ¹² Idem.
- ¹³ CLADEM, Derechos de las mujeres en el Salvador. Un reporte Alternativo 2003, at www.cladem.com/espanol
- ¹⁴ CLADEM El Salvador, Diagnóstico de la situación de los derechos sexuales y los derechos reproductivos 1995 - 2002 de El Salvador, at www.cladem.com/espanol
- ¹⁵ Centeno, Helen / Cáceres, Rhina, Resumen: La salud sexual y reproductiva de las jóvenes de 15 a 24 años en El Salvador: un reto para las políticas de salud. 2003, at <http://ccp.ucr.ac.cr/noticias/conferencia/pdf/centeno.pdf>
- ¹⁶ Informe Alternativo de monitoreo a la CEDAW El Salvador. 2003, at www.cladem.com/espanol
- ¹⁷ Rivero, José, Políticas educativas de equidad e igualdad de oportunidades. III Seminar for Education Administrators from Iberoamerican Countries [III Seminario para Altos Directivos de las Administraciones Educativas de los países Iberoamericanos]. La Habana, June 1999, at www.campus-oei.org/administracion

Reproductive Rights and Reproductive Health

The Political Constitution of the Republic of Guatemala makes it incumbent on the State to organize for the protection of the individual and the family, and declares that men and women have equal dignity and equal rights².

The Law on the Dignification and Full Advancement of Women approved in 1999³ supports the implementation of the National Reproductive Health Program promoted by the Ministry of Public Health and Social Welfare. This statute defines mechanisms to be used in the private sphere to eliminate discrimination and violence against women, and makes it incumbent on the State to promote the enhancement of the value of marriage and motherhood. To ensure that women actually enjoy equal rights, the law explicitly recognizes the right to sexual and reproductive education, and to decide the number and spacing of children in agreement with her spouse. Another provision dictates that women's sexual and reproductive rights make it incumbent on the health care sector to provide comprehensive health care services; educational and psycho-sexual and reproductive health care, family planning and mental health care services; health protection and occupational safety services, up to and including protection of women's reproduction function; and prenatal and postnatal health care services so as to decrease maternal mortality.

September 2001 saw the approval of another important piece of Guatemalan legislation regarding reproductive health, namely the Development Law⁴, that addresses population, health and family planning issues in an integrated manner. A chapter of the law in question is devoted to social development and health-related services to the population and provides for protection of health and reproductive health. «This law led to the creation of a reproductive health program which envisages family planning, adolescent services, healthy motherhood and training as necessary components of reproductive health services. It also addresses education, migration, population dynamics and location in risk areas, and social communication»⁵.

The enactment of this law established the principle that the lives and health of women and children of both sexes are matters of public welfare and that healthy motherhood is a national priority. This led to the creation of health care units to attend obstetrical emergencies in strategic locations across the country, and more particularly in areas where maternal and child mortality rates are highest (rural areas and indigenous ethnic groups).

The National Reproductive Health Program pursues the following purposes:

a) Deliver reproductive health services to the population, so that individuals and couples enjoy a healthy, risk-free reproductive life, conducive to a reduction in maternal and neonatal morbidity and mortality.

b) Protect and encourage the population to exercise their rights to information, education, communication and reproductive health services using a comprehensive approach to foster responsible attitudes and conducts⁶.

The Program is comprised of four components: maternal and neonatal health, family planning, responsible parenthood and early detection of cervical-uterine and breast cancer. It also covers areas including sexually transmitted infections, comprehensive care services

for children and adolescents of both sexes. Importantly, it drew up a maternal mortality baseline report designed to establish an accurate baseline for the purpose of measuring the impact of various actions being carried out to reduce maternal mortality.

As a part of its «strategic guidelines for maternal mortality reduction», the Program made it one of its objectives to coordinate institutional and social actions into an all-around effort to meet the challenge posed by maternal mortality. These guidelines were designed with due account of the multiple causes underlying this problem, as well as the variety of gender, ethnic, social and cultural issues faced by women.

The Program also created a manual standardizing the delivery of health care services at every level. The manual incorporates the concept of inclusive reproductive health, envisaging involvement by the community, the family as well individual user(s) of these services. It is complemented by a number of protocols that «standardize basic diagnostic and therapeutic procedures so as to enable institutional staff to provide efficient, good quality care to those who need their services».

In Guatemala, the Maternal and Neonatal Health Programme⁷ (SMN) supports the government in fostering practices and services of critical importance to the survival of the mother and the newborn. The Population and Social Development Policy adopted in April 2002 established a set of measures aimed at «creating and promoting such social, cultural, political, economic and legal conditions as may facilitate equal and fair access by the population to the benefits of development». The Policy merges five sectoral policies including a health policy whose goals include a 15% reduction in maternal mortality in the medium term, and a 20% reduction in sexually transmitted infections and HIV-AIDS in the long term. The instruments to be used to achieve these goals are the National Reproductive Health Program and the National HIV-AIDS Prevention Program.

Abortion, whether consensual or otherwise, is considered a felony under the Penal Code⁸, except in cases of danger to the mother's life. This means that therapeutical abortion is allowed.

In view of the complications of abortion, the Ministry of Public Health and Social Welfare has implemented a Post-Abortion Care Network that provides emergency services, counselling, family planning, direct care and/or referral to other services. The Network has nationwide coverage. Its object is to reduce children and women's morbidity and mortality.

The Post-Abortion Care Network implemented by the Guatemalan Epidemiological Research Center in Reproductive and Sexual Health (CIESAR) has carried out a diagnostic study as the first of three stages of a strategy developed by World Health Organization to improve both access to and quality of basic sexual and reproductive health services. In 2000, a reform of the Health Code made it mandatory to have all advertising as well as packaging of alcoholic drinks, tobacco and other like products, include a warning that consumption of such products during pregnancy may lead to abortion or foetal malformation.

Family Planning

The Law on the Dignification and Full Advancement of Women⁹ enacted in 1999 regulates family planning, and sets forth the State's commitment to provide services for the effective protection of reproductive health and reproductive rights.

The Social Development Law enacted in 2001 creates conditions for woman's full integration into the development process by specifically establishing the right to full exercise of motherhood and fatherhood, full protection of health, free choice regarding the number and spacing of pregnancies, the right to healthy motherhood, access to reproductive health programs and family planning services, and the right to benefit from information dissemination, education and training in caring for the newborn and breastfeeding¹⁰.

According to a CLADEM report on the state of progress of Guatemalan women's sexual rights and reproductive rights, the family planning component of the National Reproductive Health Program «*which is premised on people's right to freely decide the number and spacing of children, is focused on the family planning needs of women and men. It proposes that, as a part of comprehensive care, all public assistance centres provide such information as may help empower people regarding their life and their sexual and reproductive health*»¹¹.

CLADEM Guatemala points out that «it is important to point out that family planning does not reach the entire population, and there still exists a dearth of information on this issue. With 23% of family planning needs of women living with a partner –and an even higher percentage in rural areas– left unsatisfied, coverage needs expanding, more resources need allocating».

As regards emergency contraception, it is necessary to point out that, even though the Guatemala Consortium for Emergency Contraception¹² has been in existence for two years already, the Church's strong conservative opposition has prevented its effective implementation.

With regard to the responsible fatherhood and motherhood component of the National Reproductive Health Program, a multisectoral Responsible Fatherhood and Motherhood Network has been set up to coordinate actions and resources in that area.

Human Sexuality and Gender Relations

Legal provisions exempting rapists from punishment by marriage to the victim have not been abolished.

The National Coordinating Body for the Prevention of Domestic Violence and Violence against Women (Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y contra la Mujer-CONAPREVI)¹³ was created in 2000 as the body in charge of public policies aimed at eliminating violence against women.

In its 2000 report, the Guatemala Women's Secretariat emphasized the lack of attention paid to this issue in the Law on Sexual Harassment [*Ley contra el Acoso Sexual*] and changes in the Penal Code and the Code of Penal Procedures.

With regard to sexual exploitation, according to a Directorate General for Migration report, December 2001 saw the launch of a reorganization process whereby that Directorate sought to fight corruption and recover its credibility. In the area of migration, the Directorate has succeeded in establishing an adequate level of coordination with state security bodies, which in turn has made it possible to disrupt a number of criminal networks engaged in commercial sexual exploitation of women and girls with no identity papers.

On the other hand, the reformed Penal Code punishes obscene publications

(*espectáculos obscenos*).

Adolescents

According to CLADEM Guatemala, there is no such thing as an educational policy with regard to sexual education, nor is there a specific law or other normative tool regulating this issue, even though the Population and Social Development Law (*Ley de Desarrollo Social y Población*) provides that «sexual education shall be oriented towards developing ethical and moral values and principles based on love, understanding, respect and dignity, and fostering healthy and wholesome lifestyles and personal behaviour based on a conception of human sexuality integrating its biological, psychosocial and overall personal development aspects».

According to CLADEM, furthermore, «at government level, there is no national program, available to all young people, addressing the issue of adolescent pregnancy. All they have is family planning counselling & information. More recently, the National Adolescent Plan was established, and Instituto Guatemalteco de Seguridad Social founded a clinic for pregnant adolescents with the task of providing comprehensive care in order to reduce pregnancy risks for this segment of the population»¹⁴.

The General Law to Combat HIV/AIDS (*Ley General para el Combate del Virus de Inmuno deficiencia Humana –VIH- y del Síndrome de Inmunodeficiencia Adquirida –SIDA- y de la Promoción, Protección y Defensa de los Derechos Humanos ante el VIH-SIDA*), enacted in 2000¹⁵, includes norms that tend to make education –both formal and informal– for STI and HIV/AIDS prevention a part of educational curricula.

¹ CEPAL - CELADE 2002.

² Constitución Política de la República de Guatemala, 1985 con las Reformas de 1993.

<http://www.georgetown.edu/pdba/Constitutions/Guate/guate93.html>

ARTICLE 4.- Liberty and equality. In Guatemala all human beings are free and have equal dignity and equal rights. Men and women, whatever their status, have equal opportunities and responsibilities. No one shall be submitted to servitude or any other condition impairing their dignity. Human beings have a duty to behave to one another in a brotherly fashion.

³ Decreto N°7-99 adopted on 9 March 1999. Articles 8 and 15.

⁴ Decreto N°42-2001 adopted on 16 October 2001 <http://www.c.net.gt/ceg/doctos/2001/leydesoc.html>

⁵ CLADEM Guatemala, Balance de la situación de los derechos sexuales y derechos reproductivos de las guatemaltecas. 2003.

⁶ Ibidem.

⁷ www.mnh.jhpiego.org/translations/guatesp.pdf

⁸ Código penal de Guatemala, Decreto N° 17-73, 5 July 1973

Article 134. Intentionally induced abortion «A woman who induced her abortion or consented to another person inducing it shall be subject to imprisonment for one to three years. Should she do so driven by reasons intimately connected to her condition and causing her undoubted psychical alteration, she shall be subject to imprisonment for six months to two years.

Article 135. Consensual and non-consensual abortion «A person who has intentionally induced an abortion shall be subject to: 1o. imprisonment for one to three years, if he/she has acted with the woman's consent; 2o. imprisonment for three to six years, if he/she has acted without the woman's consent; imprisonment for four to eight years, if he/she has used violence, threat or deception in the process.

Article 137. Therapeutical abortion «Abortion shall not be punishable if it is performed by a physician, with the woman's consent and subject to the favourable opinion of at least one other physician, provided it is not performed with the intent of directly causing the death of the conceived individual, and provided its sole purpose is to avoid a duly established danger to the mother's life where that same purpose cannot be achieved by any other scientific or technical means.

⁹ Decreto number N°7-99 of 09 March 1999, at <http://www.c.net.gt/ceg/doctos/mujr0409.html>

¹⁰ Decreto N°42-2001 adopted on 26 September 2001, referred to in: Secretaría Presidencia de la Mujer, Adendum al Tercero y Cuarto Informe Combinado 1998 en aplicación de la CEDAW, Guatemala, December 2001.

¹¹ CLADEM Guatemala, Balance de la situación de los derechos sexuales y derechos reproductivos de las guatemaltecas . 2003.

¹² Consorcio Guatemalteco de Anticoncepción de Emergencia. Its members are Asociación Pro-Petén, Asociación de Ginecología y Obstetricia de Guatemala –AGOG, Instituto Guatemalteco de Seguridad Social, Centro de Investigación Epidemiológica en Salud Sexual y Reproductiva – CIESAR- and Consejo de Población.

¹³ Acuerdo Gubernativo N°831-2000, Reglamento de Ley para prevenir, sancionar y erradicar la violencia intrafamiliar, Guatemala, November 2000.

¹⁴ CLADEM Guatemala. Balance de la situación de los derechos sexuales y derechos reproductivos de las guatemaltecas. 2003

¹⁵ Secretaria Presidencial de la Mujer de Guatemala, Informe Nacional sobre la situación de la mujer guatemalteca, 2000.

Reproductive Rights and Reproductive Health

In 1999, the Public Health Secretariat's National Sexual and Reproductive Health Policy (PNSSR) was approved for implementation through coordinated effort of the Bureau on Population Risks, the Children and Women's Health Department, and the National Commission for Healthy Motherhood. In addition to Public Health Policy objectives, PNSSR is aimed at preventing abortions and treating its complications, treating infections of the reproductive system including sexually transmitted diseases, HIV and AIDS, and providing information, education and counselling according to needs on human sexuality, reproductive health and responsible fatherhood and motherhood.

An advance worth mentioning in the area of women's health and risk-free motherhood² is the Comprehensive Health Care for Women Program established by the Secretariat of Public Health in 1999 in order to reduce maternal mortality and neonatal mortality.

The Program has drawn up a comprehensive health care for women rules and procedures manual [*Manual de Normas y Procedimientos de Atención Integral a la Mujer*], and has trained the majority of health care personnel serving in health care centres across the country. These centres supply services in the areas of family planning, emergency contraception, prenatal, childbirth, puerperium, and breastfeeding care, special care for adolescents of both sexes, sterility and infertility treatment, and care during climacterium and menopause.

Obstetric Emergency Rules and Strategic Plans are in place, aimed at increasing the number of institutional deliveries by establishing Maternity Houses and training community midwives and nursing personnel to enable them to identify such reproductive risk factors in pregnant women as period between pregnancies, number of past pregnancies, the pregnant woman's age, particularly in the case of those aged over 35 years and under 18 years.

Measures to prevent breast cancer and cervical cancer are contemplated in both the comprehensive health care for women rules and procedures manual, and the National Sexual and Reproductive Health Policy. In addition, in 2000 the Secretariat of Public Health established a programme –albeit of limited coverage– to detect and prevent breast cancer and cervical cancer.

The Code of Criminal Procedure³ has replaced prison terms with house arrest for a woman committing a felony when pregnant or breastfeeding. Refusal to provide family support is now penalized.

With regard to abortion, even though the National Sexual and Reproductive Health Policy includes health care services for women presenting post-abortion complications, the Penal Code⁴ still imposes prison terms to both the woman who has induced it or the agent who has helped her abort. In fact, the definition of the offence is now even more detrimental to the woman, for mitigating circumstances are no longer recognized.

The Equal Opportunities for Women Law (*Ley de Igualdad de Oportunidades para la Mujer*) enacted in 2000⁵ prohibits employers from requiring negative pregnancy tests for women prior to hiring.

In 1996, the Penal Code provisions that criminalized adultery and concubinage were repealed.

Family Planning

Since 1983 the Secretariat of Public Health has had in place a Family Planning Program that promotes the use of contraceptive methods. However, the Program has focused on women exclusively, while use of male sterilization methods and condoms is promoted by the ITS and AIDS Program.

Since 1995 the State has been developing its Family Planning, Reproductive Health Care and Counselling Clinic Project [*Clínica de Planificación Familiar, Salud Reproductiva y Consejería*] through its Public Health Secretariat acting in coordination with Instituto Hondureño de Seguridad Social and ASHONPLAFA. The project in question benefits men and women of reproductive age (aged 10-49 years) and is intended to cover the entire country.

On the other hand, the Equal Opportunities for Women Law ⁶, recognized women's right to decide the number and spacing of their children, in joint agreement with their partners.

Another piece of relevant legislation is the Special HIV/AIDS Law [*Ley Especial de Prevención del HIV/AIDS*]⁷ which regulates family planning as a duty of persons who are already infected with HIV/AIDS or at risk of infection.

In 1999, the Secretariat of Public Health established rules regarding voluntary preventive surgical contraception whereby the only consent required is that of the person who will undergo the operation, except in the event the person in question is physically or mentally ill, where a medical certificate by a specialized doctor recommending the operation is also necessary. On the other hand, nursing personnel has been trained to promote emergency oral contraception methods recognized in the Public Health Secretariat's comprehensive health care for women rules and procedures manual.

With regard to responsible parenthood, the Equal Opportunities for Women Law and the Domestic Relations Code [*Código de Familia*] provide that «paid work outside the home shall not interfere with men's and women's family responsibilities, for men and women shall also share household work equally»⁸.

The Children and Adolescents Code [*Código de la Niñez y la Adolescencia*]⁹ provides that a pregnant woman is entitled to demand alimony of the future father, who, should he fail to appear when summoned by the court, shall incur declaration of presumptive paternity and mandatory alimonies. Property encumbrance is contemplated to enforce compliance with family support obligations.

Human Sexuality and Gender Relations

The 1997 revision of the Penal Code established criminal action for rape. In addition, penalties were increased and definition of the offence for indictment purposes was improved by adding sexual aggression by way of anus or mouth, and the introduction of phallic objects into sexual organs or the anus¹⁰. New provisions regulate sanctions for sexual harassment at workplaces and in centres of study.

The Code of Criminal Procedure was amended in 2002 to eliminate a woman's «ill

repute» as mitigating circumstance. It also included indecent proposals in public places as detrimental to women.

As regards prostitution, in 1996¹¹ the Penal Code increased penalties for trafficking in human beings for purposes of sexual exploitation and for pandering. This was done in compliance with the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the provisions of which, however, are not applied in practice.

Sanitary rules and the Special HIV/AIDS Law¹² punish those who engage in sexual commerce without a health card. The Secretariat of Public Health keeps women engaging in prostitution under close watch by means of weekly test aimed at detecting sexually transmitted infections. Far from pursuing women's health, such a policy is highly detrimental to it.

Adolescents

The law creating the National Institute for Women (INAM)¹³ of Honduras was enacted in 1998. Its stated purpose is to ensure full incorporation of women into the sustainable development process on terms of social, economic, political and cultural gender equity. INAM's main actions carried out from 2001 through 2002 include those¹⁴ relating to the organization of the National Information System on Women and Female Adolescents and Children.

The Equal Opportunities for Women Law enacted in 2000 introduced a number of measures regarding sexual and reproductive rights. These measures include giving high school students who get pregnant the right not to interrupt their studies at whatever public or private educational facility they are attending¹⁵; and mandating the State to incorporate sexual education into formal education at every level¹⁶.

The Special HIV/AIDS Law enacted in September 1999 has made sexual education compulsory in schools¹⁷.

Sexual education promotion is reserved for the Secretariat of Public Education, the Secretariat of Public Health and the Honduran Institute for the Prevention and Treatment of Alcoholism, Drug Abuse and Narcotics Dependency (IHADFA « *Instituto Hondureño para la Prevención del Alcoholismo y Fármacodependencia*»). However, education efforts have been mostly focused on preventing unwanted pregnancies in adolescents, promoting a delay of early sexual activity, abstinence and prevention of sexually transmitted diseases, especially HIV/AIDS¹⁸.

The Public Health Secretariat's comprehensive health care for women rules and procedures manual emphasizes that pregnant adolescents also need emotional support¹⁹.

On the other hand, since 1995 the Secretariat of Public Health has been carrying out a clinic programme for pregnant adolescents. Nevertheless, the programme in question is only operational in one hospital in the capital city, and its approach only emphasizes and reinforces the mother & child concept.

The National Congress has prepared a new childhood code, a number of laws against alcoholism and drug addiction, a new code of criminal procedure, a law establishing the Honduran Institute of the Child and the Family [*Instituto de la Niñez y la Familia*], and a special law against domestic violence.

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- ¹ CEPAL - CELADE 2002.
- ² Information taken from CLADEM Honduras, Diagnóstico Nacional sobre los Derechos Sexuales y Reproductivos en Honduras 1995 – 2000, February 2003, at www.cladem.com/espanol
- ³ Código Procesal Penal. Decreto 9-99E, adopted on 30.12.99
www.paghonduras.org/documentos/codigo_procesal_penal.pdf
Article ° 183.- No temporary detention pending trial shall be ordered for:
1. persons older than sixty (60) years;
2. pregnant women;
3. breastfeeding mothers; and
4. terminally ill persons.
In such cases, temporary detention pending trial shall be replaced by house arrest or commitment to a medical centre as the case may require.
- ⁴ Código penal de Honduras, Decreto n. 144-83 – 23 August 1983.
Article 126. Abortion is the death of a human being at any time during pregnancy or delivery. A person who intentionally causes an abortion shall be punished:
1. by a prison term of three (3) to six (6) years if the agent has acted with the woman's consent;
2. by a prison term of six (6) to eight (8) years if the agent has acted without the woman's consent, and without having recourse to violence or intimidation;
3. by a prison term of eight (8) to ten (10) years if the agent has had recourse to violence, intimidation or deception.
Article 128. A woman who induces her own abortion or consents to another person inducing it shall be punished by a prison term of three (3) to six (6) years.
- ⁵ Decreto N°34-2000 of 28 April 2000, at www.inam.gob.hn/
- ⁶ Ibidem, Article 19.-Every woman shall exercise her reproductive rights, decide the number of her sons and daughters and spacing of her pregnancies in joint agreement with her partner.
- ⁷ Decreto 147-99 dated 13 November 1999
- ⁸ CLADEM Honduras, «Diagnóstico nacional sobre los derechos sexuales y reproductivos en Honduras 1995 – 2000», February 2003, at www.cladem.com/espanol
- ⁹ Decreto N°73-1996 of 05 May 1996, published in *Diario Oficial La Gaceta* N°: 28053
www.ilanud.or.cr/justiciajuvenil/CODIGO%20DE%20LA%20N%C3%91EZ%20Y%20LA%20ADOLESCENCIA.%20Honduras.doc
- ¹⁰ Decreto N° 59-97 dated 11 June 1997. www.leyesvirtuales.com/buscarley.asp?Nombre=codigo+penal&decreto=&opcion=3
- ¹¹ Decreto N°191-96 dated 13 November 1999.
- ¹² Ibidem, Article 30.- Persons engaging in sexual commerce shall present themselves at health centres for registration and testing, to attend lectures on HIV infection prevention, and to submit to medical check-ups after receiving their respective health cards, which shall be revalidated from time to time.
- ¹³ Decreto N° 232-98 published in *Diario Oficial La Gaceta* No. 28798 of 11 February 1999. www.inam.gob.hn/
- ¹⁴ Informe Nacional de Honduras 2003 in <http://www.oas.org/CIM/XXXI%20Asamblea%20de%20DelegadasInforme%20Nacional%20Honduras.doc>
- ¹⁵ Ibidem, Section 35.-Pregnant students attending educational centres shall be granted maternity leaves without jeopardizing the continuation of their education.
- ¹⁶ Ibidem, Section 34.-Educational curricula for the senior years of basic and secondary education shall include population education contents with a focus on topics relating to sexuality and reproduction, and scientific information on pregnancy and STI prevention.
- ¹⁷ Leyes y políticas sobre salud y derechos sexuales y reproductivos de los adolescentes. 1999 www.sexualidadjoven.cl/legislacion/legislacion_monitoreo_cairo/beijing.htm
- ¹⁸ CLADEM Honduras. Diagnóstico nacional sobre los derechos sexuales y reproductivos en Honduras 1995 - 2000, February 2003. In www.cladem.com/espanol
- ¹⁹ CLADEM Honduras. Diagnóstico nacional sobre los derechos sexuales y reproductivos en Honduras 1995 - 2000 February 2003. In www.cladem.com/espanol

Reproductive Rights and Reproductive Health

The Constitution of Mexico establishes the principle that men and women are equal before the law, and mandates the State to protect the organization and development of the family. It declares that «every person has the right to decide the number and spacing of their children in a free, responsible, and informed manner»². It emphasizes the right to protection of health, and mandates that the terms and modes of access to health care services be regulated by law.

In 1997, Mexico created a Directorate General of Reproductive Health³ to replace its former Directorates for Children and Women's Health and Family Planning. As a part of its Program of Reform of the Health Sector of the Federal Executive Power, 1995 – 2000, the Reproductive Health and Family Planning Program 1995 – 2000 was developed⁴, and was «... the first official document to highlight and define women's sexual and reproductive rights and incorporate the gender perspective into all envisaged activities»⁵.

The year 1997 also saw the launch of PROGRESA - Programa de Educación, Salud y Alimentación para Familias en Pobreza Extrema⁶, a programme providing a basic package of health care services, monetary support, school grants and nutritional supplements to children of both sexes aged under 5 years, pregnant and breastfeeding women. Health policies have been aimed at increasing service coverage and reducing maternal mortality. On 6 March 2002 PROGRESA was transformed into the Human Development Opportunities Programme⁷.

Abortion⁸ is legal in the following cases: after rape, throughout the national territory; if the woman's life is at risk, in 27 states; in case of malformation of the foetus, in 13 states; if seriously detrimental to health in 9 states; for economic considerations, provided the woman already has at least three children, in the state of Yucatan alone⁹.

With regard to abortion, at the 26th session of the CEDAW Committee held in August 2002, the Center for Reproductive Rights pointed out that «in spite of advances obtained through recent modifications of the Penal Code of the Federal District, there is a consensus among specialized physicians that enforcement of the new rules will require appropriate regulation of hospital procedures in the Federal District's Health Care Law [*Ley de Salud del Distrito Federal*], as well as an increase of funds allocated to the health sector. In their opinion, it is also necessary that future regulations make ultrasound exams available to mothers free of charge in order to detect genetic deformations in the fetus»¹⁰.

In April 2002, the Public Health Secretariat of the Federal District published a new regulation on abortion¹¹ that guarantees women living in the capital city the exercise of their abortion rights in any of the city's 26 public hospitals, subject to the conditions established by the current Penal Code. In the same year, the Attorney General of the Federal District issued an administrative decision establishing guidelines to be followed by agents of his office when called upon according to law to authorize abortions in cases where the pregnancy is the result of rape or non-consensual artificial insemination¹².

Prevention and assistance actions included the Cervical-Uterine Cancer Prevention and

Control Program 1998 – 2000¹³ undertaken by the Secretariat of Public Health at federal and state level. The Program has made it possible to provide doctor's consultations for timely detection and cervical cytology, and guarantee women with severe dysplasias and cancer access to treatment in second- and third-tier care facilities¹⁴. Another step forward was made with the entry into force of the regulation [*Norma Oficial Mexicana*], on prevention, detection, diagnosis, treatment, control and epidemiological vigilance of cervical-uterine cancer¹⁵.

In the Mexico Report submitted to WHO and PAHO in 2003 about country experience with monitoring health policies from a gender perspective, it is worth pointing out that the Woman and Health Program and the Directorate General of Reproductive Health have joined efforts to approach the woman & health issue from a gender perspective. The Program has five components, one of which is promotion of a vision of woman's health throughout her lifecycle, conceived of in terms of sexual and reproductive health, freedom from family and sexual violence, mental health, and other aspects¹⁶.

Family Planning

In accord with existing guidelines for the rendering of family planning services¹⁷, the Reproductive Health and Family Planning 1995 – 2000 Program provides that such services must be driven by complete respect for the dignity of individuals and couples, and due consideration for the country's cultural and ethnic diversity.

The Regulations to the General Population Law¹⁸ of the year 2000 provide that family planning services shall be integrated and coordinated with health and reproductive health services, along with other services designed to achieve the well-being of individuals and families from a gender perspective¹⁹.

The General Health Law²⁰ has made family planning a priority by introducing mandatory delivery of accurate, timely, effective and complete contraception information to couples. «Family planning services include:

- I. Promoting the development of educational communication programs on family planning and sexual education services, based on such contents and strategies as the National Population Council may decide
- II. Providing care and follow-up to those who receive and use family planning services
- III. Providing counselling with regard to family planning services delivered by public, social and private sectors, and supervision and evaluation of their performance, in accordance with policies established by the National Population Council
- IV. Supporting and promoting research on contraception, human infertility, family planning and the biology of human reproduction
- V. Participating in the establishment of suitable mechanisms for defining, processing, buying, storing and distributing drugs and other inputs for family planning services
- VI. Compiling, systematizing and updating such data as may be required to ensure adequate follow-up on activities»²¹.

In its 1998 report, the Committee on the Elimination of Discrimination against Woman

points out that Mexico has a strong unsatisfied demand of contraceptives, especially among low-income women in urban and rural areas, and adolescents²².

According to the Directorate General of Reproductive Health, one hundred thousand rural communities scattered around the country will not receive family planning service in the short term given the high cost of the programs involved»²³.

The Strategic Reproductive Health Plan of the Secretariat of Public Health²⁴ favours two contraceptive methods, namely the intra-uterine contraceptive device or IUCD, and voluntary surgical contraception. As regards methods used by the male population at large, only 20% uses a family planning method, such as condom, vasectomy, withdrawal or rhythm²⁵. The National No-Scalpel Vasectomy Program has been included in the Reproductive Health and Family Planning Program.

On the other hand, in January 2004 Emergency Oral Contraception (ECP) was included among contraceptive methods by family planning services under the name of post-coitus hormonal contraception and with a warning that it should not be used as a regular method²⁶.

Human Sexuality and Gender Relations

The government of the Federal District has established Women's Assistance Centres (CIAM - *Centros Integrales de Atención a la Mujer*) at 16 local administration offices in the city. At CIAMs, women victims of sexual violence receive assistance from personnel trained in gender perspective.

The most significant successes in the promotion of women's rights and equality²⁷ include actions undertaken to eliminate trafficking in and prostitution of women in Mexico within the framework of the implementation of the Interinstitutional Action Plan to Prevent, Provide Care for the Victims of and Eliminate Commercial Sexual Exploitation of Minors, the creation of a cyber-police corps, the creation of an interinstitutional coordinating centre for the elimination of child pornography, Federal Penal Code reforms, the enactment of the Law for the Protection of the Rights of Children and Adolescents of Both Sexes [*Ley de Protección de los Derechos de Niñas, Niños y Adolescentes*]²⁸ and the ratification of ILO Convention 182.

Adolescents

The Educational Development Program 1995 - 2000²⁹ of the Ministry of Education contemplated equal education for men and women among its priorities, with equity promoting contents including sexual education as conducive to equality. It also included a special impulse for programs aimed at preventing female dropout and fostering a successful transition from primary to secondary education, based on the premise that «given woman's decisive influence on the health and schooling of new generations, it is of fundamental importance to promote actions aimed at improving their education»³⁰.

The Reproductive Health and Family Planning Program 1995 - 2000 included a special section devoted to the sexual health of adolescents. Actions include information, communication, sexual health services, delivered on the basis of privacy protection,

confidentiality and consent based on correct information. The Secretariat of Public Health has installed service modules for adolescents across the country.

The General Health Law mandates family planning services to include information and educational orientation for adolescents and young people³¹. It states that «The Secretariat of Public Health shall, based on National Population Council policies regarding the delivery of family planning services and sexual education, define the criteria to be used in order to evaluate the use of contraceptive methods in terms of prevalence and health impact»³². Likewise, « ... it shall, through the National Population Council, provide such counselling as may be required by the national educational system for purposes of drawing up educational programs on topics related to family planning and sexual education»³³.

The CEDAW 2002 Mexico Report mentions the limited access enjoyed by the adolescent population to health care services. In that regard, the Reproductive Health and Family Planning Plan 1995 – 2000³⁴ set forth the following goals:

« Protect and promote the exercise by the adolescent population of their rights to information, education, communication and services in the area of sexual and reproductive health based on a comprehensive approach encouraging responsible attitudes and conduct.

« Expand the coverage of information, education and comprehensive health services specifically designed for adolescents with a focus on sexual and reproductive health. According to available information, currently 289 specialized centres provide services to adolescents.

« Prevent unwanted pregnancies, abortion and STD, including HIV/AIDS among the adolescent population, and promote condom use.

« Supply extensive information and quality services regarding contraception.

« Supply high-quality information and services for pregnant adolescents.

According to the Sexuality Department of Instituto Mexicano de la Juventud, its Sexuality Program 1999 – 2000 aims at creating opportunities for communication, reflection and coordination among government, civil society and young people working in the sexuality area in order to articulate joint actions in the search for a full and responsible exercise of sexuality and for the establishment of a critical and prevention-oriented culture among young people³⁵.

On the other hand, the current technical regulation for family planning services mandates that women of fertile age, including adolescents, may use emergency oral contraception to avoid unplanned pregnancies³⁶.

¹ CEPAL - CELADE 2002

² Constitución Política de los Estados Unidos Mexicanos – Latest reform dated 05 April 2004, Article 4.

⁴ Poder Ejecutivo Federal, Programa de Salud Reproductiva y Planificación Familiar 1995 - 2000, Secretaría de Salud, México, 1995.

⁵ [Http://www.gire.org.mx/derechos/d2.html](http://www.gire.org.mx/derechos/d2.html)

⁶ Decreto establishing the Coordinación Nacional del Programa de Educación, Salud y Alimentación as a decentralized body of Secretaría de Desarrollo Social, published in Diario Oficial de la Federación on 8 August 1997.
<http://www.ordenjuridico.gob.mx/Federal/PE/APF/APC/SEDESOL/Decretos/DECRETO%20POR%20EL%20QUE%20SE%20CREA%20LA%20COORDINACION%20DEL%20PROGRAMA%20DE%20EDUCACION.pdf>

- ⁷ Decreto reforming the normative act that established Coordinación Nacional del Programa de Educación, Salud y Alimentación as a decentralized body of Secretaría de Desarrollo Social, published on 8 August 1997; published on 6 March 2002. http://www.oportunidades.gob.mx/transparencia/DECRETO_CREACION_OPORTUNIDADES.pdf
- ⁸ Código Penal Federal de México, 14 August 1931.
 Note: By means of a «Decreto por el que se reforman diversas disposiciones en materia penal», published in the official gazette of the Federation on 18 May 1999, the original designation as «código penal para el distrito federal en materia de fuero común y para toda la república en materia de fuero federal», was changed to the current «código penal federal».
- Article 330
 A person who causes a woman to abort by whatever means shall be sentenced to a prison term of one to three years, if he/she acted with her consent; to a prison term of three to six years if he/she acted without her consent; and to a prison term of six to eight years if he/she used physical or moral violence.
- Article 332
 A woman who induced her abortion or consented to another person inducing it shall be sentenced to a prison term of six months to one year, provided:
 I.- she is not a woman of ill repute; and
 II.- she has succeeded in keeping her pregnancy secret; and
 III.- the pregnancy is the product of an illegitimate union.
 Failing any one of these three circumstances, she shall be sentenced to a prison term of one to five years.
- Article 333
 Abortion caused by mere carelessness on the part of the pregnant woman, or to end a pregnancy caused by rape shall not be punishable.
- Article 334
 No punishment shall apply when the attending physician is of the opinion that continuation of the pregnancy would endanger the life of the pregnant woman or the foetus, provided another physician concurs with his/her opinion. If it is impossible to consult another physician without causing a dangerous delay, this latter requirement is waived.
- ⁹ <http://gire.org.mx/phnpuke/modules.php?name=prueba&opgire=70>
- ¹⁰ Comité sobre la Eliminación de Todas las Formas de Discriminación contra la Mujer, Información adicional sobre México - 2002.
- ¹¹ Circular GDF-SSDF/02/02, published in Gaceta Oficial on 23 April 2002. http://www.google.com.pe/search?q=cache:Ppx30XInlj0J:www.paot.org.mx/centro/gaceta/2002/April_23_57.pdf+GDF-SSDF/02/02+&hl=es
- ¹² Acuerdo A/004/2002, published in Gaceta Oficial on 11 August 2002. <http://cgservicios.df.gob.mx/prontuario/vigente/17.htm>
- ¹³ Dirección General de Salud Reproductiva. Secretaría de Salud, Programa de Prevención y Control del Cáncer Cérvico-Uterino 1998-2000. 1st edition. Mexico, 2000.
- ¹⁴ CLADEM, México. Diagnóstico sobre la situación de los derechos sexuales y reproductivos en México. Anexo III y Revisión de la Legislación Nacional y las Políticas Públicas. México-2001.
- ¹⁵ NOM-014-SSA2-1994, published in Diario Oficial de la Federación on 6 March 1998, which amended Norma Oficial Mexicana NOM-014-SSA2-1994, para la prevención, tratamiento y control del cáncer del cuello del útero y mamario en la atención primaria, at <http://www.salud.gob.mx/unidades/cdi/nom/m014ssa24.html>
- ¹⁶ Experiencia de los países en materia de monitoreo de las políticas sanitarias desde el punto de vista del género. Experiencia en México. 11 January 2003. Panamerican Health Organization, World Health Organization « 20th Session of the Subcommittee on Women, Health and Development of the Executive Committee, at <http://www.paho.org/spanish/gov/ce/msd/msd20-05-s.pdf>
- ¹⁷ Norma oficial mexicana, NOM 005-SSA2-1993, de los servicios de planificación familiar, published in Diario Oficial on 30 May 1994, at <http://www.sesa-dgo.gob.mx/005SSA23.doc>. This technical regulation was amended by the Public Health Secretariat by a Resolución that amends Norma Oficial Mexicana NOM-005-SSA2 -1993, de los servicios de planificación familiar. It was published in Diario Oficial on 21 January 2004. http://www.gobernacion.gob.mx/dof/2004/enero/dof_21-01-2004.pdf
- ¹⁸ Reglamento de la Ley General de Población, published in Diario Oficial de la Federación on 14 April 2000. http://www.e-local.gob.mx/wb2/ELOCAL/ELOC_Reglamento_de_la_Ley_General_de_Poblacion_
- ¹⁹ Ibidem, Article 15°.
- ²⁰ Ley General de Salud published in Diario Oficial de la Federación on 07 February 1984. Decreto reforming and adding to Ley General de Salud, published in Diario Oficial de la Federación on 15 May 2003.
- ²¹ Ibidem, Section 68
- ²² CEDAW Committee, Informe del Comité para la Eliminación de la Discriminación contra la Mujer 1998 (18th and 19th sessions), United Nations, New York, 1998, para. 394. [http://www.unhcr.ch/tbs/DOC.NSF/8e9c603f486cdf83802566f8003870e7/c6867215385c5af980256803004b2752/\\$FILE/N9825662.pdf](http://www.unhcr.ch/tbs/DOC.NSF/8e9c603f486cdf83802566f8003870e7/c6867215385c5af980256803004b2752/$FILE/N9825662.pdf)
- ²³ Centro de Derechos Reproductivos, Información adicional sobre México, at the 26th Session of the CEDAW Committee held in August 2002. http://www.reproductiverights.org/esp_ww_lac_argletter.html
- ²⁴ <http://www.salud.gob.mx/docprog/pns2001-2006.htm>
- ²⁵ Centro de Derechos Reproductivos, Información adicional sobre México, at the 26th Session of the CEDAW Committee held in August 2002. http://www.reproductiverights.org/esp_ww_lac_argletter.html
- ²⁶ Resolución of Secretaría de Salud modifying Norma Oficial Mexicana NOM-005-SSA2 -1993, de los servicios de planificación familiar. Published in Diario Oficial on 21 January 2004. http://www.gobernacion.gob.mx/dof/2004/enero/dof_21-01-2004.pdf
- ²⁷ Quinto Informe de México to CEDAW, year 2002
- ²⁸ Decreto published in Diario Oficial de la Federación on 29 May 2000.
- ²⁹ Decreto por el que se aprueba el programa sectorial denominado Programa de desarrollo educativo 1995-2000, published in Diario Oficial de la Federación on 19 February 1996. http://www.sfdspuebla.gob.mx/websep/all_docs/PE402DesEduc.pdf
- ³⁰ Ibidem, p. 42.
- ³¹ Ley General de Salud published in Diario Oficial de la Federación on 07 February 1984 <http://info4.juridicas.unam.mx/ijure/tcfed/150.htm?s=.> Decreto por el que se reforma y adiciona la Ley General de Salud, published in Diario Oficial de la Federación on 15 May 2003, Section 67.
- ³² Ibidem, Section 69.
- ³³ Ibidem, Section 71
- ³⁴ CLADEM México. Diagnóstico sobre la situación de los derechos sexuales y reproductivos en México. Anexo III Registro y Revisión de la Legislación Nacional y las Políticas Públicas, México, 2001
- ³⁵ Idem.
- ³⁶ Norma Oficial Mexicana NOM-005-SSA2 -1993, de los servicios de planificación familiar. Published in Diario Oficial on 21 January 2004. Lineamientos generales para la prescripción. http://www.gobernacion.gob.mx/dof/2004/enero/dof_21-01-2004.pdf

Reproductive Rights and Reproductive Health

The Political Constitution of Nicaragua⁴ provides that every person has duties to his/her family, and that family relations rest on respect, solidarity and absolute equality of rights and responsibilities between the man and woman. No one may deny employment to women for reasons of pregnancy nor dismiss them during pregnancy or the postnatal period; the law shall be complied with in every respect.

Beginning in 1996, the Ministry of Health of Nicaragua has been developing actions aimed at reducing maternal mortality and morbidity rates. To that end, they have analyzed the behaviour and trends of such rates, evaluated the impact of interventions, service quality, and action promotion in the areas of legislation, resource distribution, service delivery and community involvement. This same concern can be detected in the implementation of the National Health Policy 1997-2002.

The ICPD + 10 Nicaragua 2003 Field Survey mentions some advances regarding maternal mortality and morbidity. However, insufficient funding has prevented the implementation of these initiatives. As to Maternity Houses, these operate thanks to external and civil society support.

The National Maternal and Perinatal Mortality Reduction Plan 2000 – 2005 implicitly integrated operational and strategic guidelines in order to reduce maternal, perinatal and child mortality in Nicaragua. This integrated approach became explicit in the Strengthened Economic Growth and Poverty Reduction Strategy (ERCERP) and the Action Plan of the National Population Policy.

The Mother/Child Program has special basic funding for the purchase of sexual and reproductive health supplies⁵.

The ICPD + 10 Nicaragua 2003 Field Survey points out that «health care services received by low-income women during their reproductive process are marked by poor service quality, inadequately humane treatment, and a serious dearth of technical, human and financial resources. This state of affairs is the result of policies that favour the reduction of State expenditure with no consideration for women's needs».

The Nicaraguan Government's Population Policy is defined as *«a set of measures aimed at influencing the Nicaraguan population's reproductive behaviour, education, training, sexual and reproductive health, as well its geographical distribution across the land, by promoting the values of Nicaraguan society, namely the right to life from the moment of conception, access to education and basic health services, the irreplaceable role of the family, and the social and cultural survival of ethnic groups»*.

Even though the National Population Plan has «strengthening family planning services within the framework of comprehensive health programs aimed at reducing mother and child morbimortality» as one of its guidelines, the above statement clearly reflects the conservative ideology that has driven daily practice in the implementation of social policies and measures. This bodes very ill for women's reproductive health.

«One of the very first things the 2002-2006 government did was issue a general invitation to the official presentation in January 2002 of a document entitled *Hacia un Programa*

Nacional de Salud Sexual y Reproductiva [Towards a National Sexual And Reproductive Program], as a part of the government's Health Reforms. At the presentation, the phrase «sexual and reproductive rights» was used in the document. This triggered the reaction of conservative sectors. Their pressure led to elimination of that phrase in February of the same year. Later the document was withdrawn from circulation outright»⁶.

According to the ICPD + 10 Nicaragua 2003 Field Survey, «the government has prepared a National Population Policy 2001 – 2011 and a diagnostic assessment of the situation in Nicaragua known as Strengthened Economic Growth and Poverty Reduction Strategy (ERCERP), which basically set forth the Nicaraguan population's basis needs».

ERCERP⁷ defines two goals as regards population issues: reducing maternal mortality; and reducing unsatisfied family planning demand. Nevertheless, funds allocated to achieve both goals are insufficient in comparison with existing demand. Furthermore, «one of the main impediments to implementing necessary measures and recognizing this issue as central is the lack of distinction between the respective spheres of influence of the Catholic Church and the State, and the systematic violation of the constitutionally sanctioned secular nature of the Nicaraguan State this entails. As a result, neither education on population issues nor services that might enable the population to reduce their birth rate are given priority».

Implementing ERCERP has involved facing a national challenge as well as giving a cross-cutting dimension to institutional and sectoral national development. strategies. This is the approach underlying the Action Plan of the National Population Policy (PA-PNP), which sets forth the country's advances over the past few decades, while also showing the need to take action regarding maternal and perinatal health and family planning.

On the other hand, pursuant to Section 28 of the General Health Law⁸ approved in March 2002: «it is incumbent upon the Ministry of Health and society as a whole to help systematically reduce the impact of violence on health.» Further on, the same law considers women as «entitled to protection as members of vulnerable population» during pregnancy and breastfeeding and provides –at that time only– for fair treatment as to benefits and the delivery of public health care services free of charge⁹.

The Labour Code¹⁰ recognizes a woman's right to breastfeed her baby (boy or girl) and provides that breastfeeding women workers shall have the right to take fifteen minutes off every three hours while at work, and that the time thus taken off shall be considered as time actually worked.

The Law on Promoting, Protecting and Preserving Breastfeeding also includes marketing regulations for alternative products to mother's milk¹¹.

The Nicaragua Penal Code¹² prohibits abortion and only allows it for therapeutical reasons¹³. Penalties are reduced if abortion was performed to conceal the woman's dishonour. In January 2000 the President of Nicaragua declared March 25th (a religious feast as the Day of the Annunciation to the Blessed Virgin Mary) as «National Day of the Unborn Child»¹⁴.

It must be pointed out here that «pressures by the Catholic hierarchy have led to the inclusion of a section establishing protection for the unborn in accordance with Vatican

dictates, whereby physicians in the public and private health care sectors are threatened with imprisonment, closing of office, and loss of medical licence if found guilty of causing physical or «psychological» injury to the foetus, . something impossible to prove under any legislation»¹⁵.

Family Planning

The Political Constitution of Nicaragua provides that «family relations rest on respect, solidarity and absolute equality of rights and responsibilities between the man and woman»¹⁶. This implies an obligation to pay special attention to the issue of education for family life, conceived of from a perspective involving the human being as whole in all its dimensions. The Constitution also provides that «the State protects responsible fatherhood and motherhood»¹⁷ and «grants special protection to the process of human reproduction in all its phases»¹⁸.

According to ICPD + 10 Nicaragua 2003 Field Survey, «basically, the Ministry of Health has developed a number of programs, e.g. youth clubs and homes for adolescents where it has tried to promote male involvement and responsibility sharing with regard to both family planning and the exercise of sexuality between adolescents».

For the 2001 – 2005 period the Nicaraguan State has developed a National Population Policy which specifies a set of measures aimed at influencing the Nicaraguan population's reproductive behaviour, education, training, sexual and reproductive health, as well its geographical distribution across the land by promoting the values of Nicaraguan society, namely the right to life from the moment of conception, access to education and basic health services. This public policy is based on the basic right of all couples to freely and responsibly decide the number and spacing of their children, and to have access to truthful and complete information and to such means as are required to enable them to fully exercise that right.

As already mentioned, conservative ideology is present in various policies and, more particularly, in the National Population Plan. One example of this is the mandate for the State «to help create a diversified supply of family planning methods, including natural methods, and male contraceptive methods in hospitals, accident and emergency posts and health care centres, to enable couples or women and men demanding that service to choose whatever method is most suited to their personal needs and convictions». Such language clearly points to the importance given to personal convictions and natural methods within the Nicaraguan family planning programme.

According to the ICPD + 10 Nicaragua 2003 Field Survey, a new logistic system has been created to distribute contraceptives in accordance to the needs and specific circumstances of target populations, and a relatively constant level of product supply has been kept over the past few years. It should be pointed out that this system is embedded into the Family Planning Program of the Ministry of Health. As to Emergency Oral Contraception (ECP) although it is considered in the Technical Regulation on Family Planning [*Norma Técnica de Planificación Familiar*], it has received no support in terms of training, information dissemination, and promotion by public health care centres¹⁹. The Ministry of

Education, Culture and Sport has promoted campaigns in favour of sexual abstinence and the use of natural methods, and refused to support the use of modern contraceptive methods. «As a result of a sexual and reproductive health failure, female condom for preventing STD/HIV/AIDS and unplanned pregnancy has not been included among contraceptive methods on offer»²⁰.

Human Sexuality and Gender Relations

The Penal Code has maintained, in its treatment of rape, the provision according to which the rapist can be exempted from punishment if he enters into marriage with his victim²¹.

December 2000 saw the creation of the National Commission on Violence against Women, Children and Adolescents, and the development of a «National Plan for the Prevention of Intrafamily and Sexual Violence» 2001-2006, designed to integrate the efforts of State institutions and civil society agencies involved in this mission. «The Plan envisages activities centred on preventive actions, detection, sanction and assistance to victims of intrafamily and sexual violence, with the general aim of seeking and strengthening respect for the dignity and rights of all people and fostering a culture of peace within the family, among children and adolescents of both sexes in general»²².

In August 2001, and in agreement with recommendations issuing from the First World Congress on this issue, Nicaragua adopted its public policy against commercial sex exploitation of children of both sexes. This National Policy was promoted by The National Council for Children and Young People (CONAPINA « Consejo Nacional de Atención y Protección Integral a la Niñez y la Adolescencia), and has provided a framework of reference for purposes of analyzing the phenomenon in question and designing action strategies for State authorities of every level as well as civil society agencies. Since, unfortunately, no funds could be appropriated in the 2002 General Budget of the Republic for implementing the National Policy, little progress has been made in that direction.

Adolescents

The Law for the Promotion of Integral Youth Development is Nicaragua's only piece of legislation incorporating respect for sexual rights and reproductive rights into the educational process. It also mandates health institutions to ensure that services exist for young people that can reduce the incidence of sexually transmitted vaccine-preventable diseases and maternal mortality due to early pregnancies. Its existence is in fact unknown to the majority of the population, adolescents and young people included.²³ According to the ICPD + 10 Nicaragua 2003 Field Survey, it is not fully in force yet.

Likewise, specific guidelines²⁴ in Nicaragua's National Population Plan²⁵ regarding internal migration and population distribution establish the population's right to be informed on all family planning alternatives, and provide for parents' and young people's participation in comprehensive sexual education activities, for the use of informal channels for comprehensive sexual education purposes, and for prevention actions regarding reproductive health in rural and semi-rural areas, subject at all times to respect for society's culture, norms and values.

In November 1998 the Children's Code²⁶, came into force. Using as framework of reference the contents of various pieces of legislation on human rights and more particularly the Convention on the Rights of the Child, this law establishes prevention and protection measures in favour of minors at risk and in violation of criminal laws. It has a section on pregnant adolescents and mothers' right to health care that helps address adolescent issues. In spite of this advance, however, «inequality, authoritarian and adult dominated practices and violence embedded in discrimination, persist and, far from being on the wane, they are actually increasing»²⁷.

In May 2000, the Law establishing CONAPINA and the Office of the Ombudsman for Children's Issues [Defensoría de las Niñas, Niños y Adolescentes] was passed with a view to establish a body whose remit would be to draw together governmental institutions and other State powers and establish appropriate coordination with civil society organizations working with children. CONAPINA in particular was given the tasks of organizing and coordinating actions issuing from the National Policy for Comprehensive Care of Children and Adolescents; monitoring and evaluating compliance with the International Convention on the Rights of the Child, and the National Policy for Comprehensive Care of Children and Adolescents through the Action Plan.²⁸

January 2001 saw the presentation of the National Policy for Comprehensive Care of Children and Adolescents as the policy and social planning tool to be used for unifying criteria, defining priorities and ensuring consistency of State and civil society efforts aimed at providing Nicaraguan children and adolescents with effective care.

According to data compiled by the ICPD + 10 Nicaragua 2003 Field Survey, the Ministry of Health has designed and implemented a number of programs and specific projects involving the dissemination of information and the provision of care for the adolescent population in the capital city at least. To date, however, no concrete measure have been put in place to inform the population. What few efforts are made only materialize when people actually use reproductive health services. At health care centres, across the country and mostly through the initiative of civil and women's organizations, actions have taken place to train health care personnel so that they may be able to provide better guidance to users.

¹ ECLAC - CELADE 2002

² Source: http://www.iadb.org/exr/country/esp/nicaragua/ni_operationalstrategy.htm

³ Data as of year 2001. Source:

http://www.sexualidadjoven.cl/noticias/Not_nica/U_E_nic_mortalidad%20materna%20alta_nuevodiario_27abr2001.htm

⁴ Constitución Política de Nicaragua, articles 24, 73 and 74^o.

Source: <http://www.asamblea.gob.ni/constitu.htm#titulo2>

⁵ Rodríguez Osorio, Elizabeth, Encuesta de campo ICPD + 10 Nicaragua 2003 Compilación SI Mujer Servicios Integrales para la Mujer y Red de Salud de las Mujeres Latinoamericanas y del Caribe. P. 45

⁶ Rodríguez Osorio, Elizabeth, Encuesta de campo ICPD + 10 Nicaragua 2003 Compilación SI Mujer Servicios Integrales para la Mujer y Red de Salud de las Mujeres Latinoamericanas y del Caribe. P. 38

⁷ See full text of Estrategia Reforzada de Crecimiento Económico y Reducción de la Pobreza – ERCERP:

http://www.iadb.org/int/DRP/esp/Red3/documentos/Nicaragua_%20Esp.pdf

⁸ Ley N° 423 adopted on 14 March 2002. Published in La Gaceta No. 91 of 17 May 2002. <http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/19f7d9a195810dbb06256cd900505ebcc?OpenDocument>

⁹ Section 8° of Ley 423

¹⁰ Código del Trabajo, Ley No. 185 of 5 September 1996. Section 143: «Employers shall provide chairs or other seating arrangements in suitable locations for breastfeeding women workers. At workplaces with over thirty women workers, employers shall condition or build appropriate accommodations where women workers can breastfeed their babies. At work, lactating women workers shall take fifteen minutes off every three hours in order to breastfeed their babies. The time thus taken off shall be considered as time actually worked.»

<http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/8157a2761151db9c06256afd006369a4?OpenDocument>

¹¹ Ley N°295. Ley de Promoción, Protección y Mantenimiento de Lactancia Materna y Regulación de la comercialización de los sucedáneos de la leche materna, adopted in June 1998. <http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/85276a8ed0bef52206256afd0065742e?OpenDocument>

¹² Ley del Código Penal de Nicaragua of 16 January 1974 Section 162.- A person who caused a foetus to die whether inside the mother's womb or by abortion shall be subject to imprisonment for three to six years, if he/she has acted without the woman's consent or if she is under 16 years; to imprisonment for one to four years, if he/she has acted with the woman's consent.

A woman who has consented to abortion shall be subject to imprisonment for one to four years.

In the event of recourse to violence, intimidation, threat or deception in order to perform an abortion in the former case, or to elicit consent in the latter case, the maximum penalty respectively provided for by the law shall apply.

A person who caused a woman's death or injury by inducing her abortion or submitting her (erroneously believed to be pregnant) to abortion practices or by using inappropriate means, shall be subject to imprisonment for six to ten years in the former case, for four to ten years in the latter.

Should the agent be a regular practitioner of abortions, he/she shall be subject to the maximum penalty in each case.

Any physician, surgeon, pharmacist or midwife who induced abortion in any woman with or without her consent shall be subject to imprisonment for five (5) to ten (10) years, in addition to inhabilitación especial (disqualification for a limited period of time).

Section 163.- Abortion performed to conceal a woman's dishonour whether by her or by a third party with her consent, shall be punished by imprisonment for one to two years. Should the woman die as a result, the agent shall be punished by imprisonment for three to six years.

Section 165.- Therapeutical grounds for abortion shall be scientifically established by at least three doctors. The consent of the woman's spouse or closest relative shall also be required for legal purposes.

¹³ Política Nacional de Población en Nicaragua 1998, at www.sdnnic.org.ni/documentos/politica_poblacion

¹⁴ Decreto 10 – 2000, adopted on 25 January 2000. Published in La Gaceta No.21 of 31 January 2000. <http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/2fd5e2fbf0143b4a06256b80007656b3?OpenDocument>

¹⁵ Rodríguez Osorio, Elizabeth, Encuesta de campo ICPD + 10 Nicaragua 2003 Compilación SI Mujer Servicios Integrales para la Mujer y Red de Salud de las Mujeres Latinoamericanas y del Caribe. P. 47

¹⁶ Constitución Política de Nicaragua: Article 73°

¹⁷ Constitución Política de Nicaragua: Article 78

¹⁸ Constitución Política de Nicaragua: Article 74

¹⁹ Rodríguez Osorio, Elizabeth, Encuesta de campo ICPD + 10 Nicaragua 2003 Compilación SI Mujer Servicios Integrales para la Mujer y Red de Salud de las Mujeres Latinoamericanas y del Caribe. P. 44

²⁰ Rodríguez Osorio, Elizabeth, Encuesta de campo ICPD + 10 Nicaragua 2003 Compilación SI Mujer Servicios Integrales para la Mujer y Red de Salud de las Mujeres Latinoamericanas y del Caribe. P. 44

²¹ Ley No.150 of 11 June 1992, published in La Gaceta No.174 of 9 September 1992, modifying Article 196: «... Rape shall be punished by imprisonment for three to five years. If the victim enters into marriage with the perpetrator or gives him forgiveness, the proceeding shall be stayed and the penalty extinguished.

²² Tercer informe sobre la Situación de Derechos de los Niños, Niñas y Adolescentes de Nicaragua 1998-2002 to the Committee on the Rights of the Child, March 2003, at <http://www.unhcr.ch/html/menu2/6/crc/doc/report/srf-nicaragua-3.pdf>

²³ Ley N. 392 Ley de Promoción del Desarrollo Integral de la Juventud adopted on 09 May 2001. Source:<http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/3ea143df8ad0914506256e45005b8d80?OpenDocument>

²⁴ Política Nacional de Población en Nicaragua 1998, at www.sdnnic.org.ni/documentos/politica_poblacion

²⁵ It should be pointed out that, according to Encuesta de campo ICPD + 10 Nicaragua 2003 findings, although documents like Política Nacional de Población have been drawn up, they remain on paper, while the government has neither the obligation nor the political will to abide by their own precepts.

²⁶ Ley N° 287 Código de la Niñez y la Adolescencia. 24 March 1998, published in La Gaceta N. 97 of 27 May 1998. http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/7d7e42070282848e06256afd006916e5?OpenDocument&Highlight=2,_qdpkq8pbq_

²⁷ CLADEM Nicaragua and Comité Nacional Feminista, Informe Alternativo de Monitoreo a la Convención para la Eliminación de todas las formas de Discriminación contra la Mujer de Nicaragua 2001, at http://www.cladem.com/espanol/regionales/monitoreo_convenios/cedawnicaragua.asp

²⁸ Ley N° 351, aprobada el 18 de mayo de 2000. Vease: http://legislacion.asamblea.gob.ni/Normaweb.nsf/164aa15ba012e567062568a2005b564b/bcbcd329e6de2ac206256bba0079420f?OpenDocument&Highlight=2,_qdpkq8pbq_

Reproductive Rights and Reproductive Health.

Panama has approved the 1995-1999 National Comprehensive Adolescent Health Plan through the Women, Health and Development Program of the Ministry of Health, designed to help improve comprehensive health standards among infants and women, schoolchildren and adolescents by applying risk- and gender-based approaches with active social involvement². The Ministry has in place a Maternal Mortality Epidemiological Surveillance System with mandatory notification and investigation powers.

In 1995 Technical and Administrative Rules for Programs on Comprehensive Health Care for Women [*Normas Técnico-Administrativas. Programas de Salud Integral de Mujer*] was approved to: reduce morbimortality rates among women, mothers and the newborn; provide comprehensive care to women through all phases of pregnancy, as well as to the newborn; increase the coverage and improve the quality of care services delivered to pregnant women or the newborn. In 1996, the Technical and Administrative Rules for Health Care of Pregnant Women at High Obstetric Risk [*Normas Técnicas de Atención en la Embarazada de Alto Riesgo Obstétrico*] were approved, followed in 1999 by the Gynaecological Care Rules [*Normas de Atención Ginecológica*] to strengthen gynaecological care services in order to improve the health situation of women³.

In 1999, the Caja de Seguro Social's voluntary insurance scheme was reformed to extend coverage to people dedicated to looking after their families. The reformed system covers those who engage in activities involving biological reproduction (such as pregnancy, delivery and breastfeeding), and/or socialization, education and care of their offspring, and/or productive work of a social nature, such as maintaining and managing the home, always within the context of a family relationship⁴.

In the same year an Executive Decree [*Decreto Ejecutivo*] created the National Commission on Sexual and Reproductive Health, chaired by the Ministry of Health, whose functions include proposing sexual and reproductive health policies and strategies, disseminating sexual and reproductive health information, and promoting ongoing education programs on sexual and reproductive health for the population at large⁵.

An important policy tool is the 1999-2004 National Sexual and Reproductive Health Plan⁶, which has produced the establishment of regional multisectoral commissions on sexual and reproductive health and the development of sexual and reproductive health actions with special interest groups (indigenous groups, people with physical, sensorial and/or intellectual disabilities or other sexual preferences, commercial sex workers, adolescents, young people and senior people). The Ministry of Health has a section specializing in sexual and reproductive health, which is organically and functionally integrated into its institutional structure.

As regards the legal treatment of abortion⁷, although the law continues to consider it a felony, it also provides for exceptions that allow abortion subject to certain conditions. These include therapeutical abortion, serious foetus nonviability, or where the pregnancy was produced by rape.

Laws enacted on sexual and reproductive rights include one, enacted in 1995, that protects and fosters breastfeeding.

Family Planning

The Panamanian Constitution of 1972⁸ mandates the State to put in place basic social policies in support of adequate development of the family. This obligation is further articulated through the Family Code⁹, whose underlying principles are: cohesion of the family, both spouses have equal rights, all children enjoy equal status, and the interest of minors is paramount¹⁰.

Following the enactment of the Family Code in 1994, the Ministry of Youth, Women, Children and Family (MINJUMNFA) has been promoting the introduction of legislation with similar orientation, e.g. Law N°18-2001 on adoption¹¹ and Law N° 39-2003 on paternity recognition¹².

In 1998, a DNA database and forensic databank was established, and a number of other measures were adopted for purposes not only of using modern methods in the fight against crime, but also of providing evidence in filiation proceedings as a way to foster responsible parenthood¹³.

The Panama family policy is embedded in the Social Development Policy and Strategy 2000-2004, in line with the strategic objective of «Promoting the family as the basic nucleus of society, and giving special support to vulnerable groups, to enable them to adequately integrate into the economic and social life of the country». In that regard priority attention is given, in particular, to pregnant adolescents facing the challenge of motherhood while powerless to take full responsibility for it.

The National Council on the Family and the Child (CONAFAME « Consejo Nacional de la Familia and del Menor) ¹⁴ The council is an autonomous scientific, civic organization, which brings together representatives of Government, organized social sectors and the community. Its main objective is to advise on and coordinate the organization, promotion, and management of programs and policies in both public and private sectors aimed at providing preventive care, welfare and protection for minors, the family and its members.

Among programs for the family the following are particularly worth mentioning:

- Responsible Fatherhood and Motherhood Campaign
- Editing and publishing «Con Padres and Madres Responsables el Futuro de Panamá está Asegurado», a journal;
- Establishment of the Family and Social Orientation Service (SOFS « Servicio de Orientación Familiar y Social) at MINJUMNFA headquarters and in various locations of interest in the country's interior and in indigenous areas.

According to a report by the Deputy Minister of Youth, Women, Children and Family of Panama, government action regarding the family and vulnerable groups generally takes the form of programs and projects undertaken by Ministry of Youth, Women, Children and Family (MINJUMNFA). Such is the case of the programme that goes by the name of «*Salud Sexual y Reproductiva*».

As regards prevention, in 2000 it was made mandatory for houses of occasional lodging to supply condoms and place preventive notices. These regulations are formulated by the Municipality of San Miguelito and the Ministry of Health.

Human Sexuality and Gender Relations

The penal code in force in Panama since 1982 punishes rape, defined as a felony whether committed via the vagina, the anus or the mouth, and even by way of introduction of objects. However, it has maintained rapists' exemption from punishment by marriage to the victim.

En 1995, new rules were introduced to modernize labour relations with regard to sexual harassment¹⁵.

The Penal Code punishes sexual exploitation by clients as users in addition to pimps. The Office of the First Lady is in charge of the Program/Project for the Prevention of Abuse and Sexual Exploitation of Children of both sexes(as) and Adolescents in Panama, scheduled to become operational in 1999.

In 2002, the right of admission to public or commercial establishments was regulated and measures were dictated to prevent discrimination. Discrimination is defined as any action denoting distinction, exclusion, restriction or preference based on colour, race, sex or sexual orientation¹⁶.

Adolescents

The year 1998 saw the creation of Adolescent Pregnancy Prevention Committees. Their tasks include developing strategies to improve the quality of life of adolescents of both sexes in Municipalities covered by the Siglo XXI Programme, organizing training actions on sexual and reproductive health, and promoting community networks for experience exchange¹⁷.

The Family Code prohibits educational establishments from taking any disciplinary measure against students on grounds of pregnancy. The Ministry of Education shall develop a system conducive to allowing pregnant minors to continue and complete their studies with help from interdisciplinary personnel¹⁸. Before 2001, no legal instrument had specifically addressed this issue¹⁹.

Beginning in June 2002²⁰, Law N^o29 regulated pregnant adolescents' right to health and education. The law in question is aimed at ensuring for pregnant adolescents the right to receive comprehensive health care, to remain in the educational system, and to receive legal protection where required. It also mandates responsible bodies to adopt whatever administrative measures may be necessary to avoid rejection and discrimination.

¹ ECLAC - CELADE 2002

² Diagnóstico sobre la situación de los Derechos Sexuales y Reproductivos en Panamá 1995- 2000. Anexo III Legislación Nacional.

³ Idem

⁴ Reporte sombra. Aplicación del Pacto Internacional de Derechos económicos, sociales y culturales. Panamá 2001, at www.cladem.org/espanol

⁵ Diagnóstico sobre la situación de los Derechos Sexuales y Reproductivos en Panamá 1995- 2000. Anexo III Legislación Nacional

- ⁶ In its capacity as ministry in charge of implementing the Plan, the ministry of health [Ministerio de Salud] coordinates efforts by various public institutions and civil society.
- ⁷ Código penal de Panamá, Ley N° 18 of 22 September 1982
 Article 141. A woman who induces her own abortion or consents to another person inducing it shall be subject to imprisonment for 1 to 3 years.
 Article 144. The penalties provided for in the previous sections shall not apply:
 1. where the abortion is performed with the woman's consent in order to destroy the product of a conception brought about by rape duly proven by a preliminary criminal procedure [instrucción sumarial], and
 2. where the abortion is performed with the woman's consent and on account of serious health-related causes that endanger the life of the mother or the conceived.
 In a case contemplated under paragraph 1, the rape must have been reported to the competent authority, and the abortion must be performed during the first two months of pregnancy. In a case contemplated under paragraph 2, it shall be for a multidisciplinary commission to establish the existence of serious health-related causes and authorize the abortion.
 In either case, the abortion shall be performed by a physician in a State health care centre.
- ⁸ Constitución Política de Panamá, con Reformas hasta 1994. Título III Derechos y Deberes Individuales y Sociales. Chapter 2.- La Familia, at www.georgetown.edu/pdba/Constitutions/Panama/panama1994.html
- ⁹ Código de la Familia. Ley No. 3 of 17 May 1994.
 Book III. - De la participación del Estado en la Política Familiar
www.legalinfo-panama.com/legislacion/familia/codfam_index.htm
- ¹⁰ Reporte sombra. Aplicación del Pacto Internacional de Derechos económicos, sociales y culturales. Panamá 2001, at www.cladem.org/espanol
- ¹¹ Ley N.º18, Ley que modifica, subroga y adiciona artículos al Código de la Familia sobre adopción dated 2 May 2001. http://www.asamblea.gob.pa/legispan/leyes/2001/2001_018.pdf
- ¹² Ley N.º39, Ley que modifica, y adiciona artículos al Código de la Familia sobre reconocimiento de la paternidad dated 30 April 2003, at http://www.asamblea.gob.pa/legispan/leyes/2003/2003_039.pdf
- ¹³ Ley N°80 of 23 November 1998, creating a DNA database and forensic databank
- ¹⁴ Código de Familia, articles 726 through 736.
- ¹⁵ Ley N°44 of 12 August 1995. Pursuant to it, sexual harassment is just cause for disciplinary dismissal by employers. In public institutions, like disciplinary measures are provided for by the civil service law [Ley de Carrera Administrativa]
- ¹⁶ CLADEM. «Legislación y jurisprudencia derechos sexuales y reproductivos en América Latina y El Caribe.», Boletín electrónico, Edición Especial No. 00 - OCT/2002, at www.cladem.com/espanol
- ¹⁷ Diagnóstico sobre la situación de los Derechos Sexuales y Reproductivos en Panamá 1995- 2000. Anexo III Legislación Nacional
- ¹⁸ Ibidem, Section 491. Educational establishments are forbidden to take any disciplinary measure against students on grounds of pregnancy. The ministry of education shall develop a system conducive to allowing pregnant minors to continue and complete their studies with help from interdisciplinary personnel. www.legalinfo-panama.com/legislacion/familia/codfam_llprem.pdf
- ¹⁹ Reporte sombra. Aplicación del Pacto Internacional de derechos económicos, sociales y culturales. Panamá 2001, at www.cladem.org/espanol
- ²⁰ Ley N°29, Que Garantiza la Salud y la Educación de la Adolescente embarazada, dated 13 June 2002, at http://www.asamblea.gob.pa/legispan/leyes/Leyes_02.htm

Reproductive Rights and Reproductive Health

The 1992 Constitution ⁴ has recognized the right to decide the number and spacing of one's children, and made reproductive health a part of family planning and maternal and perinatal health.

The I National Equal Opportunities Plan (PIO) (1997-2001) established measures aimed at improving living conditions for women as active contributors to the country's economy. The II Equal Opportunities Plan for women and men (2002-2006)⁵ promoted incorporation of the gender perspective into public policy formulation, coordination, implementation, follow-up and evaluation by means of efficient normative instruments and actions directed at eliminating every form of gender discrimination and achieving equality in opportunities and results as instrumental to the democratization of society.

The Ministry of Public Health and Social Welfare has accepted the recommendations of the International Conference on Population and Development, and developed civil society participation mechanisms in efforts in the area of reproductive health. *«the Ministry's most important effort has been the implementation of a project that goes by the name of «Fortalecimiento de la Salud Reproductiva y Planificación Familiar en el Paraguay» [strengthening reproductive health and family planning in Paraguay], and incorporates the user involvement component»⁶.*

The year 1997 saw the implementation of the National Reproductive Health Plan, which establishes rules and standards for health care during pregnancy, childbirth and puerperium in order to promote safe motherhood. Following an evaluation, the plan in question has been reformulated.

The National Health Plan 1999-2003 provided the framework for the National Policy for Comprehensive Health Care for Women. The Policy targets women across several programs, including those on comprehensive health care; cancer prevention in women; perinatal health care; empirical midwives; reproductive rights of women and men; and comprehensive care for adolescents.

As regards **abortion**, the Penal Code amended in 1997⁷ continues to treat it as a felony, but legalizes therapeutical abortion. Desire to save one's wife, mother, daughter or sister from «dishonour» is considered an extenuating circumstance.

Family Planning

In 1997, under its Family Planning Program, the Ministry of Public Health and Social Welfare provided for the establishment of nationwide family planning services, with the proviso that emergency oral contraception should not be recommended as a regular method.

Both marriage and de facto unions enjoy constitutional recognition. All children are given the same status, whether matrimonial or non-matrimonial. Women no longer have an obligation to use their husbands' surnames⁸.

In 1995, the Labour Code⁹ established pregnant women workers' rights to prenatal and post-natal maternity leave, as well as a two-days paternity leave –quite an innovation. The

new rules also mandate that pregnant women workers engaged in insalubrious work be transferred to other tasks with no reduction in wages. The same rule prohibits dismissal on grounds of maternity.

With regard to social security, rules vary according to whether social security rights are held by a man or a woman. In the former case, a holder's wife or cohabiting partner shall enjoy the same social security benefits. In the latter case, the holder does not have the right to include her husband or cohabiting partner –as the case may be– to her benefits.

Human Sexuality and Gender Relations

In 1997, the Penal Code¹⁰ replaced the term «rape» [*violación sexual*] with «sexual coercion» (*coacción sexual*), which does not have the same scope even though the penalty has been increased, and the offence is now pursuable by criminal action. Incest was made an indictable offence. Sexual violence was included within the definition of domestic violence. Sexual abuse of minors under 16 years of age is punished with penalties that vary according to the perpetrator's sexual orientation, meaning that they are harsher if the rapist is of the same sex as the victim.

The Penal Code¹¹ also devotes a chapter to sexual autonomy, where trafficking in human beings and pimping are penalized. Prostitution is not prohibited, but municipal regulations aim at preventing and combating it.

Adolescents

According to the General Education Law of 1998¹², sexual education is conceived of as orientation and information to help people to acquire self-knowledge, self-esteem and a sense of responsible parenthood. In 2000 school curricula included sexual education by addressing sexual and reproductive health issues.

Adolescent development, comprehensive health care, well-being and self-fulfilment are the objectives pursued by the National Comprehensive Care Plan for Adolescents¹³ 1997 - 2001. In implementing the Plan the Ministry of Public Health and Social Welfare uses a service guide for comprehensive health care of children, adolescents and pregnant mothers, and emphasizes that sexually active adolescents must receive family planning information.

The National Health Plan 1999-2003 provides the framework for the National Health Care Policy for Women, with programme tracks and lines structured around woman's life phases: childhood, adolescence, reproductive adulthood, post-reproductive adulthood. The Policy also includes a programme line for men, centred on education for sexual and reproductive health, responsible parenthood and prevention of cancer of the reproductive system, as well as prevention and elimination of family violence.

¹ ECLAC - CELADE 2002

² The 2002 data were extracted from *Censo Nacional de Población y Viviendas 2002*.

³ Article 24 of the *Constitución* enacted on 20 June 1992 provides that no faith or denomination shall bear an official character. Nevertheless,

- Article 82° reads thus: «The prominent role played by the Catholic Church in the historical and cultural formation of the nation is recognized».
- ⁴ *Constitución de la República of Paraguay, 1992, Capítulo IV- De los Derechos de la Familia (Art. 61° – De la Planificación familiar y de la salud materno infantil)* <http://www.georgetown.edu/pdba/Constitutions/Paraguay/para1992.html>
- ⁵ *Segundo Plan de Igualdad de Oportunidades 2002-2006*, at <http://www.woman.gov.py/objetivos.htm>
- ⁶ CLADEM Paraguay, *Diagnóstico Nacional y Balance Regional, Derechos Sexuales y Derechos Reproductivos – Paraguay*, November 2003.
- ⁷ *Código penal de Paraguay, Ley N° 1160-97*, of 26 November 1997.
- Article 349.- «A woman who has caused her own abortion, or consented to a third party causing it, by whatever means, shall be punished by imprisonment for fifteen to thirty months».
- «If her motive was to save her honour, she shall be punished by imprisonment for six to twelve months».
- Article 352.- «The penalties provided for by the three foregoing sections shall be increased by fifty per cent if the culprit is the patient's husband».
- «The same increase in penalty shall be applied to a physician, folk healer, midwife, pharmacist, or an apprentice or assistant of same, or to a manufacturer or vendor of chemical products, or to a medical student who knowingly indicated, supplied or employed the means by which an abortion was performed, or should death occur in the process».
- «The above notwithstanding, no penalty shall be incurred by any of the above if abortion was an indirect outcome of an effort to save a woman's life in jeopardy because of pregnancy or delivery».
- Article 353.- «If abortion was caused to save the agent's wife, mother, daughter or sister from «dishonour», applicable penalties shall be reduced by half».
- ⁸ Reference is made here to *Ley 1/92 de Modificación parcial del Código Civil*, which introduced legal protection for children born of de facto marriages. It also made it possible for women to choose whether to use their husbands' surnames, and for both spouses to establish the order of their children's surnames. It established the legal regime for joint administration of property, classified children into matrimonial and non-matrimonial^{3/4}instead of «legitimate» and «illegitimate»^{3/4}children. Cohabitation by a couple is recognized as de facto union. If a union produces offspring, the statutory term for the union to be legally recognized shall be deemed completed upon the birth of the first child. De facto unions produce the same effects as marriage with regard to joint property.
- ⁹ *Código del Trabajo* enacted by *Ley N° 213* of 30 October 1993, amended and expanded in scope by *Ley N° 496* of 22 August 1995, at <http://www.paraguayglobal.com/leylaboral2.php>
- ¹⁰ *Código Penal Paraguayo Art. 128 / Ley 1160-97, Código Penal, 1997*, at http://www.oas.org/juridico/MLA/sp/pry/sp_pry-int-text-cp.pdf
- ¹¹ *Código Penal Paraguayo Art. 139,140 / Ley 1160-97, Código Penal, 1997*: http://www.oas.org/juridico/MLA/sp/pry/sp_pry-int-text-cp.pdf
- ¹² *Ley General de Educación, N° 1.264 – Ministerio de Educación y Cultura, June 1998*. <http://www.mec.gov.py/Ley%20Gral/Leygra.htm>
- ¹³ *Plan Nacional de Atención Integral de la Adolescencia, 1997*. <http://aps.sld.cu/bvs/materiales/programa/maternoinfantil/programaadolescentes.pdf>

Reproductive Rights and Reproductive Health

The Peruvian Constitution was enacted in 1993⁴. It establishes a person's right to decide which method of family planning to use and how many children to have. Reproductive rights are not explicitly recognized in legislation.

With regard to **pregnancy, childbirth and puerperium**, prenatal control services have been supplied under the «Salud Básica para Todos» [basic health for everyone] Program of the Ministry of Health since 1994. This programme targets population at risk, to whom it provides information, orientation, obstetric risk assessment, and care in case of post-childbirth complications⁵.

In 1996, the Ministry of Health implemented the Reproductive Health and Family Planning Programme⁶, discussed in further detail in the section on family planning of this report. This programme represented an innovation. It was the first to use the term «reproductive health».

Proyecto 2000 was a project implemented by the Ministry of Health with AID funding between 1993 and 2000. It centred on reduction of morbimortality among women of fertile age and children of both sexes under 3 years of age in the country's poorest areas. Beginning in 1998, the objective was to expand institutional childbirth through maternal and perinatal health care services⁷.

Seguro Materno Infantil (SMI), a mother and child reimbursement scheme, was implemented in 1998 to provide low-income women with health care during pregnancy, childbirth and puerperium through State health care services, since in Peru there is no such thing as free childbirth care⁸.

The General Health Law⁹ mandates public and private health care centres to provide medical care to childbirth cases, either subject to reimbursement or free of charge.

The same normative approach has been adopted with regard to **assisted reproduction**¹⁰. The right to procreate using assisted reproduction methods is recognized, provided the genetic mother and the pregnant woman are the same person. This provision deprives women without ovulatory capacity or a uterus of this right.

Regarding **abortion**, constitutional as well as criminal and civil laws establish that the conceived is a holder of right for all beneficial purposes; and that abortion¹¹ is a crime against life, the human body and health, for which the woman who has induced, or consented to, it is punishable by imprisonment for a term not to exceed 2 years. The only exception is therapeutical abortion, where the mother's life or health is in danger. This was, in fact, the general conceptual framework prior to the International Conference on Population and Development.

The Reproductive Health and Family Planning Program launched in 1996 by the Ministry of Health declared abortion to be a public health problem. Nevertheless, this recognition is not reflected by public policy. On the contrary, it was followed by backward developments regarding the legal protection of reproductive rights.

The General Health Law¹² makes it compulsory for health care personnel to report any suspected cases of induced abortion to competent authorities.

In its first article, the Children's Code¹³ establishes that one is a child from the instant of conception. This definition, in fact, trespasses against the Constitution. In line with Law 27654¹⁴ is the law that proclaimed the «Day of the Unborn Child» with considerable symbolic effect in spite of its purely declaratory nature.

In 2002, the Penal Code introduced the concept of injury to the conceived as an indictable offence punished by imprisonment for 1 to 3 years¹⁵.

Article 9, paragraph h of *Resolución Ministerial* N° 573-2003-SA/DM approving regulations on the structure and duties of National Health Directorates and Decentralized Health Network Directorates, established among its general functional objectives to «protect the life and health of all unborn children of both sexes from the instant of conception, and officially record them as conceived and holders of their constitutional rights»¹⁶.

With regard to maternity and paternity rights in the labour sphere, 1995 saw the adoption of a number of serious structural adjustment measures that abolished rules providing for the right to prenatal and post-natal maternity leave, nursing break and breastfeeding benefits, as well as the obligation for employers to provide day nurseries at work places with 20 or more women workers. The following years were in fact devoted to recover women's labour rights. Prenatal and post-natal maternity leave was reinstated in 1996¹⁷, followed by the nursing break in 1999¹⁸. The obligation to provide day nurseries has not been reinstated.

In 1996, the Law on Labour Productivity and Competitiveness [*Ley de productividad y competitividad laboral*] declared dismissal of a worker null and void if based on grounds of pregnancy, provided it took place within the three months preceding and the three months following childbirth. In 1999¹⁹, that law was amended by extending its scope of application to the full nine months of the pregnancy cycle. In December 2001, Law 27606²⁰ added 30 calendar days to postnatal leave in case of multiple births. Adoption leave was introduced by new legislation²¹ providing that a worker applying for adoption is entitled to 30 calendar days of paid leave as from the day following that on which the *Resolución Administrativa* granting pre-adoption custody was issued and the certificate of delivery of the child was signed.

Law N°28048²² grants protection to a pregnant woman engaged in work dangerous to her health and/or the normal development of her embryo or foetus during pregnancy, subject to certification by the attending physician.

An ordinance issued by the Province of Callao in July 2000 grants their blue-collar and white-collar workers a paternity leave of three working days.

Family Planning

In 1995, impediment to surgical contraception as family planning was deleted from the Population Policy Law.

The Reproductive Health and Family Planning Program of 1996 established the right to have access to all family planning methods. In practice, however, surgical contraception was given priority by a policy of discrimination against low-income women. The establishment of quantitative sterilization targets for health care services, produced an attitude of little

respect to women's right to choose. Another consequence was the frequent performance of surgical contraception without the necessary safety measures, resulting in loss of life or permanent or severe injuries for many women in rural areas.

In 1999, health sector rules regarding family planning policy and the surgical contraception manual were changed to protect the right to free and informed consent and to safe and good quality medical interventions. This was the result of complaints and investigative reports prepared through the joint efforts of women's organizations, the Office of the Ombudsman/Ombudsperson for Women's Rights, the Congress of the Republic and civil society and presented to the Ministry of Health.

With regard to the Reproductive Health and Family Planning Program, 1998 saw its target population, originally comprised only of women of fertile age, expanded to include couples and adolescents.

Two projects were launched in 1998, one designed to monitor and evaluate the quality of sexual and reproductive health services from the perspective of users –male and female; the other to incorporate life quality standards into the management of the Reproductive Health and Family Planning Program.

A project designed to provide male sexual and reproductive health was implemented by the Ministry of Health and funded by the United Nations Population Fund.

In 2001, the Ministry of Health²³ regulated emergency oral contraception as one of several contraception methods made available by public family planning services. This new regulation, however, still awaits implementation, which means the State has incurred noncompliance.

Responsible parenthood is far from widespread in Peru, and much remains to be done on the legislative front, too. In 1999²⁴, the Civil Code made DNA tests admissible for non-matrimonial filiation cases. If the alleged father refuses to take the test in question, proof that he had sexual intercourse with the mother at the time of conception will be sufficient for alimony to be awarded against him.

A Civil Code²⁵ provision that prevented a woman leading a «notoriously disorderly life» from bringing a filiation suit in favour of her son/daughter has been abolished, given its clearly discriminatory treatment of children of both sexes based on their mothers' private conduct.

With regard to **marriage**, a Civil Code²⁶ modification introduced in 1999 did away with the impediment for a woman to marry during 300 days immediately following divorce, widowhood or annulment of marriage, and replaced it with a notarized negative certificate of pregnancy as a marriage requirement. In 2001, two new grounds for divorce were incorporated into the Civil Code, namely de facto separation and impossibility of living together²⁷. This law has been enacted not by the President of the Republic, but by the President of the Congress of the Republic.

Human Sexuality and Gender Relations

Most new legislation on human sexuality has been aimed at fighting conduct injurious to **sexual freedom**.

Law 26770²⁸ introduced important developments on this issue. Following a highly challenging debate in which civil society played an active part, the provision that exempted rapists from penalty if they married their victims was eliminated; provisions were adopted for the award of alimony if rape produced a pregnancy, and to make rape an offence punishable by criminal action. Later the definition of rape was expanded to include seduction, using deception to have consensual sexual relations with an adolescent.

Law 27306²⁹ included sexual family violence within the scope of application of family violence law. This was followed by Programa Contigo (i.e. the National Program against Family and Sexual Violence)³⁰, a national programme with a specifically allocated budget. It is in charge of women's emergency centres (CEM) which provide comprehensive legal, psychological and social assistance to victims of domestic violence, also with regard to filing a formal complaint before police authorities. Program objectives include:

«- Engaging in prevention, care and support actions in favour of persons involved in episodes of family and sexual violence

- Proposing new public policy alternatives to other governmental bodies and agencies
- Working towards consensus-based arrangements with grassroots organizations and public and private institutions in order to develop actions aimed at reducing family and sexual violence»³¹.

In 2001 the National Plan on Violence against Women 2002-2007³² was approved. The Plan involves various ministries, including the Ministries of Health, Justice, Education, the Interior, and MIMDES; and is now in the implementation phase, with Technical Committees created in mid-2003 providing follow-up and supervision.

Law N° 27480³³ modified article 135^o del Penal Code, by establishing that no evidence shall be admitted with regard to charges of rape in trials for crimes against honour, such as slander, libel, or wasteful employment of the police.

In 2002, the Ministry of Women's Affairs and Social Development ordered that temporary safe-houses be established for sexual violence victims under 18 years of age and in a situation of risk or abandonment³⁴. In fact, this was one of the first public policies specifically adopted to address the problem of abandonment.

In December 2002, Law N° 27911³⁵ on administrative measures regarding teaching and administrative personnel involved in crimes against sexual freedom, provided for automatic dismissal or final separation from employment if the person involved is found guilty by the court by a final sentence or if the guilty sentence is not appealed.

In 2004³⁶, the Congress of the Republic approved modifications to the penal code that punish oral penetration by the penis as well as vaginal or anal introduction of objects. This has made the legal definition of rape for indictment purposes more in line with the realities of this offence.

The Law on Labour Productivity and Competitiveness³⁷ included **sexual harassment**, defined as any act contrary to morals or decency and affecting a worker's dignity, among hostile acts comparable to dismissal. Within the civil service, sexual harassment is punished by dismissal.

In 2003, the Law on the Prevention and Punishment of Sexual Harassment³⁸ was enacted. Its scope of enforcement includes the labour and educational spheres, law enforcement and military authorities, and in general any hierarchical relationship based on command and subordination.

Prostitution is treated as a legal activity, provided it is carried out in locations and in accordance with conditions established by relevant administrative regulations. Its regulation and supervision are the province of municipal authorities. By a very old tradition, a health certificate renewable from time to time was required for its exercise. The General Health Law³⁹ prohibits authorities from submitting people to medical or health tests as a requirement for engaging in a business or like activity.. On the other hand, the Program against Sexually Transmitted Diseases and AIDS (PROCETSS) of the Ministry of Health issued a directive in 1997 providing for at least three compulsory check-ups per year as part of a strategy devised to detect and control diseases of this type.

Law 27459⁴⁰ has defined child pornography for indictment purposes and provided that «any person who owns, promote, manufactures, distributes, exhibits, offers, markets or publishes, imports or exports objects, books, writings, visual or audio images, or engages in live pornographic performances, using minors aged 14 to 18 years, shall be punished by imprisonment for neither less than four, nor more than six years.

In 2004⁴¹, the Congress of the Republic approved penal sanctions for clients – users of adolescent victims of sexual exploitation by including such patronage in the definition of «aiding and abetting prostitution» [*favorecimiento de la prostitución*] for indictment purposes.

Although sexual orientation differences are not opposed by the Peruvian State, the only piece of legislation enacted in order to avoid marginalization is the law enacted in 1999 against discrimination in order to prevent workplaces and educational establishments from restricting or outright denying admission to homosexual persons, on the ground that such policies wound people's rights to education and work⁴².

Adolescents

The National Sexual Education Program of the Ministry of Education was implemented in 1996 within the framework of Peru's national population policy, aimed at fighting poverty, improving the population's quality of life and the quality of education; and of the ICPD and Beijing Action Programs. Beginning in 2001, the Tutoring and Comprehensive Prevention Office of the Ministry of Education adopted a sexual education policy approach functional to controlling risks including sexually transmitted diseases, early pregnancy and sexual abuse.

Before the Cairo Conference, adolescent marriage was allowed for women subject to a minimum legal age of 14 years for women and 16 years for men. Law 27201⁴³ amended the Civil Code by establishing the minimum legal age at 16 years for boys and girls alike, and allowing it only on grounds of pregnancy, subject to consent by one parent and authorization by legal authority (these last two requirements were already contemplated by previous legislation).

As regards **adolescent pregnancy**, «some advances have been made towards protection

of adolescent rights. The issue has been raised of pregnant adolescents' need for differentiated prenatal, childbirth and puerperium care services, but actual implementation of such services is far from generalized. To protect pregnant adolescents' right to education, legislation has been adopted that prohibits educational establishments from denying pregnant adolescents the possibility to begin or complete their studies, and enables adolescents aged 14 or more years to bring suit in order to claim recognition for their children, custody and alimony as well as payment of pregnancy and childbirth expenses. However, mechanisms are still to be designed for closer follow-up in order to verify that pregnant adolescents rights to education are not in fact wounded by educational facilities»⁴⁴.

The year 2001 saw enactment of Law N°27558⁴⁵ for the Promotion of Education of Rural Girls. Among other things, this law provides for training rural girls on sexuality-related prevention, care and protection, and for dialogue with parents in order to enable them to orient their daughters in developing their sexuality.

The National Action Plan for Children and Adolescents 2002 – 2010⁴⁶ approved by Presidential Decree N°003-2002-PROMUDEH of 23 June 2002, envisages information, education and communication campaigns on sexual and reproductive rights as strategic actions for the achievement of its goals.

¹ ECLAC - CELADE 2002

² Instituto Nacional de Estadística e Informática del Perú

³ Instituto Cuanto Anuario Estadístico, Perú en números 2002

⁴ Constitución Política del Perú ratified by a referendum on 31 October 1993,
<http://tc.gob.pe/legconperu/constitucioncompleta.htm>

⁵ CLADEM – Perú, Diagnóstico sobre la situación de los derechos sexuales y los derechos reproductivos: 1995 – 2002, p. 49. Lima, 2003.

⁶ Resolución Ministerial N° 071-96-Sa/Dm, promulgada el 6 de febrero de 1996.

⁷ CLADEM – Perú, Diagnóstico sobre la situación de los derechos sexuales y los derechos reproductivos: 1995 – 2002, p. 49. Lima, 2003.

⁸ CLADEM – Perú, Diagnóstico sobre la situación de los derechos sexuales y los derechos reproductivos: 1995 - 2002, p. 49. Lima, 2003.

⁹ Ley N°26842 of 20 July 1997, as amended by Ley N° 27604 of 22 December 2001 with regard to health establishments' obligation to provide medical care for emergency cases and deliveries.
http://www.minsa.gob.pe/leyes/l26842_lgs/

¹⁰ Ibidem, Section 7.- Every person is entitled to receive infertility treatment, and to procreate using assisted reproduction methods, provided the genetic mother and the pregnant woman are the same person. Application of assisted reproduction techniques is subject to both biological parents' prior written approval.

Fertilization of human ova for purposes other than procreation is forbidden, as is clonation of human beings.

¹¹ Código penal del Perú, Decreto legislativo N° 635, adopted on 8 April 1991

Article 114.- Self-abortion

A woman who induces her own abortion or consents to another person inducing it shall be subject to imprisonment for a period not exceeding two years, or to fifty-two to one hundred and four days of community service.

Article 119.- Therapeutic abortion

Abortion shall not be punishable if it is performed by a physician and with the consent of the pregnant woman or her legal representative if any, provided it is the only available means to save the pregnant woman's life, or to prevent serious and permanent detriment to her health.

Article 120.- Abortion for psychological reasons and eugenic abortion

Abortion shall be punished by imprisonment for a period not exceeding three months:

1. when the pregnancy was the result of rape other than marital rape or nonconsensual artificial insemination performed outside marriage, provided the facts of the case have been reported to, or investigated by, the police at least; or

2. when the pregnancy is likely to produce the birth of a child with serious physical or psychic defects, provided a medical diagnosis has been issued to that effect.

¹² Ibidem, Section 30.- A physician who delivers medical care to a person presenting a wound caused by a knife or other sharp instrument, or gunshot wound, or a transit accident injury or an injury caused by violence of another type coming under the definition of indictable offence, or signs of criminal abortion, shall report the case to competent authorities.

¹³ Ley N° 27337. Código de los Niños y Adolescentes adopted on 21 July 2000.

<http://www.caipse.org.pe/rij/bases/legisla/peru/ley1.html>

Section 1° «A child has the right to live from the moment of conception. This code guarantees this right, and protects the conceived person's life

from any experiments or genetic manipulations contrary to his/her integrity or physical or mental development».

¹⁴ Of 25 January 2002

¹⁵ Ley N° 27716. Ley que incorpora el Artículo 124-A al Código Penal referido al delito de lesiones en el concebido. «Section 124-A.- A person who causes injury to the body or health of the conceived shall be punished by imprisonment for a term of no less than one year and no more than three years.»

¹⁶ <http://www.minsa.gob.pe/infodigemid/normatividad/RM57303.htm>

¹⁷ Ley 26644 que precisa los alcances del goce del derecho del descanso pre-natal y post-natal de la trabajadora gestante, published on 27 June 96; amended by Ley 27402 of 20 January 2001

¹⁸ Ley 27240, Ley que otorga permiso de lactancia materna, adopted on 10 December 1999, amended by Ley 27403 adopted on 10 January 2001. It should be pointed out that Ley N° 27591 dated 22 November 2001 put women workers in the private sector on the same level with those in the public sector regarding nursing break.

¹⁹ In 1999 it was amended by Ley N° 27185, adopted on 1 October 99.

²⁰ Ley N° 27606 published on 23 December 2001. It should be pointed out that Ley N° 28239 enacted on 31 May 2004 grants additional breastfeeding benefits and extends the paid maternity leave by 30 additional days in case of multiple births.

²¹ Ley N°27409 of 10 January 2001.

²² Ley 28048 adopted on 08 July 2003.

²³ Resolución Ministerial N° 399-2001-SA/DM of 13 July 2001

²⁴ Código Civil, Article 363.- Paternity challenge

If a husband thinks he is not the father of his wife's child, he may deny paternity:

5. If a DNA test or other scientific evidence ensuring equal or higher certainty proves the child is not related to him by blood. Where a genetic test or other scientific evidence ensuring equal or higher certainty is provided, the judge shall reject the presumptions provided for in the previous paragraphs.

This is the text as amended by Section 2 of Ley N° 27048, published on 06 January 99, which has made biological, genetic or other evidence ensuring an equal or greater degree of certainty admissible in matrimonial paternity challenges.

<http://www.minjus.gob.pe/legislacion/codciv3.htm>.

²⁵ Ley 27048 published on 06 January 1999

²⁶ Ley N°27118, published on 23 May 1999

²⁷ Ley 27495 adopted on 07 July 2001

²⁸ Ley N° 26770 of 15 April 1997. – Various articles of the Penal Code are modified. The provision that exempted rapists from penalty if they married their victims is abolished.

²⁹ Ley N°27306 of 14 July 2000; <<http://www.cajpe.org.pe/rij/bases/legisla/peru/leyvfref.htm>>

«Section 2° - For the purposes of this law, family violence is defined to include any action or failure to act resulting in physical or psychological injury, bad treatment with no injury, as well as any serious and/or repeated threat or coercion, and sexual violence (...)».

³⁰ Decreto Supremo N° 008-2001-PROMUDEH, creating the National Programme against Family and Sexual Violence within the Ministry of Women's Affairs and Social Development (MIMDES), as published a second time on 26 April 2001 to rectify omissions in the text when first published.

³¹ <http://www.mimdes.gob.pe/pncvfs/>

³² See <http://www.mimdes.gob.pe/pncvfs/plannacional2002_2007.doc>

³³ Ley N°27480 published on 12 June 2001; < <http://www.cajpe.org.pe/RIJ/bases/legisla/peru/27480.html>>

³⁴ Ley N° 27637 published on 16 January 2002; <<http://www.cajpe.org.pe/rij/bases/legisla/peru/27637.pdf>>

³⁵ Ley N° 27911 dated 12 December 2002; <<http://www.cajpe.org.pe/rij/bases/legisla/peru/27911.pdf>>

³⁶ Ley N° 28251 adopted on 17 May 2004.

³⁷ Decreto Legislativo N°728. Article 30° paragraph g.

³⁸ Ley N° 27942 adopted on 26 February .02.2003; <<http://www.cajpe.org.pe/rij/bases/legisla/peru/27942.pdf>>

³⁹ Ibidem, Section 13.- Every person is entitled to being issued a certificate of health whenever he/she should so require.

No public authority may demand of any person that he/she produce a health certificate, or a health card, or like document as a requirement for engaging in a professional, business or like activity. (...)»

⁴⁰ Adopted on 25 May 2001; < <http://www.cajpe.org.pe/RIJ/bases/legisla/peru/27459.htm>>

⁴¹ Ley N° 28251 adopted on 17 May 2004.

⁴² CLADEM - Perú. Diagnóstico sobre la situación de los derechos sexuales y los derechos reproductivos: 1995 – 2002, p. 45. Lima, 2003.

⁴³ Ley N°27201 published on 14 November 1999, at <<http://www.cajpe.org.pe/RIJ/bases/legisla/peru/111p.pdf>>

⁴⁴ CLADEM - Perú. Diagnóstico sobre la situación de los derechos sexuales y los derechos reproductivos: 1995 – 2002, p. 44. Lima, 2003.

⁴⁵ Ley N°27558 adopted on 31 October 2001, at <<http://www.minsa.gob.pe/normaslegales/2001/Ley27558.pdf>>

⁴⁶ <http://www.editoraperu.com.pe/nl02/06/promu.pdf>

Reproductive Rights and Reproductive Health

The Constitution of Puerto Rico dates back to 1952 and recognizes the existence of human rights, including the right of every person to a standard of living adequate for the health and well-being of himself and of his family, and especially to food, clothing, housing and medical care and necessary social services; the right of motherhood and childhood to special care and assistance. It adds that these rights are closely connected with the progressive development of the economy of the Commonwealth and require, for their full effectiveness, sufficient resources and an agricultural and industrial development not yet attained by the Puerto Rican community.

In 1999³, a special law was enacted to ensure that mothers and newborn babies receive adequate care during the post-childbirth period by establishing the rights of mothers covered by medical insurance plans as well as those of their children; and by establishing statutory obligations for insurers, and penalties for noncompliance.

A 1999 law⁴ has made a woman's pregnancy an aggravating circumstance of the offence in case of aggression against her. In 2003⁵ it was established that even if the state of pregnancy was not apparent at the time of aggression, it will suffice that her condition be known to the aggressor for the aggression to be deemed perpetrated under this aggravating circumstance.

In the year 2000 legislation⁶ was adopted to regulate breastfeeding or extraction of mother's milk. One half-hour or two fifteen minute nursing breaks per working day (to be used either for breastfeeding or extraction of mother's milk) were granted to women workers with full-time jobs during a period of twelve months as from the moment of return from maternity leave. Along the same lines, in 2002⁷ all ministers, directors, presidents and public administrators in Puerto Rico were mandated to accommodate breastfeeding at workplaces. In the same year⁸, a new law prescribes that any woman breastfeeding a baby under the age of 24 months shall be exempted from jury duty. Lastly, in 2004⁹ a law was enacted that prohibits discrimination against mothers breastfeeding their children and establishes protection for the legal right to breastfeeding over and above any contrary provision, provides for fines for noncompliance, and more. In the same year maternity centres were prohibited from feeding the newborn with mother's milk substitutes¹⁰. On 25 March 2003¹¹, a new law proclaimed the first week of August of each year as the «Week of Protection and Support for a Safe and Healthy Pregnancy Process in the Commonwealth of Puerto Rico». In the same year¹², the month and the first week of August were respectively proclaimed the «Breastfeeding Awareness Month» and the «World Breastfeeding Week», and support for breastfeeding was made a public policy of the Commonwealth of Puerto Rico. In 2004¹³, maternity service centres were prohibited from giving mother's milk substitutes to newborn babies, save on doctor's orders or with the consent of the baby's mother, father or guardian. Failure to comply is subject to sanctions.

The Working Mothers Protection Law was amended in 1997¹⁴ by providing for the suspension or revocation of an employer's business or professional licence in the event of dismissal on grounds of pregnancy or denial of maternity leave. The maximum fine for

violating these provisions was increased to \$ 5000,00. A law adopted in the year 2000¹⁵ orders employer to pay working mothers the full amount of their salary, wages, daily pay or compensation on the eve of their maternity leave.

The Law Protecting Equal Employment Opportunities from a Gender Perspective was enacted in 1999¹⁶. One year later¹⁷, working mothers covered by the law in question were granted adoption leave. In 2002¹⁸, another law provided that employers shall give priority to flexible working schedule requests from women with minor children and single fathers with custody. Over the period from 1999 to 2002, several special provisions were dictated (per industry) to provide for maternity leave, wages, and other benefits in case of adoption¹⁹.

Family Planning

With regard to responsible parenthood, the Organic Child Support Law, enacted in 1987²⁰, established a wide-ranging educational programme designed to promote compliance by parents and persons otherwise responsible for the maintenance of minors with their moral and legal obligations; to coordinate and encourage individuals and entities, whether educational, charitable, civic and religious, social, recreational, professional, occupational, professional, commercial, industrial or agricultural, to promote the responsible parenthood public policy.

The law in question enlists the cooperation of all mass media, whether public or private, whether non-profit or for-profit, in helping educate the public about the importance of complying with one's child support duties in order to strengthen the family as society's fundamental institution. To achieve this purpose, the law empowers the Administration to organize any type of activity and use any personal, group or mass means of communication, up to and including production and broadcasting of advertisements on the radio, the written press, television and other media.

The Administration shall publish quarterly updates of child support services, including information about their costs and places where they can be applied for. It shall also promote the use of voluntary paternity recognition procedures and raise awareness about the duty to provide for support of one's children pursuant to the Law.

A special law was enacted in 2000²¹, to allow genetic testing of an alleged father's parents, children, siblings and grandchildren in any action in which paternity is relevant, if the alleged father is deceased.

In 2000²², the «Insurance Code of Puerto Rico» was amended to provide that no health care service plan may exclude foster sons and daughters in the family unit of the person covered by the plan, and to establish who shall be considered a foster son or daughter for the purposes of this provision.

A law enacted in 2003²³ set forth Puerto Rico's public policy for strengthening the family, and criteria to be used by governmental agencies in order to evaluate the impact of their actions on the family. A special law was adopted in the same year²⁴ to update the development of the Child Support Administration, strengthen established public policy, and conform the law to the requirements of the federal Social Security Law.

An amendment to the Civil Code adopted in 1997²⁵ allowed mentally retarded people to marry.

Human Sexuality and Gender Relations

A law enacted in 1997²⁶ created the register of convicted violent sex crimes and child abuse offenders. A year later, the Penal Code²⁷ was amended to provide that prosecution for sexual crimes be subject to a 5 years limitation if the victim is older than 21 years. If the victim is under 21 years of age, this statute of limitation shall run as from the day the victim turns 21. In the year 2000²⁸, another amendment replaced the phrase «not his own» with «not his spouse» in the article about rape.

In 2003 additions on sexual violence against minors were made to the federal legislation known by the name of «Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Law»²⁹. In 1997³⁰, perversion of minors was defined as a felony. In the year 2000 penalties for owning or operating houses of prostitution or sodomy were increased³¹.

In 1999³², a new piece of legislation denied legal recognition to same-sex or transvestite marriages entered into under other jurisdictions.

Moving in the opposite direction, a special law enacted in 2002³³ penalizes sexual orientation-based discrimination by means of a paragraph that makes prejudice based on the victim's sexual orientation an aggravating circumstance if it served as motive for a crime.

With regard to **sexual harassment**, a law enacted in 1998³⁴ prohibits such conduct against students in public and private schools alike. In the same year³⁵, procedures and rules of evidence were established for sexual harassment allegations. In 2002³⁶, a one year limitation is established for civil action brought on account of employment-related sexual harassment. The Law against Stalking in Puerto Rico enacted in 1997³⁷, defines stalking as incurring in a persistent behaviour aimed at intimidating a specific person and such as would intimidate a prudent and reasonable person to the effects that she/he or any member of his/her family could suffer physical harm or that his/her or their families' personal property could be damaged.

Adolescents

The Constitution of Puerto Rico enshrines the principle that the dignity of the human being is inviolable, and that all men are equal before the law. It prohibits discrimination and prescribes that the laws and the system of public education shall embody these principles of essential human equality. It provides for public education, enshrining the principle that every person has the right to an education which shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It mandates the State to provide a system of free and wholly non-sectarian public education.

The Organic Law of the Public Education Department of 1999³⁸ establishes Puerto Rico public policy in the area of education. It provides that students receive information or orientation on the sexual development of the human being. It mandates schools to implant

sexual education programs for their students, and the Department to provide assistance in a consulting capacity. Sexual education programs shall emphasize the physiological and emotional aspects of the sexual relation, as well as the family responsibilities and risks associated to it.

In 1999³⁹ a trust fund was established for the promotion of disease prevention and/or health promotion initiatives. These include adolescent pregnancy prevention, sexual education, and AIDS prevention. Other initiatives to be promoted will include pre-natal and neonatal home visits to mothers, establishment of care centres for children of both sexes aged 0 to 5 years, and programs promoting healthy and wholesome lifestyles and family development in the social environment.

The Law for the Protection of Children in the XXI Century, enacted in 2003⁴⁰, mandates that a six-months deadline be established for the implementation of School-based Primary Prevention and Training Programs, and that such programs include information about the detrimental effects of adolescent pregnancy, domestic violence and violence against children of both sexes, school dropout, alcoholism, drug addiction, as well as about available economic self-sufficiency development tools.

¹ ECLAC - CELADE 2002

² Censo de Puerto Rico 1990

³ Source: <http://www.lexjuris.com/LEXLEX/Ley1999/lex99248.htm>

⁴ Source: <http://www.lexjuris.com/LEXLEX/Ley1999/lex99281.htm>

⁵ Source: <http://www.lexjuris.com/LEXLEX/Leyes2003/lex2003121.htm>

⁶ Source: <http://www.lexjuris.com/LEXLEX/Ley1999/lex99248.htm>

⁷ Source: <http://www.lexjuris.com/LEXLEX/Leyes2002/lex2002155.htm>

⁸ Source: <http://www.lexjuris.com/LEXLEX/Leyes2002/lex2002031.htm>

⁹ Source: <http://www.lexjuris.com/LEXLEX/Leyes2004/lex2004095.htm>

¹⁰ Ley N°79 del 13 March 2004

¹¹ Source: <http://www.lexjuris.com/LEXLEX/Leyes2003/lex2003093.htm>

¹² Source: <http://www.lexjuris.com/LEXLEX/Leyes2003/lex2003200.htm>

¹³ Source: <http://www.lexjuris.com/LEXLEX/Leyes2004/lex2004079.htm>

¹⁴ Source: <http://www.lexjuris.com/lexlex/lex97188.htm>

¹⁵ Source: <http://www.lexjuris.com/LEXLEX/Leyes2000/lex2000425.htm>

¹⁶ Source: <http://www.lexjuris.com/LEXLEX/Ley1999/lex99212.htm>

¹⁷ Source: <http://www.lexjuris.com/lexlex/Leyes2000/lex2000054.htm>

¹⁸ Source: <http://www.lexjuris.com/LEXLEX/Leyes2002/lex2002007.htm>

¹⁹ Source: <http://www.lexjuris.com/LEXLEX/Ley1999/lex99181.htm>

²⁰ Source: <http://www.lexjuris.com/lexlex/lex97180.htm>

²¹ Source: <http://www.lexjuris.com/lexlex/Leyes2000/lex2000147.htm>

²² Source: <http://www.lexjuris.com/lexlex/Leyes2000/lex2000251.htm>

²³ Source: <http://www.lexjuris.com/LEXLEX/Leyes2003/lex2003048.htm>

²⁴ Source: <http://www.lexjuris.com/LEXLEX/Leyes2003/lex2003178.htm>

²⁵ Source: <http://www.lexjuris.com/lexlex/lex97141.htm>

²⁶ Source: <http://www.lexjuris.com/lexlex/lex97028.htm>

²⁷ Source: <http://www.lexjuris.com/lexlex/ley1998/lex98002.htm>

²⁸ Source: <http://www.lexjuris.com/LEXLEX/Leyes2000/lex2000328.htm>

²⁹ Source: <http://www.lexjuris.com/LEXLEX/Leyes2003/lex2003123.htm>

³⁰ Source: <http://www.lexjuris.com/lexlex/lex97088.htm>

³¹ Source: <http://www.lexjuris.com/lexlex/Leyes2000/lex2000245.htm>

³² Source: <http://www.lexjuris.com/LEXLEX/Ley1999/lex99094.htm>

³³ Source: <http://www.lexjuris.com/LEXLEX/Leyes2002/lex2002046.htm>

³⁴ Source: <http://www.lexjuris.com/lexlex/ley1998/lex98003.htm>

³⁵ Source: <http://www.lexjuris.com/lexlex/ley1998/lex98016.htm>

³⁶ Source: <http://www.lexjuris.com/LEXLEX/Leyes2002/lex2002196.htm>

³⁷ Source: <http://www.lexjuris.com/LEXLEX/Ley1999/lex99284.htm>

³⁸ Source: <http://www.lexjuris.com/LEXMATE/educacion/lexeducacion%201999.htm>

³⁹ Source: <http://www.lexjuris.com/LEXLEX/Ley1999/lex99173.htm>

⁴⁰ Source: <http://www.lexjuris.com/LEXLEX/Leyes2003/lex2003014.htm>

Reproductive Rights and Reproductive Health

The National Constitution of 2002², provides that «in order to bolster its moral, religious, and cultural stability, the family will receive the broadest possible protection from the State. To that end, «maternity, whatever the condition or status of the woman, shall enjoy the protection of the government authorities and has the right to official assistance where there is such need. The State shall take whatever sanitary and other measures may be appropriate in order to reduce child mortality as much as possible and achieve the healthy development of children of both sexes. The institution of homestead is also declared to be of high social interest»³.

The framework established in 1997 for sectoral reform is based on six principles: universality, equity, comprehensiveness, solidarity, participation and sustainability. Between 1996 and 2000 a number of processes were launched, including deconcentration and decentralization in the management of the Secretariat of Public Health and public hospitals, thereby creating a new health care model, where first-tier centres receive special importance.

In 1998, the Secretariat of Public Health and Social Welfare issued technical regulations which it defined as «of mandatory compliance by clinical laboratories and blood banks when delivering care services to women of fertile age»⁴. National regulations were issued for clinical laboratories and blood banks with regard to maternal and perinatal care. A Regulation for Blood Banks [*Reglamento para Bancos de Sangre*] and an Administrative and Technical Procedures Manual for Blood Banks Licensing [*Manual de Procedimientos Administrativos - Técnicos para la Habilitación de los Bancos de Sangre*] were produced in 1999 by the Laboratory and Blood Bank Department. All of these advances took place following adoption by the Executive Power of the National Mobilization Plan for the Reduction of Child and Maternal Mortality 1997-2000.

In 1997, the reduction of child and maternal mortality was declared priority number one. Rules and procedures are in place for the operation of the Liveborn, Child and Maternal Death Vigilance System; which includes care rules for children and women's health care programs and includes coordination with the Central Electoral Board and 22 Civil Registry Offices for purposes of birth registration at hospitals. Among measures adopted during the 1997-2000 period were enlargement of the Directorate for Children and Women's Affairs including the adolescent health component, and launch of the Child Abuse Program. Under the initiative known as Ordering and Modernizing the Service Network and Management Model, measures were taken to set up fever vigilance posts in hospitals, not to mention actions taken under the National Mobilization Plan for the Reduction of Child and Maternal Mortality.

The General Health Law enacted on 21 February 2001⁵, includes women in its priority group, with particular emphasis on protection of pregnant women. The law in question mandates the State to «ensure that health programs and actions are principled on the recognition and promotion of a comprehensive approach to women's health, so as to foster their development in the various areas of social life and enjoyment of a full and healthy life by eliminating the causes and the consequences of discrimination based on her sexuality»⁶.

With regard to induced abortion, the Law provides that it is subject to relevant Penal Code⁷ provisions, and that National Health System institutions shall implement policies conducive to its prevention⁸.

Family Planning

The Constitution in force since 2002 recognizes marriage as the legal basis the familia⁹. It also provides that married women shall have full civil capacity, and that the law shall establish the necessary means for protecting the property rights of women no matter under what regime they were married.

The Constitution also dictates that every person has an obligation to engage in work of his/her choice in order to provide for their own maintenance and that of their family by respectable means, to improve their personality in every way and to contribute to the well-being and progress of society.

At the normative level, the Secretariat of Public Health and Social Welfare has compiled Regulation N° 14: «Technical Regulation of the Dominican Republic in the matter of Reproductive Health» [*Norma Nacional de Salud Reproductiva de la República Dominicana*] as one of a Series of Technical Regulations. The Regulation provides that «every person of reproductive age has a right to demand and receive family planning services according to his/her needs», and adds that these services shall be accessible and acceptable to users in accordance with their social and economic status, and that persons of lowest means and the young shall be given priority within a «framework of gender equity and respect for sexual and reproductive rights».

Human Sexuality and Gender Relations

In 1997, Law 14-97 was enacted against sexual child abuse. Both the Secretariat of the Interior and the Police and the Department of Family and Minors are in charge of receiving reports and complaints and investigating cases of sexual abuse of minors under 18 years, which number in the hundreds each year according to data available since 1998.

Pursuant to the Law against Domestic Violence of 1997 [*Ley contra la Violencia Doméstica*], the State can bring criminal action against a suspect of rape, incest, sexual aggression and other forms of domestic violence.

Although prostitution is not illegal in the Dominican Republic, the current Penal Code vigente¹⁰ punishes those who encourage or facilitate licentious behaviour or corruption in minors under 18 years of both sexes.

Adolescents

In January 1997, the Dominican Congress passed the Minors' Code¹¹, which seeks to guarantee the rights of minors by providing protection for children and adolescents of both sexes. This Law was enacted with the aim in view of preserving the physical and mental health of children, and developing their personality at the spiritual, cultural, social and moral levels. The Code is based on the principles enshrined in the United Nations Convention on the Rights of the Child. A new Minors' Code was recently passed by Congress as Law N° 136-03, to come into force in August 2004.

In the year 2000 the General Youth Law¹² was promulgated. The 1995-2001 period saw the establishment of the Directorate General of Promotion and Education for Health and the Department for Health in Municipalities. These two structures have engaged in launching health promotion strategies. During the same period the Secretariat of Public Health created the Comprehensive Care Program for Adolescents, which in 2000 supplied 37 specialist services and 5 000 peer facilitators [*multiplicadores adolescentes organizados*]¹³.

¹ ECLAC - CELADE 2002

² Constitución de la Republica Dominicana, proclaimed on 20 July 2002. See: <http://www.georgetown.edu/pdba/Constitutions/DomRep/domrep02.html>

³ Constitución de la Republica Dominicana, Article 8°.

⁴ Normas Nacionales de los Laboratorios Clínicos y Bancos de Sangre para la atención materno perinatal. <http://www.saludpublica.gov.do>

⁵ Ley 42-01. See: <http://www.saludpublica.gov.do/leysalud.htm>

⁶ Ley 42-01, Art. 31°.

⁷ Código penal de la República Dominicana, 1988

Art. 317. - A person who by means of food, drink, medicines, probes, treatment or in any other way induces or directly helps induce abortion in a pregnant woman even with her consent shall be punished by imprisonment for two to five years [reclusión]. The same penalty shall be imposed to a woman who induces her own abortion or consents to using the substances indicated or administered to her for that purpose, or to submitting to other abortion methods, provided abortion has taken place. A prison term of six months to two years shall be imposed to a person who has put a pregnant woman in contact with another person for purposes of inducing abortion, provided abortion has taken place, even if he/she has not played a direct part in the abortion process. A physician, surgeon, midwife, nurse, pharmacist or other medical professional who abuses his/her profession by inducing or cooperating with an abortion shall be punished by five to twenty years of hard labour, provided abortion has taken place.

⁸ Ley 42-01, Section 32

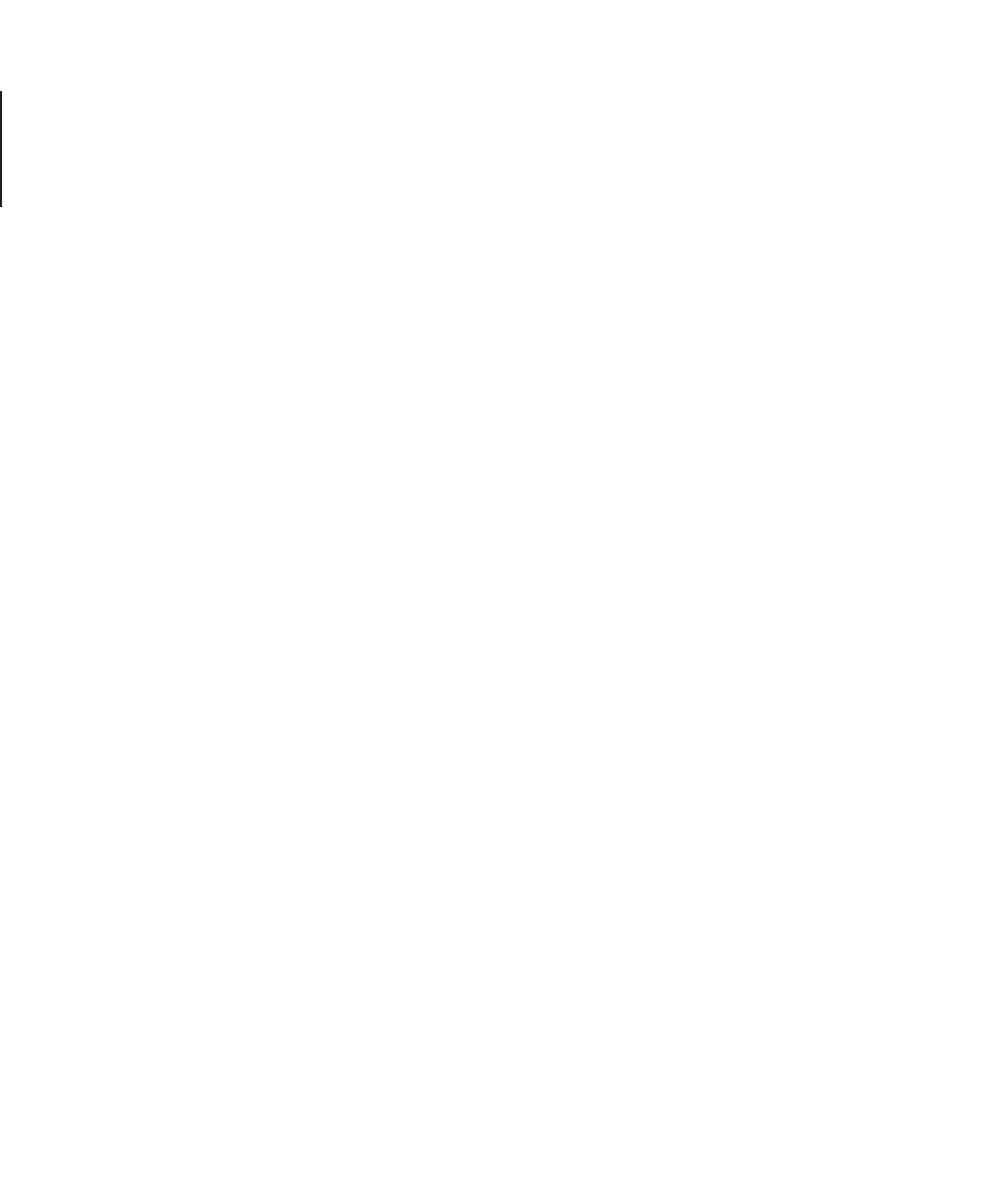
⁹ Constitución de la República Dominicana, Article 8°.

¹⁰ Código Penal de República Dominicana. See: http://www.oas.org/juridico/MLA/sp/dom/sp_dom-int-text-cp.pdf

¹¹ Ley N° 14-94.

¹² Ley N° 14-200.

¹³ Regional Core Health Data System – Country Health Profile 2002 « Dominican Republic, at www.paho.org



Reproductive Rights and Reproductive Health

Beginning in 2001, under the Comprehensive Health Program for Women, the Walk-in Care Service of the Ministry of Public Health has been providing reproductive health services, including pregnancy and puerperium control, prevention of genital and breast cancer, and gynaecological control.

The Breastfeeding Promotion Program 1995-2000 of the Ministry of Public Health set up a national commission composed of representatives from the ministry and several civil society institutions, which worked on promotion and training in hospitals of the public health system.

Law N°17215², provided that pregnant women workers be exempted from engaging in work that may be detrimental to them or their children. With regard to equal treatment and opportunities for both sexes in the labour sphere, by Decree N°37-99³ the Executive Power issued regulations to Law 16.045 enacted in 1989. Under these regulations, it is unlawful to limit or condition continued employment, or suspend or dismiss a worker on discriminatory grounds based on sex; and change in civil status, pregnancy or breastfeeding are aggravating circumstances where they are the grounds for such actions. In addition, an Interministerial Commission was set up to organize educational campaigns about the problems of working women. The same provision granted the right to paternity leave. In the education sector, Decree N°346-1997⁴ ordered that pregnant vocational technical education trainees have the same rights, including paternal leave. In 2001, the Law on Childbirth Companionship⁵ was enacted, pursuant to which every woman has the right to have with her a friend or other person of her choice.

Law N° 17242⁶ has granted one day of special leave each year to women workers who submit to genital and breast cancer prevention tests, beginning in the year 2000. This law has its rationale in the situation of women's reproductive health in Uruguay.

Abortion⁷ is penalized in every case, but the law also contemplates extenuating and exculpatory circumstances. At the end of 2002, the Chamber of Representatives passed a bill by the name of «reproductive health protection» which recognizes woman's right to interrupt her pregnancy by her own free choice during the first twelve weeks following conception, where prevented from continuing her pregnancy by the circumstances of conception, whether they be of a financial, social, family or age-related nature. In spite of intense social pressure in favour of the new law, the bill was rejected by the Senate on 4 May 2004.

Family Planning

The Maternity and Paternity by Choice Program of 1996 was a Ministry of Public Health priority. It was directed at community health promoters trained in sexual and reproductive health, and its objective was to develop information, education and communication strategies to ensure free access to contraceptive methods. In the year 2000 this programme was terminated.

The Comprehensive Health for Women Program has been designed to disseminate information and distribute contraception methods including the condom, the pill and the IUCD.

Since 2001 it has been present as a free service in some fifty health centres and polyclinics.

The Informed and Voluntary Maternity Subprogramme of the Comprehensive Health Care for Women Program promoted by the Municipality of Montevideo has been supplying contraception services to low-income women since 1996.

Human Sexuality and Gender Relations

The Penal Code⁸⁸ was amended in 1995 to eliminate the absolute presumption of violence in cases of sexual relations with a minor aged between 12 and 15 years. Under the new article, it is presumed that a minor in such an age range has ability and maturity of will sufficient to give valid consent to sexual relations. The rationale for the new rule is that in our days and age young people aged 12 are or appear to be more mature than they really are, and an unsuspecting person may get confused as a result⁹.

In Uruguay, it is still possible for a rapist to escape punishment by marrying his victim. This rule is still a part of the Penal Code¹⁰ in spite of proposals pending before Parliament and comments from the Experts Committee of the Convention on the Elimination of All Forms of Discrimination against Women.

Sexual harassment is contemplated by the Law on Equal Opportunities and Treatment for Both Sexes in the Labour Sphere [Ley de Igualdad de Oportunidades and de Trato para Ambos Sexos en Materia Laboral] as a serious form of discrimination at, or in relation with, the workplace. The Government of the Department of Montevideo¹¹ considers as sexual harassment any behaviour, intention, gesture or innuendo with sexual connotations addressed at a person of either sex; establishes sanctions by an effective and confidential internal procedure that protects women as well as men from harassment by persons of the same or other sex; and mandates the development of an active policy to discourage such conduct. Regulations to this piece of legislation were enacted by Resolution [Resolución] 4924/999 in the year 2000.

With regard to **prostitution**, several initiatives have been taken in Uruguay. Of them, particularly worth mentioning is a Banco de Previsión Social resolution that extended social security coverage to prostitutes through affiliation as single-owner businesses in 1995.

In 1999, the Ministry of the Interior issued a decree pursuant to which sex workers may receive a certificate of good conduct which is a requirement for the issue of a passport in other words, it is a police clearance certificate.

In 2002, the Sex Work Law¹² was promulgated. It covers all people of either sex above 18 years of age engaging in prostitution as their habitual employment. The Law has created health care teams and put the Ministry of Public Health in charge of promoting and preserving the health of sex workers and the community at large. At the same time, it mandates the Ministry of the Interior to prevent and suppress the sexual exploitation of persons engaged in sex work.

Law 17.677¹³ amended article 149 bis of the Penal Code to prohibit discrimination based on sexual orientation or sexual identity. It provides that «whoever publicly or through any public media incites to hatred, contempt or any form of moral or physical violence against

one or more persons on the basis of skin colour, race, religion, national or ethnic origin, sexual orientation or sexual identity, shall be punished by imprisonment for three to eighteen months».

Adolescents

With regard to adolescent pregnancy, there are no public policies in place to prevent it, or to address this issue in a comprehensive manner.

In 1999 a «National Comprehensive Care Plan for Children, Adolescents and Reproductive Health» was drawn up by 60 professionals from over 20 public and private institutions coordinating efforts over a period of 10 months to develop proposals and negotiate consensus-based decisions¹⁴. Nevertheless, the new government brought to power in 2000, the Plan was never considered for implementation, and no explanation was given in that regard.

In its chapter on sexual and reproductive rights, the Equal Opportunities Plan for the City of Montevideo¹⁵, establishes guidelines for action especially directed at adolescent and young population.

¹ ECLAC - CELADE 2002

² Ley N° 17215 published on 07 October 1999, dictating rules applicable to every pregnant or lactating woman worker in the public or private sector.

<http://www.parlamento.gub.uy/leyes/ley17215.htm>

³ Decreto N°37/997 promulgated on 05 February 1997, issuing regulations to Ley 16.045 on the need to effectively ensure equal treatment and opportunities for persons of both sexes in the labour sphere.

⁴ Decreto N°346/997 dated 17 September 1997 «Licencia por maternidad y/o paternidad en el Consejo de Educación Técnico Profesional. Art. 9 grants pregnant trainees the same rights to maternity and breastfeeding leave as all other workers in the public sector. Art. 14 grants male trainees two days paternity leave.

⁵ Ley N°17386 published on 31 August 2001 provides that every woman shall be entitled during her delivery labour, up and including the very moment of birth, to be accompanied by a friend or, should she so decide, by someone specifically trained to give her emotional support.

<http://www.parlamento.gub.uy/leyes/ley17386.htm>

⁶ Ley N° 17.242 published on 28 June 2000 declares prevention of genital and breast cancer to be a matter of public interest. <http://www.parlamento.gub.uy/leyes/ley17242.htm>

⁷ Código penal de Uruguay, Ley N° 9.155, of 4 December 1933. Amended by Ley n° 9.763 of 24 January 1938.

Article 325 on abortion induced with the woman's consent.

A woman who induces or consents to her own abortion shall be subject to imprisonment for three to nine months.

Article 328 on extenuating and exculpatory circumstances.

Paragraph 1°. If the offender has acted in order to save his own honour, or the honour of his wife or a close relative, the above penalty shall be reduced by one third to one half. The judge may, provided the abortion was consensual, and after due consideration of the circumstances of the case, exempt the offender of punishment outright. The honour motive shall have no exculpatory or extenuating value if the offender is also the author of the pregnancy.

Paragraph 2°. If the offender has acted without the woman's consent in order to eliminate the product of rape, the above penalty shall be reduced by one third to one half. If he has acted with the woman's consent, he shall be exempted from punishment outright.

Paragraph 3°. If the offender has acted without the woman's consent for grave health-related reasons, the above penalty shall be reduced by one third to one half. If he has acted with the woman's consent, he shall be exempted from punishment outright.

Paragraph 4°. If the offender has acted without the woman's consent in a situation of financial distress, the judge may reduce the above penalty by one third to one half, and may exempt him from punishment outright if he has acted with the woman's consent.

Paragraph 5°. Both the reduction of and exemption from punishment provided for under the foregoing paragraphs shall only apply if the abortion is performed by a physician during the first three months of pregnancy. This limitation shall not apply in a circumstance provided for in paragraph 3.

⁸ Ley 16707 Ley de Seguridad Ciudadana published on 19 July 1995

Section 9- Article 272 of Código Penal is hereby replaced by the following:

«272. Rape. Whoever forces another person of his/her same or other sex to have sexual intercourse with him/her by means of violence or threat commits rape, even in the absence of consummation. Rape shall be presumed when sexual intercourse takes place:

1. With a person under fifteen years of age, whether of the same sex as the offender or not, provided that evidence to the contrary shall be admitted if the victim has completed twelve years of age;

2. With a person that at the time of the intercourse was deprived of discernment or will, whether due to congenital or acquired, permanent or transitory causes;

3. With a person under arrest or in detention, provided the offender is the person in charge of guarding him/her;

4. When the offender uses fraud by taking another person's place.

The offender shall be punished with imprisonment for two to twelve years, according to the circumstances of the case.

⁹ CLADEM – Uruguay. MYSU. Diagnóstico sobre la situación de los derechos sexuales y los derechos reproductivos, p. 35. Uruguay, 2003.

¹⁰ Ibidem, Código Penal. http://www.parlamento.gub.uy/Codigos/CodigoPenal/Cod_Pen.htm

Article 116° (Extinction of the crime through marriage)

In cases of rape, indecent exposure, seduction and abduction, the offender's marriage to his victim shall extinguish the crime or the penalty as the case may be.

¹¹ Decreto N°28.942 of 15 January 2000

¹² Ley 17.515 Ley de Trabajo Sexual, published on 09 July 2002, at <http://www.parlamento.gub.uy/Leyes/Ley17515.htm>

¹³ Ley 17.677. Incitación al odio, desprecio o violencia o comisión de estos actos contra determinadas personas, adopted on 06 August 2003.

¹⁴ The Plan is the result of a joint effort by representatives of the Ministries of Public Health, and Education and Culture; of Administración Nacional de Educación Pública, Banco de Previsión Social, Instituto Nacional del Menor, the Municipality of Montevideo, the School of Medicine, Federación Médica del Interior, Sindicato Médico del Uruguay, Sanidad Militar y Policial, Sociedad Uruguaya de Pediatría, Plenario de Instituciones de Asistencia Médica Colectiva, Asociación Nacional de ONGs (ANONG), and MYSU. It was funded by PAHO/WHO, UNFPA, UNICEF y CLAP (Centro Latinoamericano de Perinatología).

¹⁵ Plan de Igualdad de Oportunidades y Derechos para la ciudad de Montevideo, Chapter 5, Derechos Sexuales Y Reproductivos, at <http://www.mysu.org.uy/prueba.htm>

Reproductive Rights and Reproductive Health

The Venezuelan Constitution² provides that comprehensiveness shall be among the principles governing the country's health policy. Accordingly, it establishes the right of every person, housewives included, to social security, which shall provide protection against contingencies including maternity, paternity, illness, widowhood, loss of parents, family burdens, etc.

Although the Constitution makes no mention of the conceived, the new Penal Code published in October 2000, defines induced abortion as a felony³.

With regard to maternity and paternity protection in the labour sphere, the Organic Labour Law of Venezuela published in June 1997⁴ and the regulations to it enacted in January 1999⁵ contain a number of provisions about protection of maternity and the family in the labour sphere. The regulations add a chapter on comprehensive care for workers' children.

Family Planning

The Venezuelan Constitution enshrines the right of couples to decide how many children they wish to conceive, and are entitled to access to the information and means necessary to guarantee the exercise of this right. It also establishes the right to full family planning services based on ethical and scientific values⁶.

The Constitution also mandates the State to protect the family. It provides that family relationships be based on equality of rights and duties, solidarity, common effort, mutual understanding and reciprocal respect among family members. In addition, it ensures protection for the mother, the father, or whoever is the head of the family, and makes express reference to adoption⁷.

With regard to marriage, one of its articles establishes absolute equality between spouses and recognition of facto unions⁸.

The Penal Code defines adultery⁹ and bigamy¹⁰ as indictable offences.

Human Sexuality and Gender Relations

The Venezuelan Constitution expressly states that any form of trafficking in human beings in general and in women, children and adolescents in particular shall be subject to the penalties prescribed by law¹¹.

The Charter also mandates the State to protect every person from situations that affect or constitute a threat, vulnerability or risk to their physical integrity, properties, enjoyment of rights or fulfilment of duties¹².

On 3 September 1998 the Law on Violence against Women and the Family¹³ was promulgated to enter into force in 1999. The Law defines, among others, violent sexual intercourse and sexual harassment as criminal offences. The victim's pregnancy is considered an aggravating circumstance. It also mandates authorities and employers to take appropriate measures in cases of sexual harassment; health care professionals treating victims of such crimes to report them, and officials of the competent agencies to attend to such reports.

As a result of this law, in January 1999 the Judiciary Police Technical Corps [*Cuerpo Técnico de Policía Judicial*] inaugurated its special Violence against Woman and the Family Division. The objective of the new agency is to receive, process and investigate complaints filed before it.

The new Penal Code also regulates sexuality by addressing the issue of crimes against moral customs and good family order [*delitos contra las buenas costumbres y buen orden de las familias*]. These crimes include rape, seduction, prostitution or corruption of minors, and moral offence; abduction and corruption. It has preserved the exemption from punishment for rapists who marry their victims¹⁴.

The Organic Code of Penal Procedures published in November 2001 provides that, where a physical and mental examination of the defendant or another person is absolutely necessary to find out the truth, it must be performed with due respect for the person's modesty, with assistance from an expert, and in the presence of a person trusted by the examinee¹⁵.

Adolescents

Under the Venezuelan Constitution, furthermore, «children and adolescents are full legal persons and shall be protected by specialized courts, organs and legislation... The State, families and society shall guarantee full protection as an absolute priority, taking into account their best interest in actions and decisions concerning them...»¹⁶

In 1994 the Venezuelan government formulated the National Early Pregnancy Prevention Plan 1995-1998¹⁷, and in 1996, Ministry of Education Resolution N° 1762¹⁸ regulated student admission to and continuation of studies at public and private facilities providing pre-school, basic, secondary and vocational education. The Resolution specifically prohibits the inclusion of pregnancy among impediments to admission or continuation of studies.

In keeping with the constitutional precept, the Organic Law for the Protection of Children and Adolescents promulgated in 1998 and entered into force in 2000 provides that: «Every child and adolescent of either sex have a right to receive, in accordance with their development, sexual and reproductive health information and education as instrumental to responsible, healthy, voluntary and risk-free sexual conduct, motherhood and fatherhood. The State shall provide sexual and reproductive health services and programs for children and adolescents of both sexes and actively involve society in the process. These services and programs shall be affordable, confidential, protect the privacy of children and adolescents and respect their right to consent based on timely and truthful information. Adolescents over 14 years of age have the right to request such services themselves and to receive them»¹⁹.

With regard to this issue, the National Youth Law published in March 2002 establishes young people's right to health and social security, including the right to comprehensive health care to be guaranteed by appropriate laws and policies; the right to receive sexual and reproductive health information and education as instrumental to maintaining a responsible, healthy, voluntary and risk-free sexual conduct, motherhood and fatherhood; the right of every young woman to experience motherhood and child care in a way compatible with activities that interest her, so as to be able to achieve her full and comprehensive

development; and makes the State, society at large and the family responsible for guaranteeing her the exercise of that right²⁰.

Young people are also entitled to receive timely and truthful information from public health institutions for purposes of accessing health care services for the young and whatever other resources may be necessary for the development of prevention, treatment and rehabilitation programs designed to fight sexually transmitted and other diseases.

With regard to education, the Law provides for the State, society and the family to work out consensus-based policies and plans supporting the development of reeducation and resocialization programs for young people involved in prostitution and other at-risk conducts.

¹ ECLAC - CELADE 2002

² Constitución de la República Bolivariana de Venezuela, 1999. Article 84. <http://www.georgetown.edu/pdba/Constitutions/Venezuela/ven1999.html>

³ Código Penal de Venezuela published in Gaceta Oficial N° 5.494 Extraordinario dated 20 October 2000. <http://comunidad.vlex.com/pantín/codigopenal.html>

Article 432. A woman who intentionally aborts, whether the means of abortion be used by herself or by a third party with her consent, shall be punished by imprisonment for six months to two years.

Article 436. The penalties as per the foregoing paragraph shall be reduced by one third to two thirds and the imprisonment regime shall be changed from prison to jail, if the offender has acted to protect his own honour or the honour of his wife, his mother, a descendent, his sister or his foster daughter.

⁴ Ley orgánica del Trabajo published in Gaceta Oficial N° 5.152 dated 19 June 1997. <http://comunidad.vlex.com/pantín/lotrabajo.html>

⁵ Reglamento de la Ley Orgánica del Trabajo published in Gaceta Oficial N° 5.292 dated 25 January 1999. <http://comunidad.vlex.com/pantín/rtrabajo.html>

⁶ Constitución de la República Bolivariana de Venezuela, 1999. Article 76.

⁷ Constitución de la República Bolivariana de Venezuela, 1999. Article 75.

⁸ Constitución de la República Bolivariana de Venezuela, 1999. Article 77.

⁹ Chapter V of Código Penal de Venezuela

¹⁰ Chapter VI of Código Penal de Venezuela

¹¹ Constitución de la República Bolivariana de Venezuela, 1999. Article 54

¹² Constitución de la República Bolivariana de Venezuela, 1999. Article 55

¹³ Source: http://www.analitica.com/bitlibrioteca/congreso_venezuela/ley_woman.asp

¹⁴ Código Penal de Venezuela, Title VIII, Chapter I

¹⁵ Código Orgánico Procesal Penal published in Gaceta Oficial N° 5.558 of 14 November 2001. Article 209. <http://comunidad.vlex.com/pantín/copp.html>

¹⁶ Constitución de la República Bolivariana de Venezuela, 1999. Article 78.

¹⁷ Source: <http://www.metabase.net/docs/befit-ucr-unicef/00614.html>

¹⁸ Resolución N° 1762: Normas para el ingreso y permanencia de los alumnos en los planteles oficiales y privados de los niveles preescolar, Básica. Media Diversificada y Profesional, at http://www.pasoapaso.com.ve/legal/legal_1762.htm

¹⁹ Ley Orgánica para la Protección del Niño y del Adolescente, published in Gaceta Oficial N° 5. 266 Extraordinario of 2 October 1998. Section 50, at <http://comunidad.derecho.org/pantín/nino.html>

²⁰ Ley Nacional de Juventud published in Gaceta Oficial N° 37.404 dated 14 March 2002.



ANNEX



PROGRAM OF ACTION OF THE UNITED NATIONS INTERNATIONAL CONFERENCE ON POPULATION & DEVELOPMENT

Chapter VII

REPRODUCTIVE RIGHTS AND REPRODUCTIVE HEALTH

Chapter I

PREAMBLE

1.1. The 1994 International Conference on Population and Development occurs at a defining moment in the history of international cooperation. With the growing recognition of global population, development and environmental interdependence, the opportunity to adopt suitable macro- and socio-economic policies to promote sustained economic growth in the context of sustainable development in all countries and to mobilize human and financial resources for global problem-solving has never been greater. Never before has the world community had so many resources, so much knowledge and such powerful technologies at its disposal which, if suitably redirected, could foster sustained economic growth and sustainable development. Nonetheless, the effective use of resources, knowledge and technologies is conditioned by political and economic obstacles at the national and international levels. Therefore, although ample resources have been available for some time, their use for socially equitable and environmentally sound development has been seriously limited.

1.2. The world has undergone far-reaching changes in the past two decades. Significant progress in many fields important for human welfare has been made through national and international efforts. However, the developing countries are still facing serious economic difficulties and an unfavourable international economic environment, and people living in absolute poverty have increased in many countries. Around the world many of the basic resources on which future generations will depend for their survival and well-being are being depleted and environmental degradation is intensifying, driven by unsustainable patterns of production and consumption, unprecedented growth in population, widespread

and persistent poverty, and social and economic inequality. Ecological problems, such as global climate change, largely driven by unsustainable patterns of production and consumption, are adding to the threats to the well-being of future generations. There is emerging global consensus on the need for increased international cooperation in regard to population in the context of sustainable development, for which Agenda 21¹ provides a framework. Much has been achieved in this respect, but more needs to be done.

1.3. The world population is currently estimated at 5,6 billion. While the rate of growth is on the decline, absolute increments have been increasing, presently exceeding 86 million persons per year. Annual population increments are likely to remain above 86 million until the year 2015².

1.4. During the remaining six years of this critical decade, the world's nations by their actions or inactions will choose from among a range of alternative demographic futures. The low, medium and high variants of the United Nations population projections for the coming 20 years range from a low of 7,1 billion people to the medium variant of 7,5 billion and a high of 7,8 billion. The difference of 720 million people in the short span of 20 years exceeds the current population of the African continent. Further into the future, the projections diverge even more significantly. By the year 2050, the United Nations projections range from 7,9 billion to the medium variant of 9,8 billion and a high of 11,9 billion. Implementation of the goals and objectives contained in the present 20-year Program of Action, which address many of the fundamental population, health, education and development challenges facing the entire human community, would result in world population growth during this period and beyond at levels below the United Nations medium projection.

1.5. The International Conference on Population and Development is not an isolated event. Its Program of Action builds on the considerable international consensus that has developed since the World Population Conference at Bucharest in 1974³ and the International Conference on Population at Mexico City in 1984⁴, to consider the broad issues of and interrelationships between population, sustained economic growth and sustainable development, and advances in the education, economic status and empowerment of women. The 1994 Conference was explicitly given a broader mandate on development issues than previous population conferences, reflecting the growing awareness that population, poverty, patterns of production and consumption and the environment are so closely interconnected that none of them can be considered in isolation.

1.6. The International Conference on Population and Development follows and builds on other important recent international activities, and its recommendations should be supportive of, consistent with and based on the agreements reached at the following:

- (a) The World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, held in Nairobi in 1985⁵;
- (b) The World Summit for Children, held in New York in 1990⁶;
- (c) The United Nations Conference on Environment and Development, held at Rio de Janeiro in 1992;⁷
- (d) The World Conference on Nutrition, held at Rome in 1992⁸;

- (e) The World Conference on Human Rights, held at Vienna in 1993⁹;
- (f) The International Year of the World's Indigenous People, 1993¹⁰, which would lead to the International Decade of the World's Indigenous People¹¹;
- (g) The Global Conference for the Sustainable Development of Small Island Developing States, held in Barbados in 1994¹²;
- (h) The International Year of the Family, 1994¹³.

1.7. The Conference outcomes are closely related to and will make significant contributions to other major conferences in 1995 and 1996, such as the World Summit for Social Development¹⁴, the Fourth World Conference on Women: Action for Equality, Development and Peace¹⁵, the Second United Nations Conference on Human Settlements (Habitat II), the elaboration of the Agenda for Development, as well as the celebration of the fiftieth anniversary of the United Nations. These events are expected to highlight further the call of the 1994 Conference for greater investments in people, and for a new action agenda for the empowerment of women to ensure their full participation at all levels in the social, economic and political lives of their communities.

1.8. Over the past 20 years, many parts of the world have undergone remarkable demographic, social, economic, environmental and political change. Many countries have made substantial progress in expanding access to reproductive health care and lowering birth rates, as well as in lowering death rates and raising education and income levels, including the educational and economic status of women. While the advances of the last two decades in areas such as increased use of contraception, decreased maternal mortality, implemented sustainable development plans and projects and enhanced education programs provide a basis for optimism about successful implementation of this programme of action, much remains to be accomplished. The world as a whole has changed in ways that create important new opportunities for addressing population and development issues. Among the most significant are the major shifts in attitude among the world's people and their leaders in regard to reproductive health, family planning and population growth, resulting, inter alia, in the new comprehensive concept of reproductive health, including family planning and sexual health, as defined in the Program of Action. A particularly encouraging trend has been the strengthening of political commitment to population-related policies and family planning programs by many Governments. In this regard, sustained economic growth in the context of sustainable development will enhance the ability of countries to meet the pressures of expected population growth; will facilitate the demographic transition in countries where there is an imbalance between demographic rates and social, economic and environmental goals; and will permit the balance and integration of the population dimension into other development-related policies.

1.9 The population and development objectives and actions of the present Program of Action will collectively address the critical challenges and interrelationships between population and sustained economic growth in the context of sustainable development. In order to do so, adequate mobilization of resources at the national and international level will be required as well as new and additional resources to the developing countries from all available funding

mechanisms, including multilateral, bilateral and private sources. Financial resources are also required to strengthen the capacity of national, regional, subregional and international institutions to implement this Program of Action.

1.10. The two decades ahead are likely to produce a further shift of rural populations to urban areas as well as continued high levels of migration between countries. These migrations are an important part of the economic transformations occurring around the world, and they present serious new challenges. Therefore, these issues must be addressed with more emphasis within population and development policies. By the year 2015, nearly 56 per cent of the global population is expected to live in urban areas, compared to under 45 per cent in 1994. The most rapid rates of urbanization will occur in the developing countries. The urban population of the developing regions was just 26 per cent in 1975, but is projected to rise to 50 per cent by 2015. This change will place enormous strain on existing social services and infrastructure, much of which will not be able to expand at the same rate as that of urbanization.

1.11. Intensified efforts are needed in the coming 5, 10 and 20 years, in a range of population and development activities, bearing in mind the crucial contribution that early stabilization of the world population would make towards the achievement of sustainable development. The present Program of Action addresses all those issues, and more, in a comprehensive and integrated framework designed to improve the quality of life of the current world population and its future generations. The recommendations for action are made in a spirit of consensus and international cooperation, recognizing that the formulation and implementation of population-related policies is the responsibility of each country and should take into account the economic, social, and environmental diversity of conditions in each country, with full respect for the various religious and ethical values, cultural backgrounds and philosophical convictions of its people, as well as the shared but differentiated responsibilities of all the world's people for a common future.

1.12. The present Program of Action recommends to the international community a set of important population and development objectives, including both qualitative and quantitative goals that are mutually supportive and are of critical importance to these objectives. Among these objectives and goals are: sustained economic growth in the context of sustainable development; education, especially for girls; gender equity and equality; child and maternal mortality reduction; and the provision of universal access to reproductive health services, including family planning and sexual health.

1.13. Many of the quantitative and qualitative goals of the present Program of Action clearly require additional resources, some of which could become available from a reordering of priorities at the individual, national and international levels. However, none of the actions required –nor all of them combined– is expensive in the context of either current global development or military expenditures. A few would require little or no additional financial resources, in that they involve changes in lifestyles, social norms or government policies that can be largely brought about and sustained through greater citizen action and political leadership. But to meet the resource needs of those actions that do require increased

expenditures over the next two decades, additional commitments will be required on the part of both developing and developed countries. This will be particularly difficult in the case of some developing countries and some countries with economies in transition that are experiencing extreme resource constraints.

1.14. The present Program of Action recognizes that over the next 20 years Governments are not expected to meet the goals and objectives of the International Conference on Population and Development single-handedly. All members of and groups in society have the right, and indeed the responsibility, to play an active part in efforts to reach those goals. The increased level of interest manifested by non-governmental organizations, first in the context of the United Nations Conference on Environment and Development and the World Conference on Human Rights, and now in these deliberations, reflects an important and in many places rapid change in the relationship between Governments and a variety of non-governmental institutions. In nearly all countries new partnerships are emerging between Government, business, non-governmental organizations and community groups, which will have a direct and positive bearing on the implementation of the present Program of Action.

1.15. While the International Conference on Population and Development does not create any new international human rights, it affirms the application of universally recognized human rights standards to all aspects of population programs. It also represents the last opportunity in the twentieth century for the international community to collectively address the critical challenges and interrelationships between population and development. The Program of Action will require the establishment of common ground, with full respect for the various religious and ethical values and cultural backgrounds. The impact of this Conference will be measured by the strength of the specific commitments made here and the consequent actions to fulfil them, as part of a new global partnership among all the world's countries and peoples, based on a sense of shared but differentiated responsibility for each other and for our planetary home.

Chapter VII

A. REPRODUCTIVE RIGHTS AND REPRODUCTIVE HEALTH*

7.1. This chapter focuses on the principles contained in Chapter II, including in particular its introductory paragraphs.

Basis for action

7.2. Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of

their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy child. In line with the above definition of reproductive health, reproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being through preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases (STDs).

7.3. Bearing in mind the above definition, reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other relevant United Nations consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community. The promotion of the responsible exercise of these rights for all people should be the fundamental basis for government- and community-supported policies and programs in the area of reproductive health, including family planning. As part of their commitment, full attention should be given to the promotion of mutually respectful and equitable gender relations and particularly to meeting the educational and service needs of adolescents to enable them to deal in a positive and responsible way with their sexuality. Reproductive health eludes many of the world's people because of such factors as: inadequate levels of knowledge about human sexuality and inappropriate or poor-quality reproductive health information and services; the prevalence of high-risk sexual behaviour; discriminatory social practices; negative attitudes towards women and girls; and the limited power many women and girls have over their sexual and reproductive lives. Adolescents are particularly vulnerable because of their lack of information and access to relevant services in most countries. Older women and men have distinct reproductive and sexual health issues which are often inadequately addressed.

7.4. The implementation of the present Program of Action is to be guided by the above comprehensive definition of reproductive health, which includes sexual health.

Objectives

7.5. The objectives are:

(a) To ensure that comprehensive and factual information and a full range of reproductive health services, including family planning, are accessible, affordable, acceptable and convenient to all users;

(b) To enable and support responsible voluntary decisions about child-bearing and methods of family planning of their choice, as well as other methods of their choice for regulation

of fertility which are not against the law and to have the information, education and means to do so;

(c) To meet changing reproductive health needs over the life cycle and to do so in ways sensitive to the diversity of circumstances of local communities.

Actions

7.6. All countries should strive to make accessible through the primary health care system, reproductive health to all individuals of appropriate ages as soon as possible and no later than the year 2015. Reproductive health care in the context of primary health care should, inter alia, include: family-planning counselling, information, education, communication and services; education and services for prenatal care, safe delivery, and post-natal care, especially breastfeeding, children and women's health care; prevention and appropriate treatment of infertility; abortion as specified in Paragraph 8.25, including prevention of abortion and the management of the consequences of abortion; treatment of reproductive tract infections; sexually transmitted diseases and other reproductive health conditions; and information, education and counselling, as appropriate, on human sexuality, reproductive health and responsible parenthood. Referral for family-planning services and further diagnosis and treatment for complications of pregnancy, delivery and abortion, infertility, reproductive tract infections, breast cancer and cancers of the reproductive system, sexually transmitted diseases and HIV/AIDS should always be available, as required. Active discouragement of harmful practices such as female genital mutilation should also be an integral component of primary health care including reproductive health care programs.

7.7. Reproductive health-care programs should be designed to serve the needs of women including adolescents and must involve women in the leadership, planning, decision-making, management, implementation, organization and evaluation of services. Governments and other organizations should take positive steps to include women at all levels of the health-care system.

7.8. Innovative programs must be developed to make information, counselling and services for reproductive health accessible to adolescents and adult men. Such programs must both educate and enable men to share more equally in family planning, domestic and child-rearing responsibilities and to accept the major responsibility for the prevention of sexually transmitted diseases. Programs must reach men in their workplaces, at home and where they gather for recreation. Boys and adolescents, with the support and guidance of their parents, and in line with the Convention on the Rights of the Child, should also be reached through schools, youth organizations and wherever they congregate. Voluntary and appropriate male methods for contraception, as well as for the prevention of sexually transmitted diseases and AIDS, should be promoted and made accessible with adequate information and counselling.

7.9. Governments should promote much greater community participation in reproductive health-care services by decentralizing the management of public health programs and by forming partnerships in cooperation with local non- governmental organizations and private health-care providers. All types of non- governmental organizations, including local women's

groups, trade unions, cooperatives, youth programs and religious groups, should be encouraged to become involved in the promotion of better reproductive health.

7.10. Without jeopardizing international support for programs in developing countries, the international community should, upon request, give consideration to the training, technical assistance, and short-term contraceptive supply needs of the countries in transition from centrally managed to market economies, where reproductive health is poor and in some cases deteriorating. Those countries, at the same time, must themselves give higher priority to reproductive health services, including a comprehensive range of contraceptive means, and must address their current reliance on abortion for fertility regulation by meeting the need of women in those countries for better information and more choices on an urgent basis.

7.11. Migrants and displaced persons in many parts of the world have limited access to reproductive health care and may face specific serious threats to their reproductive health and rights. Services must be sensitive particularly to the needs of individual women and adolescents and responsive to their often powerless situation, with particular attention to those who are victims of sexual violence.

B. Family planning

Basis for action

7.12. The aim of family-planning programs must be to enable couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information and means to do so and to ensure informed choices and make available a full range of safe and effective methods. The success of population education and family-planning programs in a variety of settings demonstrates that informed individuals everywhere can and will act responsibly in the light of their own needs and those of their families and communities. The principle of informed free choice is essential to the long-term success of family-planning programs. Any form of coercion has no part to play. In every society there are many social and economic incentives and disincentives that affect individual decisions about child-bearing and family size. Over the past century, many Governments have experimented with such schemes, including specific incentives and disincentives, in order to lower or raise fertility. Most such schemes have had only marginal impact on fertility and in some cases have been counterproductive. Governmental goals for family planning should be defined in terms of unmet needs for information and services. Demographic goals, while legitimately the subject of government development strategies, should not be imposed on family-planning providers in the form of targets or quotas for the recruitment of clients.

7.13. Over the past three decades, the increasing availability of safer methods of modern contraception, although still in some respects inadequate, has permitted greater opportunities for individual choice and responsible decision-making in matters of reproduction throughout much of the world. Currently, about 55 per cent of couples in developing regions use some method of family planning. This figure represents nearly a fivefold increase since the 1960s.

Family-planning programs have considerably contributed to the decline in average fertility rates for developing countries, from about six to seven children per family in the 1960s to about three to four children at present. However, the full range of modern family-planning methods still remains unavailable to at least 350 million couples world wide, many of whom say they want to space or prevent another pregnancy. Survey data suggest that approximately 120 million additional women world wide would be currently using a modern family-planning method if more accurate information and affordable services were easily available, and if partners, extended families and the community were more supportive. These numbers do not include the substantial and growing numbers of sexually active unmarried individuals wanting and in need of information and services. During the decade of the 1990s, the number of couples of reproductive age will grow by about 18 million per annum. To meet their needs and close the existing large gaps in services, family planning and contraceptive supplies will need to expand very rapidly over the next several years. The quality of family-planning programs is often directly related to the level and continuity of contraceptive use and to the growth in demand for services. Family-planning programs work best when they are part of or linked to broader reproductive health programs that address closely related health needs and when women are fully involved in the design, provision, management and evaluation of services.

Objectives

7.14. The objectives are:

- (a) To help couples and individuals meet their reproductive goals in a framework that promotes optimum health, responsibility and family well-being, and respects the dignity of all persons and their right to choose the number, spacing and timing of birth of their children;
- (b) To prevent unwanted pregnancies and reduce the incidence of high-risk pregnancies and morbidity and mortality;
- (c) To make quality family-planning services affordable, acceptable and accessible to all who need and want them, while maintaining confidentiality;
- (d) To improve the quality of family-planning advice, information, education, communication, counselling and services;
- (e) To increase the participation and sharing of responsibility of men in the actual practice of family planning;
- (f) To promote breastfeeding to enhance birth spacing.

Actions

7.15. Governments and the international community should use the full means at their disposal to support the principle of voluntary choice in family planning.

7.16. All countries should, over the next several years, assess the extent of national unmet need for good-quality family-planning services and its integration in the reproductive health context, paying particular attention to the most vulnerable and underserved groups in the population. All countries should take steps to meet the family-planning needs of their populations as soon as possible and should, in all cases by the year 2015, seek to provide

universal access to a full range of safe and reliable family-planning methods and to related reproductive health services which are not against the law. The aim should be to assist couples and individuals to achieve their reproductive goals and give them the full opportunity to exercise the right to have children by choice.

7.17. Governments at all levels are urged to institute systems of monitoring and evaluation of user-centred services with a view to detecting, preventing and controlling abuses by family-planning managers and providers and to ensure a continuing improvement in the quality of services. To this end, Governments should secure conformity to human rights, and to ethical and professional standards in the delivery of family planning and related reproductive health services aimed at ensuring responsible, voluntary and informed consent and also regarding service provision. In-vitro fertilization techniques should be provided in accordance with appropriate ethical guidelines and medical standards.

7.18. Non-governmental organizations should play an active role in mobilizing community and family support, in increasing access and acceptability of reproductive health services including family planning, and cooperate with Governments in the process of preparation and provision of care, based on informed choice, and in helping to monitor public- and private-sector programs, including their own.

7.19. As part of the effort to meet unmet needs, all countries should seek to identify and remove all the major remaining barriers to the utilization of family-planning services. Some of those barriers are related to the inadequacy, poor quality and cost of existing family-planning services. It should be the goal of public, private and non-governmental family-planning organizations to remove all programme-related barriers to family-planning use by the year 2005 through the redesign or expansion of information and services and other ways to increase the ability of couples and individuals to make free and informed decisions about the number, spacing and timing of births and protect themselves from sexually transmitted diseases.

7.20. Specifically, Governments should make it easier for couples and individuals to take responsibility for their own reproductive health, by removing unnecessary legal, medical, clinical and regulatory barriers to information and to access to family-planning services and methods.

7.21. All political and community leaders are urged to play a strong, sustained and highly visible role in promoting and legitimizing the provision and use of family-planning and reproductive health services. Governments at all levels are urged to provide a climate that is favourable to good-quality public and private family-planning and reproductive health information and services through all possible channels. Finally, leaders and legislators at all levels must translate their public support for reproductive health, including family planning, into adequate allocations of budgetary, human and administrative resources to help meet the needs of all those who cannot pay the full cost of services.

7.22. Governments are encouraged to focus most of their efforts towards meeting their population and development objectives through education and voluntary measures rather than schemes involving incentives and disincentives.

7.23. In the coming years, all family-planning programs must make significant efforts to improve quality of care. Among other measures, programs should:

(a) Recognize that appropriate methods for couples and individuals vary according to their age, parity, family size preference and other factors, and ensure that women and men have information and access to the widest possible range of safe and effective family-planning methods in order to enable them to exercise free and informed choice;

(b) Provide accessible, complete and accurate information about various family-planning methods, including their health risks and benefits, possible side effects and their effectiveness in the prevention of the spread of HIV/AIDS and other sexually transmitted diseases;

(c) Make services safer, affordable, more convenient and accessible for clients and ensure, through strengthened logistical systems, a sufficient and continuous supply of essential high- quality contraceptives. Privacy and confidentiality should be ensured;

(d) Expand and upgrade formal and informal training in sexual and reproductive health care and family planning for all health-care providers, health educators and managers, including training in interpersonal communications and counselling;

(e) Ensure appropriate follow-up care, including treatment for side effects of contraceptive use;

(f) Ensure availability of related reproductive health services on site or through a strong referral mechanism;

(g) In addition to quantitative measures of performance, give more emphasis to qualitative ones that take into account the perspectives of current and potential users of services, through means including effective management information systems and survey techniques for the timely evaluation of services;

(h) Family-planning and reproductive health programs should emphasize breastfeeding education and support services, which can simultaneously contribute to birth spacing, better maternal and child health and higher child survival.

7.24. Governments should take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning, and in all cases provide for the humane treatment and counselling of women who have had recourse to abortion.7.25. In order to meet the substantial increase in demand for contraceptives over the next decade and beyond, the international community should move, on an immediate basis, to establish an efficient coordination system and global, regional and subregional facilities for the procurement of contraceptive and other commodities essential to reproductive health programs of developing countries and countries with economies in transition. The international community should also consider measures such as transfers of technology to developing countries enabling them to produce and distribute high-quality contraceptives and other commodities essential to reproductive health services, in order to strengthen the self-reliance of those countries. At the request of the countries concerned, the World Health Organization should continue to provide advice on the quality, safety and efficacy of family-planning methods.

7.26. Provision of reproductive health-care services should not be confined to the public sector but should involve the private sector and non-governmental organizations, in accordance with the needs and resources of their communities, and include, where appropriate, effective strategies for cost recovery and service delivery, including social marketing and community-based services. Special efforts should be made to improve accessibility through outreach services.

C. Sexually transmitted diseases and HIV prevention

Basis for action

7.27. The world-wide incidence of sexually transmitted diseases is high and increasing. The situation has worsened considerably with the emergence of the HIV epidemic. Although the incidence of some sexually transmitted diseases has stabilized in parts of the world, there have been increasing cases in many regions.

7.28. The social and economic disadvantages that women face make them especially vulnerable to sexually transmitted infections, including HIV, as illustrated, for example, by their exposure to the high-risk sexual behaviour of their partners. For women, the symptoms of infections from sexually transmitted diseases are often hidden, making them more difficult to diagnose than in men and the health consequences are often greater, including increased risk of infertility and ectopic pregnancy. The risk of transmission from infected men to women is also greater than from infected women to men, and many women are powerless to take steps to protect themselves.

Objective

7.29. The objective is to prevent, reduce the incidence of, and provide treatment for, sexually transmitted diseases, including HIV/AIDS, and the complications of sexually transmitted diseases such as infertility, with special attention to girls and women.

Actions

7.30. Reproductive health programs should increase their efforts to prevent, detect and treat sexually transmitted diseases and other reproductive tract infections, especially at the primary health-care level. Special outreach efforts should be made to those who do not have access to reproductive health-care programs.

7.31. All health-care providers, including all family-planning providers, should be given specialized training in the prevention and detection of, and counselling on, sexually transmitted diseases, especially infections in women and youth, including HIV/AIDS.

7.32. Information, education and counselling for responsible sexual behaviour and effective prevention of sexually transmitted diseases and HIV should become integral components of all reproductive and sexual health services.

7.33. Promotion and the reliable supply and distribution of high-quality condoms should become integral components of all reproductive health services. All relevant international organizations, especially the World Health Organization, should significantly increase their

procurement. Governments and the international community should provide all means to reduce the spread and the rate of transmission of HIV/AIDS infection.

D. Human Sexuality and Gender Relations

Basis for action

7.34. Human sexuality and gender relations are closely interrelated and together affect the ability of men and women to achieve and maintain sexual health and manage their reproductive lives. Equal relationships between men and women in matters of sexual relations and reproduction, including full respect for the physical integrity of the human body, require mutual respect and willingness to accept responsibility for the consequences of sexual behaviour. Responsible sexual behaviour, sensitivity and equity in gender relations, particularly when instilled during the formative years, enhance and promote respectful and harmonious partnerships between men and women.

7.35. Violence against women, particularly domestic violence and rape, is widespread, and rising numbers of women are at risk from AIDS and other sexually transmitted diseases as a result of high-risk sexual behaviour on the part of their partners. In a number of countries, harmful practices meant to control women's sexuality have led to great suffering. Among them is the practice of female genital mutilation, which is a violation of basic rights and a major lifelong risk to women's health.

Objectives

7.36. The objectives are:

(a) To promote adequate development of responsible sexuality permitting relations of equity and mutual respect between the genders and contributing to improving the quality of life of individuals;

(b) To ensure that women and men have access to information, education and services needed to achieve good sexual health and exercise their reproductive rights and responsibilities.

Actions

7.37. Support should be given to integral sexual education and services for young people with the support and guidance of their parents, and in line with the Convention on the Rights of the Child, that stress male responsibility for their own sexual health and fertility and that help them exercise those responsibilities. Educational efforts should begin within the family unit, in the community and in the schools at an appropriate age, but must also reach adults, in particular men, through non-formal education and a variety of community-based efforts.

7.38. In the light of the urgent need to prevent unwanted pregnancies, the rapid spread of AIDS and other sexually transmitted diseases, and the prevalence of sexual abuse and violence, Governments should base national policies on a better understanding of the need for responsible human sexuality and the realities of current sexual behaviour.

7.39. Active and open discussion of the need to protect women, youth and children from any abuse, including sexual abuse, exploitation, trafficking and violence must be encouraged and supported by educational programs at both national and community levels. Governments should set the necessary conditions and procedures to encourage victims to report violations of their rights. Laws addressing those concerns should be enacted where they do not exist, made explicit, strengthened and enforced, and appropriate rehabilitation services provided. Governments should also prohibit the production and the trade of child pornography.

7.40. Governments and communities should urgently take steps to stop the practice of female genital mutilation and protect women and girls from all such similar unnecessary and dangerous practices. Steps to eliminate the practice should include strong community outreach programs involving village and religious leaders, education and counselling about its impact on girls' and women's health, and appropriate treatment and rehabilitation for girls and women who have suffered mutilation. Services should include counselling for women and men to discourage the practice.

E. Adolescents

Basis for action

7.41. The reproductive health needs of adolescents as a group have been largely ignored to date by existing reproductive health services. The response of societies to the reproductive health needs of adolescents should be based on information that helps them attain a level of maturity required to make responsible decisions. In particular, information and services should be made available to adolescents that can help them understand their sexuality and protect them from unwanted pregnancies, sexually transmitted diseases and subsequent risk of infertility. This should be combined with the education of young men to respect women's self-determination and to share responsibility with women in matters of sexuality and reproduction. This effort is uniquely important for the health of young women and their children, for women's self-determination and, in many countries, for efforts to slow the momentum of population growth. Motherhood at a very young age entails a risk of maternal death much greater than average, and the children of young mothers have higher levels of morbidity and mortality. Early child-bearing continues to be an impediment to improvements in the educational, economic and social status of women in all parts of the world. Overall for young women, early marriage and early motherhood can severely curtail educational and employment opportunities and are likely to have a long-term, adverse impact on their and their children's quality of life.

7.42. Poor educational and economic opportunities and sexual exploitation are important factors in the high levels of adolescent child-bearing. In both developed and developing countries, adolescents faced with few apparent life choices have little incentive to avoiding pregnancy and child-bearing.

7.43. In many societies, adolescents face pressures to engage in sexual activity. Young

women, particularly low-income adolescents, are especially vulnerable. Sexually active adolescents of both sexes are increasingly at high risk of contracting and transmitting sexually transmitted diseases, including HIV/AIDS, and they are typically poorly informed about how to protect themselves. Programs for adolescents have shown to be most effective when they secure the full involvement of adolescents in identifying their reproductive and sexual health needs and in designing programs that respond to those needs.

Objectives

7.44. The objectives are:

(a) To address adolescent sexual and reproductive health issues, including unwanted pregnancy, unsafe abortion, sexually transmitted diseases and HIV/AIDS, through the promotion of responsible and healthy reproductive and sexual behaviour, including voluntary abstinence, and the provision of appropriate services and counselling specifically suitable for that age group;

(b) To substantially reduce all adolescent pregnancies.

Actions

7.45. Recognizing the rights, duties and responsibilities of parents and other persons legally responsible for adolescents to provide, in a manner consistent with the evolving capacities of the adolescent, appropriate direction and guidance in sexual and reproductive matters, countries must ensure that the programs and attitudes of health-care providers do not restrict the access of adolescents to appropriate services and the information they need, including on sexually transmitted diseases and sexual abuse. In doing so, and in order to, inter alia, address sexual abuse, these services must safeguard the rights of adolescents to privacy, confidentiality, respect and informed consent, respecting cultural values and religious beliefs. In this context countries should, where appropriate, remove legal, regulatory and social barriers to reproductive health information and care for adolescents.

7.46. Countries, with the support of the international community, should protect and promote the rights of adolescents to reproductive health education, information and care and greatly reduce the number of adolescent pregnancies.

7.47. Governments, in collaboration with non-governmental organizations, are urged to meet the special needs of adolescents and to establish appropriate programs to respond to those needs. Such programs should include support mechanisms for the education and counselling of adolescents in the areas of gender relations and equality, violence against adolescents, responsible sexual behaviour, responsible family-planning practice, family life, reproductive health, sexually transmitted diseases, HIV infection and AIDS prevention. Programs for the prevention and treatment of sexual abuse and incest and other reproductive health services should be provided. Such programs should provide information to adolescents and make a conscious effort to strengthen positive social and cultural values. Sexually active adolescents will require special family-planning information, counselling and services, and those who become pregnant will require special support from their families

and community during pregnancy and early child care. Adolescents must be fully involved in the planning, implementation and evaluation of such information and services with proper regard for parental guidance and responsibilities.

7.48. Programs should involve and train all who are in a position to provide guidance to adolescents concerning responsible sexual and reproductive behaviour, particularly parents and families, and also communities, religious institutions, schools, the mass media and peer groups. Governments and non- governmental organizations should promote programs directed to the education of parents, with the objective of improving the interaction of parents and children to enable them to comply better with their educational duties to support the process of maturation of their children, particularly in the areas of sexual behaviour and reproductive health.

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- ¹ Report of the United Nations Conference on the Environment and Development, Rio de Janeiro, from 3 to 14 June 1992, vol. I, Resolutions approved by the Conference (United Nations publication, Sales number:S.93. I.8 and corrections), Resolution 1, Annex II.
 - ² Report of the United Nations Conference on the Environment and Development, Rio de Janeiro, from 3 to 14 June 1992, vol. I, Resolutions approved by the Conference (United Nations publication, Sales number:S.93. I.8 and corrections), Resolution 1, Annex II.
 - ³ See Report of the United Nations World Population Conference, Bucharest, from 19 to 30 August 1974, vol. I (United Nations publication, Sales number:S.75. XIII.3.)
 - ⁴ See Report of the United Nations International Conference on Population, Mexico City, from 6 to 14 August 1984 (United Nations publication, Sales number:S.84. XIII.8 and corrections.)
 - ⁵ See Report of the United Nations World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, from 15 to 26 July 1985 (United Nations publication, Sales number:S.85. IV.10.)
 - ⁶ See United Nations Children's Fund, *First Call for Children*, New York, 1990.
 - ⁷ See Report of the United Nations Conference on the Environment and Development, Rio de Janeiro, from 3 to 14 June 1992, (United Nations publication, Sales number:S.93. I.8 and corrections.)
 - ⁸ See Final Report of the World Conference on Nutrition, Rome, from 5 to 11 December 1992 (Rome, Food and Agriculture Organization of the United Nations, 1993.)
 - ⁹ See, Report of the World Conference on Human Rights, Vienna, from 14 to 25 June 1993 (A/CONF.157/24 first part)
 - ¹⁰ General Assembly Resolution 47/75.
 - ¹¹ General Assembly Resolution 48/163.
 - ¹² See Report of the Global Conference for the Sustainable Development of Small Island Developing States, Bridgetown (Barbados), from 25 April to 6 May 1994 (United Nations publication, Sales number:S.94. I.18 and corrections.)
 - ¹³ General Assembly Resolution 44/82.
 - ¹⁴ General Assembly Resolution 47/92.
 - ¹⁵ Resolutions 36/8 and 37/7 of the Commission on the Status of Women (Official Records of the Economic and Social Council, 1992, Supplement No. 4 (E/1992/24)), Chapter I, Article C; and *ibidem*, 1993, Supplement No. 7 (E/1993/27), Chapter I, Article C.
- * The Holy See expressed a general reservation on this chapter. The reservation is to be interpreted in terms of the statement made by the representative of the Holy See, at the 14th plenary meeting, on 13 September 1994.

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