Peru

Women of the World:

Laws and Policies Affecting Their Reproductive Lives

Latin America and the Caribbean

The Center for Reproductive Law and Policy
DEMUS, Estudio para la Defensa de los Derechos de la Mujer

In collaboration with partners in

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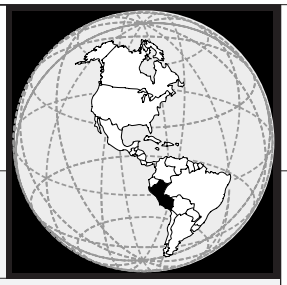
Peru



Statistics

GENERAL

Population

■ Peru has a total population of 23,950,000 inhabitants, of which 50.3% are women.[1] The annual growth rate is approximately 1.8%.[2] The average age of the rural population is 18 years while, in urban areas, it is 22 years.[3]

■ In 1996, the proportion of the Peruvian population living in urban areas was estimated to be 67%.[4]

Territory

■ Peru has a surface area of 1,285,215.6 square kilometers.[5]

Economy

■ In 1993, the World Bank estimated the gross national product per capita to be U.S.$2,110.[6]

■ During the period from 1990 to 1994, the gross domestic product ("GDP") grew by an estimated 4.1%, a highly significant increase over the period from 1980 to 1990, when the growth in the GDP was -0.2%.[7]

■ In 1995, the government invested approximately U.S.$600 million in the health sector, an increase of 122.4% from 1994.[8]

Employment

■ In 1996, approximately 8 million people were employed in Peru.[9] Women represented 28% of the workforce.[10]

WOMEN'S STATUS

■ The average life expectancy for women is 71 years, compared with 67 years for men.[11]

■ Illiteracy continues to be a problem that mainly affects women. The female illiteracy rate in Peru is 11.5%.[12]

■ Unemployment in Peru is 8.4% of the total urban economically active population over the age of 14 years,[13] women and young people being the most affected. The unemployment rate for Peruvian women is 11.8%.[14]

■ Violence against women is a serious social problem nationally. Statistics are difficult to obtain, as many incidents are not reported by the victims. However, according to reports of the Women's Police Delegation of Lima, 6,244 complaints were filed in 1996, while in 1995, the number was 4,181.[15]

■ Despite the fact that many women do not report sexual attacks against them, rape and other sexual assaults hold third place among the most frequently committed crimes in the country.[16] According to some statistics, in 1995, the National Police of Peru registered 8,531 crimes against personal liberty at the national level, of which 48.6% were crimes of rape.[17]

ADOLESCENTS

■ Approximately 38% of the population of Peru is under 15 years old.[18]

■ The average age at first marriage for Peruvian women is 21 years.[19]

■ 13% of women between the ages of 15 and 19 years are mothers,[20] 9% of adolescents have one child and 2% have two children.[21]

MATERNAL HEALTH

■ The total fertility rate is 3.5 children per woman.[22] This figure is reduced to 2.8 children per woman in urban areas and considerably increased to 5.6 children in rural areas.[23]

■ The maternal mortality rate is 265 deaths for every 100,000 live births.[24] It is estimated that 1,670 women, or 5 a day, died for reasons connected with pregnancy, delivery, or postnatal complications in 1993.[25]

■ The infant mortality rate during the period from 1991 to 1996 has been estimated to be 43 deaths per 1,000 live births.[26] 67% of births between 1991 and 1996 were assisted by health care professionals.[27] Only 50% of births nationally took place within a health care facility.[28]

CONTRACEPTION AND ABORTION

■ 64% of Peruvian women of reproductive age use some method of contraception.[29] Within this group, 41% use modern family planning methods and 23% use traditional methods.[30]

■ Of the modern contraceptive methods, 12% of women in stable cohabitating relationships use the intrauterine device, 10% have been sterilized, and 8% rely on hormonal injections.[31] The pill, condoms, and vaginal spermicides are preferred by 6.2%, 4.4%, and 0.7%, respectively, of Peruvian women.[32]

■ It is estimated that there are 270,000 abortions each year in Peru.[33]

HIV/AIDS AND STIs

■ In 1996, there were 4,598 cases of AIDS, reported by the Ministry of Health's Program for the Control of STIs and AIDS.[34] Of these cases, 14.8% were women.[35]

■ The highest percentage of people with AIDS were between the ages of 30 and 39 years (33.9%) and between 20 and 29 years (35.7%).[36]

■ In 1995, the most common sexually transmissible infections among the Peruvian population were gonorrheal infections (6,178 cases) and late stages of syphilis (1,337 cases).[37]

ENDNOTES

1. National Institute for Statistics and Information (NISI), *Encuesta Demografica y de Salud Familiar* 1996 [Demographic Survey of Family Health 1996] , at 15 (1997).
2. *Id*., at 8.
3. *Id*., at 15.
4. *Id*., at 13.
5. *Id*., at 6.
6. World Bank, World Development Report 1996: From Plan to Market, at 189 (1996).
7. *Id*., at 209.
8. Ministry Of Health, General Directorate of the People, Directorate of Social Programs, *Programa de Salud Reproductiva y Planificación Familiar 1996–2000* [Program for Reproductive Health and Family Planning 1996-2000], at 24 (1996).
9. World Development Report 1996, *supra* note 6, at 194.
10. *Id*., at 194.
11. World Almanac Books, the World Almanac and Book of Facts 1997, at 808 (1996).
12. Demographic Survey, *supra* note 1, at 19.
13. Manuela Ramos Movement, Situación Actual de la Mujer. Cuántos Somos y Cómo Estamos [Current Situation of Women. How many and how we are], at 17 (1997).
14. *Id*.
15. *Id*., at 12.
16. *Id*., at 13.
17. Cuanto, S.A., Perú en Números 1996. Anuario Estadístico [Peru in Numbers 1996: Statistical Yearbook], at 405 (1996).
18. Demographic Survey, *supra* note 1, at 15.
19. *Id*., at 89.
20. *Id*., at 54.
21. *Id*.
22. *Id*., at 44.
23. *Id*.
24. *Id*., at 131.
25. Current Situation of Women, *supra* note 13, at 16.
26. Demographic Survey, *supra* note 1, at 118.
27. *Id*., at 134.
28. *Id*., at 139.
29. *Id*., at 69.
30. *Id*.
31. *Id*., at 63.
32. *Id*.
33. Ministry of Health, Office for Statistics and Information, Program for Reproductive Health and Family Planning (information on file with the Center for Reproductive Law and Policy (CRLP)).
34 *Id*. The Ministry of Health, Office for Statistics and Information, Program for the Control of Sexually Transmissible Infections and AIDS (information on file with CRLP).
35. *Id*.
36. *Id*.
37. *Id*.

The Republic of Peru is situated on the central Pacific coast of South America. Ecuador and Colombia border it to the north, Brazil and Bolivia to the east, and Chile to the south.[1] The official languages are Spanish and, in those areas where they are predominant, Quechua, Aymara, and other indigenous languages.[2] Roman Catholicism is the predominant religion. The population is racially diverse: while mestizo and indigenous ethnic groups are the majority, there is also a significant presence of other ethnic groups such as whites, mostly of Hispanic origin, blacks, and Asians.[3]

Peru was the political center of the Incan empire. In the fifteenth century, when the Spanish colonizers arrived, Incan territory included modern-day Bolivia, Argentina, Chile, Ecuador, and Colombia.[4] Its history as a republic began when it gained political independence from Spain on July 28, 1821. Democratic and dictatorial governments then alternated in power. At the end of the 1970s, General Juan Velasco Alvarado seized power by staging a coup.[5] In 1980, Peru returned to democracy with the election of President Fernando Belaunde Terry. In the same year, a long period of internal political violence began that gripped the country for more than thirteen years, aggravating the already acute problem of poverty, causing 27,000 deaths, and internally displacing 600,000 people.[6] President Alberto Fujimori was elected in 1990, and, for the first time in the country's history, in 1992, he dissolved the National Congress. Under Fujimori's government, an economic adjustment and restructuring program was implemented.[7] The end of a period of severe inflation and the capture of a leader of one of the armed opposition groups helped ensure his reelection as president for a second term (1995-2000).[8]

I. Setting the Stage: the Legal and Political Framework

The political and judicial systems constitute the framework for exercising rights and designing policies that affect women's reproductive lives. In order to understand the process by which laws are made, interpreted, modified, and implemented as well as the process by which governments enact reproductive health and population policies, it is necessary to consider the legal and political basis and structure of these systems.

A. THE STRUCTURE OF NATIONAL GOVERNMENT

The Political Constitution of Peru (the "Constitution") lays out the fundamental rights of its citizens, establishes sources of law and the hierarchy of legal norms, and determines the structure and organization of the state. The system of government in Peru is unitary and decentralized,[9] meaning that the country's laws and ministerial policies are executed in a decentralized way throughout the country. The branches of government are the executive, the legislative, and the judicial.

Executive Branch

Executive power is vested in the president of the Republic, who is the head of state and personifies the nation.[10] He or she is elected by universal and direct suffrage, by simple majority, for a period of five years.[11] The president is responsible for government policy and for implementing and enforcing the Constitution, laws, judgments, and other judicial decisions.[12] He or she has the power to propose legislation on his own initiative, and when the Congress of the Republic ("Congress") delegates such power to him.[13] He or she also may issue regulations implementing any law passed by Congress,[14] and can issue urgent decrees exclusively with respect to economic and financial matters, which have the same status as laws.[15] The president appoints ministers who are, in turn, responsible for sectorial policy via the ministries.[16] All presidential acts require the countersignature of one or more ministers in order to be valid.[17] The Council of Ministers, or any of its members, is accountable for its actions to Congress,[18] who can undertake votes of censure or of no confidence. [19] The president has the power to dissolve Congress if it censures or passes votes of no confidence against two consecutive Councils of Ministers,[20] and he or she must then call congressional elections within four months of the Congress' dissolution.[21]

Legislative Branch

Legislative power resides in the Congress of the Republic,[22] which consists of a single chamber of 120 members, elected for a period of five years.[23] The members of Congress represent the nation and cannot be prosecuted or imprisoned without prior congressional authorization.[24] The principal functions of Congress are to enact, approve, modify, repeal, and interpret laws as well as to ratify treaties, approve the national budget, and perform other functions specifically provided for by the Constitution.[25] Congress legislates by passing laws and legislative resolutions,[26] while the president does so through legislative decrees, when Congress has delegated such power to him or her during a fixed period.[27] Other bodies in which state power is vested, namely, autonomous public institutions, municipalities, and professional associations, may propose laws, but only concerning matters within their field or jurisdiction.[28] Citizens also have the right to propose legislation.[29] Once finalized and passed by Congress, bills are sent to the president for his or her approval; he or she must present observations to Congress within fifteen days,[30] or else the bill is deemed approved and is promulgated by Congress.[31] For a bill to be passed by Congress, it requires approval by a majority vote.[32]

Judicial Branch

By administering justice and ensuring that laws are complied with, the judicial system can have a significant impact on the general legal situation of women and, particularly, on their reproductive rights. The Peruvian judicial system is a civil law system derived from Roman law, as distinguished from English common law. The judiciary administers justice in accordance with the Constitution and laws[33] and is composed of the following bodies, each with its own jurisdiction: the Supreme Court of Justice ("the Supreme Court"), the higher courts of justice, the specialized and mixed courts, and the justices of the peace.[34]

The Supreme Court, when sitting in plenary session, is the judiciary's highest body and issues final judgments in certain cases specified by law.[35] Its president represents the judiciary.[36] The higher courts, established in various judicial districts,[37] decide cases on first and on final appeal — with certain exceptions specified by the law — in civil, criminal, labor, and agrarian matters.[38] The specialized and mixed courts are presided over by judges who have primary jurisdiction over civil, criminal, labor, agrarian, and juvenile cases and hear appeals from the justices of the peace.[39] Justices of the peace administer justice in districts or zones where there are no specialized judges, hearing cases on diverse subjects as long as the amount of money in dispute does not exceed a limit set by law.[40] The judges and prosecutors at all levels, including the Supreme Court, are elected by the National Council of the Judiciary[41] which must ratify its choices for these positions every seven years.[42] Only justices of the peace are elected by the general public.[43]

The authorities of rural and indigenous communities may administer justice within their territorial jurisdiction under customary law, "provided this does not violate the fundamental rights of the individual."[44] Legislation provides for coordinating this special jurisdiction with that of the national judiciary.[45]

The Office of the Public Prosecutor, the Public Defender's Office ("Ombudsman"), and the Constitutional Court are all autonomous mechanisms for protecting the rule of law in Peru. The Office of the Public Prosecutor is responsible for, among other functions, initiating cases before the judiciary to defend the legal order and the public interest[46] and representing society in legal proceedings.[47] The Ombudsman is obliged to defend individual and collective human rights and to supervise the administration and provision of services to the citizenry.[48] The Constitutional Court has a specialized jurisdiction empowering it to ensure respect for the Constitution by interpreting constitutional norms and issuing judicial decisions related to the Constitution.[49]

B. STRUCTURE OF TERRITORIAL DIVISIONS

Regional and local governments

The regional and municipal governments were created by the process of decentralization, which was intended to encourage the comprehensive development of the country.[50] Peru is divided into regions, departments, provinces, and districts.[51] These territorial divisions enjoy political, economic, and administrative autonomy over matters within their jurisdiction.[52] However, regional and local governments submit their budgets to the General Comptroller of the Republic and are subject to financial control in accordance with the law.[53] The regions are formed at the initiative and by the decision of the inhabitants of bordering departments, by a process of referendum.[54] The president of the region is elected by direct vote, for a period of five years,[55] and, together with the Regional Coordinating Council, forms the organs of government for the region.[56] The regions carry out and coordinate socioeconomic plans and programs, as well as other functions of government.[57] They must support local governments without substituting or duplicating their areas of responsibility.[58] The provincial and district municipalities are the instruments of local government and are represented by mayors elected by direct vote for a period of five years.[59]

C. SOURCES OF LAW

Domestic sources of law

The laws that determine the legal situation of women and their reproductive rights are derived from various sources. In Peru, the Constitution and legislation are the principal sources of law.[60] Laws follow a hierarchical principle that determines the supremacy of one norm over another where the two conflict.[61] Peru's sources of law in hierarchical order are as follows: the Constitution; the laws or norms with the force of law;[62] international treaties, decrees, and regulations. In exceptional cases, jurisprudence[63] is a source of law by express mandate of the law.[64] General legal principles[65] are specifically applicable in the area of health where there are omissions or deficiencies in the law.[66]

The Constitution prevails over all ordinary laws.[67] If a law conflicts with the Constitution, judges must give precedence to the Constitution.[68] A law can be repealed only by another law or a legal decision declaring its unconstitutionality.[69] No law may have retroactive effect, with the exception of criminal laws where they favor the defendant.[70] Laws enter into effect the day after they are published in the *Official Daily Gazette*, unless they expressly state otherwise.[71]

International sources of law

Numerous international human rights treaties recognize and promote specific reproductive rights. In Peru, treaties

become part of Peruvian national law once signed and ratified.[72] The president is responsible for concluding and ratifying treaties,[73] with the prior approval of Congress, where the treaty in question concerns such matters as human rights, sovereignty, national defense, or financial obligations of the state; or where it creates, modifies or abolishes taxes, among other matters.[74] If a treaty affects the Constitution, the latter must be amended before the treaty can be ratified.[75] The president has the power to withdraw from treaties, provided he informs Congress,[76] except where the treaty is subject to congressional approval, in which case withdrawal also requires congressional approval.[77]

Peru is a member state of the United Nations and the Organization of American States. As such, it has signed most of the relevant treaties that comprise the universal system for the protection of human rights[78] and, in particular, those that refer to the protection of women's rights in the universal and Inter-American system, such as the Convention on the Elimination of All Forms of Discrimination Against Women[79] and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (the Convention of Belém Do Pará).[80]

II. Examining Health and Reproductive Rights

In Peru, issues related to the reproductive health of women are subsumed under national policies on health and population. Therefore, in order to understand reproductive rights, it is necessary to analyze health and population programs as well as the laws related thereto. The Peruvian government has declared the 1990s the Decade of Family Planning.[81]

A. HEALTH LEGISLATION AND POLICY

The Constitution establishes that all the persons have the right to health care.[82] The General Law on Health (1997)[83] provides that health care is a matter of public interest and, as such, is regulated, overseen, and promoted by the state.[84] The state promotes progressive, universal health care for its citizens and guarantees freedom of choice regarding health care systems without favoring the state system that it is required to provide for the uninsured population.[85] The state determines and carries out its health policy at the national level through the Ministry of Health.[86] Any norm or regulation relating to health must be endorsed by this authority[87] and the public entities in charge of environmental or sanitary matters are also under its supervision, as are the various professional associations for health sciences, with respect to such associations' control over the professional activities of their members.[88]

Objectives of the health policy

The health policy for the five-year period from 1995 to 2000 seeks, among other objectives, to achieve greater coverage of health services for the population, to modernize the technological and institutional sectors, to promote greater institutional efficiency and efficacy in the provision of services, to better coordinate the private and state-supported health services, and to promote change in the institutional culture that exists within the Ministry.[89] In 1994, the government initiated the Program for Basic Health Care for All[90] to focus attention on these issues nationwide.[91] The Program for Strengthening Health Care Services[92] and Project 2000, currently being developed, are dedicated to improving health services.[93]

So far as programs specifically aimed at women's health are concerned, in 1995, the Ministry of Health reconceptualized and revitalized the Program for Women, Health and Development ("PWHD"),[94] which was created in 1990.[95] This program specifically incorporates gender-sensitive methodologies into health activities relating to women.[96] Its general objective is "to contribute, from within the health sector, to the elimination of the various forms of discrimination against women which contribute to the deterioration of women's health and that of their families."[97] It is proposed that the activities of the program be carried out at different levels and by various sectors.[98] In October 1996, the Ministry of Health announced the commencement of two programs within the framework of the PWHD: the Project on Violence Against Women and Girls and the Project for Investigation of Gender Equality in the Quality of Health Care from the Social and Emotional Perspective.[99] The former program relies on specialized non-governmental organizations ("NGOs") to carry out its activities and seeks to devise more coordinated responses and develop local strategies to deal with domestic violence.[100] The objective of the latter project is to seek new indicators to measure gender equality in the provision of medical services, exclusively from the "social and emotional perspective" of its users.[101] Both projects are under way in certain areas of the country that the Ministry of Health[102] considers to be a priority.

Infrastructure of health services

The General Law on Health establishes state responsibility for ensuring adequate coverage and quality of safe and accessible health care services for the public.[103] All types of health care establishments are subject to control by the national health authorities.[104] The infrastructure of the health sector comprises all the establishments owned and run by the Ministry of Health, the Social Security Institute of Peru, the Armed Forces, and the Police, as well as the private entities offering health services.[105] In 1992, there were 4,630 health care establishments in

Peru: 455 hospitals, 1,083 health care centers, and 3,079 health posts, not including private health establishments.[106] The health centers and posts provide the community with primary health care of a basic nature and are the core of the health care network, comprising the various entities of the Ministry of Health's system.[107] Hospitals are classified according to their capacity to handle complex cases, the number of beds, and geographical jurisdiction.[108] All health establishments are required, without exception, to attend to anyone needing emergency care.[109]

As far as human resources are concerned, in 1992, of a total of 19,969 general health care professionals, 12% were obstetricians and 6% were nurses.[110] In the same year there were 16,433 doctors nationwide, of which, 9.6% were obstetricians or gynecologists.[111] The geographic distribution of human resources, which the Ministry of Health has found to be inadequate, and the lack of training and motivation of health professionals are considered to be the principal problems in the field.[112] The most remote, rural communities are the most affected by the inadequate distribution: in 1992, there was one doctor for every 12,000 inhabitants in the most remote provinces, one for every 8,000 in the less remote provinces, and an average of one for every 800 inhabitants in Lima.[113] In 1994, only 32.6% of the population had medical insurance. 25% of the remaining 73.8% did not use any modern health care services, and dealt with their problems using alternative medicine, such as medicinal herbs and other remedies.[114]

Cost of health services

In 1995, the sector's budget was 1,272 million new soles (approximately U.S.$600 million), which was a 122.4% increase over the previous year's budget.[115] The General Law on Health of 1997 provides that the government's budget should be primarily geared towards wholly or partially funding health care activities for low-income individuals.[116]

Regarding the cost of health care, in 1981 the Ministry of Health created a fee system that is scaled according to the type of service and the economic status of certain vulnerable sectors, especially rural and low-income urban groups.[117] This ministerial decree provides that basic service, medicines, diagnostic tests, and treatment in health centers be free of charge.[118] It also covers all consultations, emergency services, hospitalization, medicines, and auxiliary examinations in local hospitals,[119] as well as treatment during pregnancy, childbirth, and postnatal care.[120] Finally, it also covers services and medicines in specialized[121] or highly specialized[122] hospitals, for qualifying low-income individuals.[123] In 1985, the Population Law provided that health care services for pregnancy, childbirth, and postnatal care should be provided with "a tendency towards their provision free of charge,"[124] modifying the previous 1981 decree that established that such services would be totally free.

In 1990, the Ministry of Health's establishments began to charge fees for clinical services in order to generate their own resources,[125] although there was no official modification of laws or policies on this subject. The total amounts generated and the fees that have been charged have not been made public. Evaluating the repercussions of the application of hospital fees, in 1995, the Ministry of Health stated that the partial change in health care funding, begun in 1990, had not brought about qualitative changes in health care services and "have probably had a negative impact on the population that traditionally relies on public establishments, making access more difficult for the poor and the homeless."[126] The demand on hospitals by the most destitute decreased between 1991 and 1994 from 30.1% to 28%, while the lowest-income middle classes[127] increased their demand from 34.8% to 45%.[128] The Ministry of Health stated that in certain cases hospitals were as much as 65% self-financing.[129]

The General Law on Health of 1997 does not expressly or implicitly abolish the 1981 standard establishing free health care[130] but does state that health establishments and medical staff are obliged to inform patients and their families "about the economic conditions for the provision of health care services as well as the other terms and conditions for the provision of this service."[131] The law does not establish what these "economic conditions" are. In the field of reproductive health, the only service guaranteed by law to be totally free of charge is the provision of the full range of contraceptive methods.[132]

The social security health care system, under the Institute for Social Security of Peru ("ISSP"), pays for the health care provided to those affiliated with ISSP through funds obtained from its compulsory contributors (9% of active workers' and 4% of retired workers' remuneration), funds obtained from voluntary contributors, and from investments and legally authorized funds.[133]

Regulation of health care providers

The General Law on Health currently in force contains a chapter on regulating the medical and related professions, including technical and auxiliary health care workers.[134] The law provides that in order to practice medicine, dentistry, pharmacology, or any other professional activity related to health care, a person must hold a professional degree, belong to a professional association if so required, and fulfill any specialist or other legal requirements.[135] The codes of ethics and other norms set by each professional association establish limits, penalties, and other prohibitions as provided by the General Law on Health.[136]

Information about "medical acts"[137] is confidential. Whoever divulges such information incurs civil or criminal responsibility, as well as any sanctions set out in the ethical

code of the relevant professional association.[138] Exceptions to the patient confidentiality rule are cases of illnesses or injuries that are required to be reported by law,[139] which include criminal violence and illegal abortion.[140] Only doctors can prescribe medication, and dentists and obstetricians may do so only in their own area of practice.[141] Experimental research is governed by the ethics set out in the Helsinki Declaration.[142] Medical professionals and technical and auxiliary staff are liable for damages or injuries caused to patients through negligence in their professional practices.[143] The General Health Law provides warnings and fines applicable to health care practitioners, without excluding other sanctions provided for in the applicable professional code of ethics.[144]

The Penal Code criminalizes certain acts that normally involve participation by health care professionals, such as causing injuries or death through negligence;[145] performing abortions;[146] fraud against the civil law;[147] breach of patient confidentiality;[148] crimes against public health;[149] illicit trafficking of drugs or toxic substances;[150] and crimes against public trust.[151]

In the case of traditional birth attendants without formal qualifications, commonly known as midwives (*comadronas*), there is a manual prescribing guidelines for their training in force since 1976.[152]

Patients' rights

The Constitution requires the state to defend the interests of consumers and service users.[153] The General Law on Health provides that those who use health care services are entitled to confidentiality; respect for their dignity; privacy; and to not be subjected, without their consent, to examination or treatment, to demonstrations for educational purposes, or to medication or treatment for experimental purposes.[154] Individuals also have the right to demand that health care services meet standards that are "acceptable by professional procedures and practices."[155] Everyone has the right to medical information without having to explain why he or she is requesting it.[156] Likewise, everyone has a right to receive emergency medical attention in any health establishment,[157] subject to the conditions regarding reimbursement of costs and other conditions of service provided by the General Law on Health.[158] The law prohibits discrimination based on the illness from which a person is suffering.[159] With the exception of emergency care, the consent of the patient or a legal representative or, alternatively, judicial authorization, is required before any treatment or surgery may be administered.[160]

Health establishments are jointly liable for any injury or damage caused to a patient due to the negligence of health professionals, technicians, or assistants who work for the establishment.[161] If the establishment has not provided its staff with adequate means for treating patients, then it is exclusively liable for any injury or damage caused.[162] The Penal Code provides that if a health provider causes minor injury to a patient, he or she shall be sentenced to a maximum of one year in prison or a fine of between 60 and 120 days' wages.[163] If the damage caused to the patient is serious, the sentence is for between one and two years' imprisonment and a fine of between 60 and 120 days' wages.[164] If the patient dies because the professional, technician, or assistant fails to observe the technical rules governing his or her professional activities, the penalty is two to six years' imprisonment and professional disqualification.[165]

The General Law on Health provides that breaches of its standards may be sanctioned by warnings, fines, or closure of the health establishment in question,[166] depending on the degree of damage caused to the patient's health, the gravity of the breach of the law, and whether the person responsible has committed other similar breaches.[167] Sanctions under this law do not exclude civil or criminal suits that could arise from such cases.

B. POPULATION, REPRODUCTIVE HEALTH, AND FAMILY PLANNING

The Constitution establishes that the objective of the National Policy on Population is to raise awareness concerning responsible parenthood and to protect the right of families and individuals to make their own decisions concerning reproduction.[168] To meet these aims, the state undertakes to provide adequate education and information services as well as access to those methods of family planning that do not adversely affect life or health.[169]

The population and family planning policies currently in force are contained within two main normative instruments: the National Population Law ("Population Law")[170] and the Program on Reproductive Health and Family Planning 1996-2000.[171] In 1995, the Population Law was modified to allow sterilization as a birth control method[172] and to integrate the objectives and strategies of the above-mentioned program.

Population laws and policies

Peru's national population policy, set out in its Population Law, has the following objectives: to promote a stable and harmonious equilibrium between the growth, structure, and territorial distribution of the inhabitants of the country; to encourage and ensure free, informed, and responsible choice by individuals and couples regarding the number and spacing of children; and to reduce the number of deaths caused by disease, particularly among mothers and children.[173] The Population Law gives the state a role as promoter in implementing family planning programs through educational and informational activities and services and provides that such programs must respect the individual's fundamental rights[174] and the dignity of

the family.[175] Peru's population policy treats mothers, children, adolescents, and the elderly as priority groups. The institution of marriage, the family, and responsible parenthood receive special protection under the terms of the law.[176]

The Population Law contains a special chapter on health aspects of Peru's population policy.[177] It establishes that maternity and infant health care services are a priority and a "tendency towards their provision free of charge."[178] It prohibits coercion, "manipulation," and conditioning by public or private institutions in the provision of family planning services.[179] Finally, the law promotes breast-feeding for its nutritional benefits to the child and its contribution to birth spacing.[180]

The responsibility for fulfilling the objectives of the national population policy is shared by various governmental entities.[181] The body in charge of formulating national programs and coordinating measures proposed by local and regional governments and mass communication programs on the theme of population[182] is the National Population Council ("NPC").[183] The NPC is a decentralized public institution and has legal status within internal public law. Its president represents it.[184]

Reproductive health and family planning laws and policies

Peru's laws and policies related to reproductive health face the second-highest maternal mortality rate in Latin America, after Bolivia.[185] The General Law on Health reaffirms the individual's constitutional right to freely choose his or her preferred method of contraception and to obtain adequate information about reproductive health and available family planning options prior to selecting a method.[186] The Ministry of Health has determined that its health policy for the period from 1996 to 2000 "shall be guided by the fundamental principle of guaranteeing public access to the highest level of quality information on the meaning and importance of reproductive health and family planning."[187]

In February 1996, the Ministry of Health approved the Program on Reproductive Health and Family Planning 1996-2000 ("Program on Reproductive Health and Family Planning"),[188] a policy instrument that contains the objectives, goals, activities, and government strategies concerning reproductive health and family planning. The program's mission is to provide services that promote reproductive health and to provide preventive, curative, and rehabilitative reproductive health services[189] and, in particular, "to attend to women's reproductive health in all stages of their lives."[190] It recognizes reproductive health as a fundamental human and social right.[191] The family planning component of the program is considered to be a central aspect of reproductive health, intended to ensure that men and women have the ability and freedom to decide on the number of children they wish to have and the right to obtain assistance with fertility problems.[192]

The language and orientation of the Program on Reproductive Health and Family Planning recognizes the fundamental importance of gender equality and it acknowledges that the reproductive health of women is dependent on their social and economic status.[193] Within the program's framework, the Ministry of Health has identified the following as priority problems in reproductive health: (a) the high maternal and perinatal mortality rate; (b) the high levels of unmet needs in family planning; (c) the increase in high-risk reproductive behavior among adolescents; (d) the increasing risk to pregnant women of sexually transmissable infections ("STIs") that especially affect women of fertile age, adolescents, and newborn babies; (e) the high morbidity and mortality rate among women caused by treatable gynecological illnesses that become life-threatening due to the lack of access to health services;[194] and (f) the inequity in the status of women.[195] The population most affected by the problems described above consists of women, infants of low-income families, adolescents, women living in rural areas, and women of certain ethnic and cultural groups.[196]

The goals of the Program on Reproductive Health and Family Planning are, among others, to achieve a total fertility rate of 2.5 children per woman;[197] to reach a total contraceptive prevalence rate of 50% of women of reproductive age, 70% of women in stable relationships, and 60% of all adolescent girls;[198] to reach a prenatal care coverage rate of 75% of probable pregnancies (the current rate is 67%);[199] to ensure that at least 75% of births are attended by a professional health care provider (the current rate is 56%);[200] to improve the screening for cervical cancer to reach 30% of women of reproductive age; to improve the screening of STIs to reach 60% of women of reproductive age, adolescents, and infants who are at risk; and to support educational programs so that 100% of school children receive sex education by the end of their secondary schooling.[201] To achieve these goals, the Ministry of Health has proposed strategies to initiate the democratization of information on reproductive health and family planning and to ensure universal access to such services.[202] The program also proposes that reproductive health and family planning services be decentralized with the coordinated participation of NGOs and both the public and private sectors and that these services become self-funding.[203]

With the objective of standardizing the existing regulations and procedures for family planning programs, the Ministry of Health published a manual of procedures and norms for health care providers in 1992 called the "Manual on Reproductive Health: Methods and Procedures" ("RH Manual").[204] The RH Manual complements the Program on Reproductive

Health and Family Planning, and its provisions on health care providers are binding .[205]

Government delivery of family planning services

Family planning services are provided by the state through all public health sector establishments.[206] In 1995, the Ministry of Health enacted a resolution requiring all such establishments to consider family planning a matter of priority and to strengthen their family planning programs, particularly those devoted to disseminating information on the subject.[207] Most important, the regulation requires the provision of the full range of contraception free of charge as a means to ensure freedom of choice.[208] In 1996, the program on Reproductive Health and Family Planning underscored that contraceptive services and methods provided by the program, including surgical sterilization, should be offered free of charge.[209] The Demographic and Family Health Survey[210] points out that the Ministry of Health and the Social Security Institute of Peru are the principle providers of modern contraceptive methods, with a coverage of 70% of users.[211] The remaining 30% obtain contraceptives from the private sector, principally pharmacies and drug stores (15.4%) and NGOs (3.3%).[212]

Obstetric professionals render the majority of reproductive health and family planning services.[213] In establishments that lack doctors and obstetricians, the nursing staff assumes responsibility for maternal health care.[214] It is estimated that 10% of nurses employed by the Ministry of Health perform some kind of services related to reproductive health.[215]

C. CONTRACEPTION

Prevalence of contraceptives

The demographic survey DFHS96 shows that between 1991 and 1996, the prevalence of modern contraceptive methods among cohabiting women increased from 57% to 64%.[216] Forty-one percent use modern methods and 23% use traditional methods.[217] The rate of prevalence of contraceptive methods is higher in sexually active women who are not cohabiting (76%).[218] The contraceptive methods most commonly used are the intrauterine device ("IUD"); (12%) and female sterilization (10%).[219] The public sector (the Ministry of Health and the ISSP) inserts 76.4% of IUDs and performs 78.3% of female sterilizations.[220] The use of modern methods such as the pill, the IUD, hormonal injections, condoms, and others, is more frequent among women living in urban areas who have a higher level of education.[221] The rhythm method or periodic abstinence is the most prevalent traditional method used by Peruvian women who cohabit (18%) as well as those who do not cohabit (24.6%), in urban and rural areas.[222]

During the period from January to August of 1996, the Ministry of Health performed 149,213 insertions of IUDs, 35,558 surgical sterilizations, and 3,376 vasectomies.[223] It provided 1,634,269 packets of pills, 786,269 hormonal injections, 8,369,386 condoms, and 4,267,413 vaginal suppositories.[224] It is estimated that 636,795 couples received family planning services during this period.[225]

The contraceptive methods currently provided by government-sponsored family planning programs include both modern and traditional methods:[226] barrier and hormonal contraceptives; IUDs; permanent (surgical) methods; and traditional methods such as periodic abstinence.

Legal status of contraceptives

The General Law on Health provides that a person has the right to choose freely his or her method of contraception.[227] The only legal prohibition in this regard in Peruvian legislation is the prohibition in the Population Law against abortion as a method of contraception.[228] The General Law on Health requires the client's prior consent before initiating any course of contraception, and, in the case of any permanent (surgical) method, the consent must be in writing.[229]

Emergency or postcoital contraception is regulated by the RH Manual,[230] which provides that this method may be used in cases of unprotected sexual relations, rape, or failure of barrier contraceptive methods.[231] According to the RH Manual, the morning-after pill should be used within seventy-two hours of unprotected intercourse.[232] Although emergency contraception is not specifically governed by any national legislative norm, the RH Manual itself is binding throughout the country.[233]

Contraceptives must be legally approved by and registered with the National Formulary of Medicines prior to being marketed nationally.[234] The formulary inscribes those medicines that the state deems necessary to the preservation, maintenance, improvement, or recovery of health and have been properly approved.[235] These medicines cannot be sold on the street.[236] The Directorate General for Medicines, Supplies and Drugs ("DIGEMSD") is the body within the Ministry of Health responsible for controlling, supervising, and regulating the quality, use, commercialization, registration, supply, and distribution of such products at the national level.[237] DIGEMSD can suspend or cancel the registration of the aforementioned products if they fail to meet the technical specifications by which they were approved and registered, or if the World Health Organization determines that the product is unsafe or ineffective.[238]

Regulation of information on contraception

The General Law on Health establishes the right of users of contraception to receive adequate information regarding "available methods, their risks, contraindications, precautions, warnings, and physical, physiological, or psychological effects which

their use or administration can cause," before any method is prescribed or administered.[239]

Contraceptives that are included in the health registry and are authorized to be sold without medical prescription may be advertised in the media.[240] The Ministry of Health may authorize publicity of pharmaceutical products sold by prescription only "as an exception and with due justification,"[241] in which case the advertisement must direct the consumer to read the instructions accompanying the product.[242] The body responsible for standardizing and controlling advertising and publicity regarding medicines, pharmaceutical ingredients, and drugs, is the Executive Office for Inspections and Inquiries of the DIGEMSD.[243]

Sterilization

Sterilization was the second-most commonly used contraceptive method in Peru in 1996.[244] Currently the percentage of sterilizations in women in a stable cohabiting relationship is 11.3% in urban areas and 5.4% in rural areas.[245] Until 1995, sterilization was prohibited as a method of family planning by the Population Law.[246] The recent General Law on Health now regulates sterilization.[247] This law provides that in the specific case of sterilization and other permanent methods preventing conception, the patient's prior consent must be given in writing.[248] Thus, it modifies the earlier provision in the RH Manual,[249] which provided that a woman needed her spouse's written consent before undergoing surgical sterilization.[250] The RH Manual continues to regulate the requirements, indications, contraindications, advantages, disadvantages, procedures, and surgical techniques for surgical sterilization. The following surgical methods are authorized: vasectomy, tubal ligation by minilaparatomy using local anesthetic, and laparoscopy for female sterilization.[251] Voluntary sterilization services must be provided by the state free of charge, through the various health sector facilities.[252]

The General Law on Health guarantees the right to seek fertility treatment through "assisted fertility treatments."[253] The law requires, however, that a woman who is impregnated must also be the genetic mother of the child she bears.[254] To use such treatments, the biological parents must give their prior written consent.[255]

D. ABORTION

Legal status of abortion

In Peru, abortion is illegal and is considered to be a crime against life, body, and health,[256] with the exception of therapeutic abortions, which may be performed to save a woman's life or to prevent serious and permanent damage to her health.[257] The Constitution provides that human life begins at conception and that the "conceived" is subject to the law insofar as this is in its favor.[258] Furthermore, the Population Law prohibits abortion as a method of family planning.[259]

Because abortion is illegal, the Population Law establishes the state's commitment to adopting "appropriate measures, coordinated by the Ministry of Health, to help women avoid having to undergo abortions."[260] Abortion is the second leading cause of maternal death (22%) in Peru.[261] It also establishes the state's commitment to "provide medical treatment and psychosocial help to those women who have undergone an abortion."[262] In 1994, it was estimated that 30% of available beds in facilities that provide obstetric and gynecological services were being used to care for women suffering from complications following abortion.[263] In 1996, the Family Planning and Reproductive Health Program decided that its immediate plan to reduce maternal mortality[264] "should confront the problem of reducing the number of deaths caused by complications following illegal abortions resulting from unwanted pregnancies."[265] However, the General Law on Health has recently stated that doctors must inform directors of health establishments of cases indicating that an illegal abortion was performed and that directors are required to report any such case to the competent authorities.[266] Where the police and District Attorney's Office require information concerning a case of abortion, the doctor is obliged to provide it[267] and, in such a case, is exempted from relying on patient confidentiality.[268]

The Penal Code provides that the following are guilty of criminal abortion: "a woman who induces her own abortion or consents to another performing it for her,"[269] "any person who performs an abortion with the patient's consent" and "any person who performs an abortion without the woman's consent."[270] It also penalizes "a person who causes a miscarriage through violence," whether or not that person intended to do so.[271]

Requirements for obtaining legal abortion

A therapeutic abortion may be performed legally, provided it is the only means of saving the pregnant woman's life or of avoiding serious and permanent damage to her health.[272] In addition, it is a prerequisite that the abortion be performed by a doctor and that the pregnant woman or her legal representative consent to the abortion.[273]

Penalties for abortions

Women who induce their own abortion or consent to another performing an abortion are sentenced to a prison term of not more than two years or to community service of between 52 and 104 days.[274] There are three cases in which it has been established that the prison sentence shall not exceed three months: where the pregnancy is either the result of extramarital rape or nonconsensual artificial insemination outside marriage or where it is likely that the fetus will be born with serious physical or mental defects and this has been diagnosed by a doctor.[275]

Persons who perform an abortion with the pregnant woman's consent receive prison sentences of between one and four years.[276] If the abortion was performed without the woman's consent, the sentence is three to five years.[277] In either case, if the woman dies and the person responsible could have foreseen such a result, the penalty is two to five years and five to ten years, for an abortion performed with and without her consent, respectively.[278] Doctors, obstetricians, pharmacists, or any other health care professionals who perform an abortion are, in addition to the above-mentioned criminal penalties, subject to between one and ten years' suspension from practice.[279] Any person who unintentionally causes a miscarriage with a violent act against a woman whom he or she knew to be pregnant is liable to receive a prison sentence of up to two years or between 52 and 104 days' community service.[280]

E. HIV/AIDS AND SEXUALLY TRANSMISSIBLE INFECTIONS (STIs)

Examining HIV/AIDS within the framework of reproductive rights is essential, insofar as the two areas are interrelated from both medical and public health standpoints. Moreover, a comprehensive evaluation of laws and policies affecting reproductive health in Peru must examine the situation of HIV/AIDS and STIs given the dimensions and the implications of both diseases as reflected in the following statistics. In Peru, between 1983 and 1996, there were 4,598 cases of AIDS.[281] Of this total number of cases, 678 were women (14.8%) and 3,902 were men (85.2%).[282]

Laws on HIV/AIDS and STIs

Legislation regarding HIV/AIDS and STIs in Peru has developed in conjunction with the evolving regulation of the handling of human blood. In 1988, on the basis of research conducted to assist in the formulation of the first program for the prevention and control of HIV/AIDS (1987),[283] the Ministry of Health passed a law requiring public and private institutions to conduct tests for AIDS, hepatitis B, and syphilis before performing transfusions of blood, components of blood, or blood derivatives.[284] In 1995, the acquisition, donation, and transfusion of blood was declared to be a matter of public interest and order.[285] The sale and marketing of human blood for transfusions and export is prohibited.[286] With respect to blood donations, written consent is required from the donor as well as a detailed evaluation of his or her medical history and clinical and laboratory examinations of the blood.[287] If an illness is detected in the donor's blood after performing the procedure, the health facility must inform and advise the person on possible treatments.[288]

In 1996, a law was passed sanctioning the formulation of a National Plan to Fight AIDS (known by its Spanish acronym, CONTRASIDA)[289] and establishing certain rights for people infected with HIV/AIDS. According to this law, tests for diagnosing HIV/AIDS require prior consent and are voluntary, except in the case of blood or organ donors and other cases for which testing is required by law.[290] HIV/AIDS test results and information as to the certain or probable cause of infection are confidential.[291] Only the Attorney General's Office and the judiciary may request such information for purposes of investigating a crime and only when the circumstances so require.[292] Health care professionals are required to notify the Ministry of Health of any AIDS diagnosis, even where the patient is deceased.[293]

The above-mentioned law also protects the labor rights of a person with HIV/AIDS for as long as that person is able to perform his or her duties.[294] The termination of a contract of employment is null and void if based on the the employee's HIV/AIDS status. In such a case, the employee is entitled to be reinstated.[295] Furthermore, any person who has HIV/AIDS has the right to comprehensive medical treatment and to any necessary state benefits.[296] The state must provide such treatment through the health facilities it administers, or those in which it has some direct or indirect participation. The right to comprehensive medical treatment and insurance coverage is enforceable in the private domain if it has been established pursuant to a contractual relationship.[297]

Policies on prevention and treatment of HIV/AIDS and STIs

In 1987, the Ministry of Health proclaimed the control, notification, and treatment of AIDS to be of public necessity and utility.[298] It also established the system of compulsory reporting of suspected cases by doctors as well as public and private health institutions throughout the country.[299] Such reports are deemed to be strictly anonymous and confidential, and in no circumstances may they be used as evidence or for publicity.[300] Ensuring compliance with these norms is the responsibility of the Technical Commission for the Certification, Assessment, and Registration of such cases, which is an entity within the Ministry of Health.[301] In 1987, the National Multisectorial Program for the Control of AIDS was approved[302] for the purpose of educating the population about the prevention of this disease and to detect, treat, and monitor cases. The program endeavors to exercise permanent oversight over AIDS cases and, in particular, to obtain a profile on prevailing causes of the disease through surveys.[303]

In 1996, a law was enacted, CONTRASIDA, that delegated to the Ministry of Health the task of formulating the National Plan to Fight HIV/AIDS and STIs.[304] This plan has the following objectives: (a) to coordinate and facilitate the implementation

of national strategies to control HIV/AIDS and STIs; (b) to promote national and international economic and technical cooperation to prevent, control, and treat these diseases; and (c) to propose legal reforms to facilitate and guarantee appropriate efforts to combat these diseases in Peru.[305] In 1996, a normative instrument was also approved to standardize the technical and administrative principles applicable to health care institutions with respect to the prevention and control of STIs and HIV/AIDS.[306] The document is called "Doctrine, Norms, and Procedures for Controlling STIs and AIDS in Peru" and is binding on all health care establishments in the country.[307]

III. Understanding the Exercise of Reproductive Rights: Women's Legal Status

Women's health and reproductive rights cannot be fully evaluated without analyzing their legal and social status. The legal status of women not only reflects societal attitudes that affect their reproductive rights but often has a direct impact on women's ability to exercise such rights. The legal context of relationships between couples and within families, women's educational level, and access to economic resources and legal protection generally determine women's ability to make choices about their reproductive health needs and to exercise their right to obtain such services. In Peru, recent governmental evaluations of women's reproductive health have shown a direct relationship between poverty, lack of education, social marginalization, discrimination, and lack of attention to women's reproductive rights and maternal mortality.[308] Sixty percent of Peruvian women are poor[309] and have limited understanding of their social and economic rights.[310] Domestic violence continues to have serious repercussions on their overall health and reproductive lives.[311] In 1996, 18% of Peruvian households were headed by a woman (19.2% in urban areas and 15.7% in rural areas).[312]

The Constitution recognizes the right to equality before the law and the right not to be discriminated against on grounds of origin, race, sex, language, religion, opinion, economic condition, or for any similar reason.[313] It recognizes the right not to be subjected to moral, psychological, or physical violence[314] and establishes the state's special obligation to protect mothers and children.

A. RIGHTS WITHIN MARRIAGE

Marriage law

The Constitution guarantees protection of the family and provides that the community and the state are responsible for promoting marriage, recognizing it as a natural and fundamental institution of society.[315] Regulation of the legal requirements to enter into marriage and of the causes of separation and dissolution is in the purview of the law.[316] The Peruvian Civil Code[317] provides that the minimum age for marriage, without parental consent, is 18 years.[318] Spouses have equal rights, obligations, and authority within the home.[319] During marriage, the woman has the right to adopt the husband's surname and to keep it even in the event of separation. Such right ceases upon divorce or the annulment of the marriage.[320] Both spouses participate in administering the household, jointly agreeing on where the matrimonial home will be located, whether to move, and decisions regarding the family's finances.[321] Both are obliged to contribute to the maintenance of the family according to their abilities and means, but if this responsibility falls on one spouse alone, the other must provide support.[322] Both may practice any profession or occupation permitted by law and may work outside the home with the express or tacit consent of the other. If one spouse is opposed, a judge can authorize the other to work if it is in the family's best interest.[323] Spouses must be faithful, assist one another, and cohabit in the matrimonial home.[324]

Legal representation of the married couple is jointly exercised by both spouses, especially with regard to disposing of or creating encumbrances on joint property; however, in the day-to-day administration of the home, either spouse may legally represent the couple.[325] Each spouse retains the right to freely administer, dispose of, or create encumbrances on his or her own property.[326] If a spouse does not contribute the income or proceeds of his or her own property towards the maintenance of the home, the other may request that the authority to administer such property be transferred to him or her, in whole or in part.[327] Married couples are obliged to maintain and educate their children.[328] Parental authority and legal representation of the children is exercised jointly by the spouses during their marriage. In the event of disagreement, a family court judge may resolve the conflict.[329]

Polygamy is not permitted in Peru. The Penal Code treats cases of bigamy as crimes against the family and applies a custodial sentence of between one and four years to a married person who marries again, and between one and three years to a single person who knowingly marries another who is already married.[330]

Regulation of domestic partnerships

A recent demographic survey shows that 24% of Peruvian women between the ages of 15 and 49 are living in domestic partnerships (*uniones de hecho*).[331] The Constitution defines and supports domestic partnerships by establishing that a stable relationship between a man and woman, neither of whom is married to another, gives rise to joint ownership of property,

similar to the regime governing matrimony.[332] The Civil Code adds that such a union must have goals and obligations similar to those of marriage and must have existed for at least two consecutive years.[333] Domestic partnerships are terminated by death, continuous absence, mutual agreement, or by a unilateral decision (abandonment).[334] In the case of an alleged domestic partnership that does not meet the legal prerequisites, a claimant is entitled to claim only unjust enrichment against the other party.[335]

Divorce and custody law

The Peruvian Civil Code provides for a preliminary stage prior to divorce, known as physical separation,[336] and for the dissolution of matrimony, or divorce.[337] The following are some of the grounds for separation or divorce: adultery, physical or psychological violence; attempted murder of or serious injury to the other spouse; unjustified abandonment of the matrimonial home for more than two years; dishonorable conduct that makes communal life untenable; the habitual and unjustified use of drugs or addictive substances; serious venereal disease contracted after the marriage; homosexuality arising during the marriage; being sentenced to a prison term exceeding two years for a crime involving deceit or fraud; and consensual separation for more than two years following the marriage ceremony.[338]

In regulating divorce, the Civil Code is concerned with three issues: the division of matrimonial property, alimony and child support, and custody of the children. Once the marriage has been liquidated, the matrimonial property[339] is divided equally between the spouses or their respective heirs.[340] The spouse who is "at fault" in a divorce loses his or her right to any benefits generated by the other spouse's own property.[341] The mutual obligation of spouses to support one another financially ends with divorce. A judge determines the amount of child support to be paid by either or both parents.[342] The parents are obliged to maintain their children for as long as they are minors; adults over 18 years are entitled to maintenance only if they are unable to support themselves because they are studying or if they are single women.[343] This latter provision establishes a difference based on gender that does not exist in the other provisions of the Civil Code.

Custody and parental authority are granted to the spouse who petitioned for the separation on a specific ground, unless the judge, taking into account the welfare of the children, decides that custody of one or more of the children should be granted to the other spouse or to some third party.[344] If both spouses are "at fault" in a separation, custody of any boys over the age of 7 is granted to the father, while that of the girls and any boys under 7 is granted to the mother.[345] The judge may order an alternative custody arrangement.[346]

B. ECONOMIC AND SOCIAL RIGHTS

Property rights

The Constitution establishes equal rights to enter into lawful contracts and to exercise property and inheritance rights, among others.[347] In Peru, there are no legal restrictions on women's property rights. The Civil Code does not permit contractual agreements that seek to circumvent the prohibition against transferring or encumbering property, except insofar as the law so permits.[348]

With respect to inheritance, spouses are obliged not to renounce an inheritance or legacy, or to decline a donation, without the consent of the other spouse.[349]

Labor rights

Peru is a party to various international instruments, adopted by the International Labor Organization, protecting women's work, equality of treatment within the workplace, and protection of maternity.[350] The Constitution establishes respect for equality and nondiscrimination in employment[351] and special protection for working mothers.[352] It also provides protection against discrimination in employment on grounds of pregnancy.[353] The Law for the Promotion of Employment[354] states that a dismissal on grounds of pregnancy within ninety days before or after birth is null and void.[355] If such a dismissal is carried out, it is considered null and the employee must be reinstated.[356]

The Law on Modernizing Social Security,[357] passed in 1997, regulates health care for female employees. Female workers and the spouses or domestic partners of male workers who are affiliated with the social security insurance system are entitled to medical services under the ISSP, including prenatal health care.[358] Housewives and mothers can become affiliated with health care and pension insurance systems if they wish to.[359] Minor children of employees affiliated with the social security system have the right to benefits from the time of their conception.[360] Pregnant employees are entitled to forty-five days' leave before and forty-five days after giving birth.[361] They may also claim a maternity subsidy for ninety days, provided they do not engage in any other paid employment.[362] A breast-feeding benefit used to be paid to breast-feeding workers or to the mother or person responsible for the insured worker's child.[363] In 1997, this benefit was restricted to women workers.[364] Women in certain jobs are entitled to breast-feeding leave so that they can take an hour each day to feed their child with natural milk during the child's first year. This leave is only available now to women teachers in the public and private sectors[365] and women working in public administration.[366]

Workers can choose whether to belong to the National Pension Scheme[367] or to the Private Pension Scheme.[368]

Currently, the retirement age under both schemes is 65 years.[369] Life insurance is the employer's responsibility and is compulsory once an employee has been working for said employer for four years. The employee's spouse or domestic partner is the beneficiary of this insurance.[370]

Access to credit

There are no legal provisions limiting or restricting women's access to credit. In practice, however, married women seeking to obtain credit must do so jointly with their husbands, even if they are not seeking to encumber or pledge joint property.[371] This is based on a presumption on the part of creditors that a woman requesting credit may be pledging matrimonial property or may use joint funds in order to pay the debt.[372]

Access to education

The Constitution establishes the state's duty to ensure that no one is prevented from receiving an adequate education for financial reasons or because of physical or mental limitations. Public education is provided free of charge.[373] In public universities, the state guarantees the right to a free education to those students who perform satisfactorily and do not have the necessary economic means to meet the costs of their education.[374] Notwithstanding these facts, illiteracy is still a serious problem among women. In Peru, the majority of illiterate people are women, principally from rural areas.[375] In 1993, of the total number of illiterate people (1,784,282), 72.70% were women.[376] Of this percentage, two-thirds lived in rural areas.[377]

Women's bureaus

Currently, the nation's governmental body responsible for formulating policies on gender and on promoting women is the Ministry for the Advancement of Women and Human Development ("MPWHD"), which was created in October 1996[378] with the mission of promoting the development of women and their families, overseeing activities that encourage the human development of the population and prioritizing services for minors at risk.[379]

Among the functions of the MPWHD are to ensure compliance with programs and platforms for action relating to human development, adhered to by Peru at world conferences, and to propose ratification of new international instruments.[380] From the outset, the Ministry has assumed control of a group of institutions and programs related to human development and population.[381] Among the organizations that have been transferred to the jurisdictional control of the MPWHD is the National Population Council.[382]

There are two other important bodies that are concerned with the promotion and defense of women's rights, which are under other state powers, namely, the Congressional Commission for Women[383] and the Specialized Defender for Women's Rights.[384] The latter, recently created, constitutes an auxiliary office of the Ombudsman.[385] It is aimed at protecting, promoting and defending women's rights[386] and has the power to introduce legislation and to promote the signing of human rights treaties.[387] There are other offices and units at a lower level within the ministries that are specifically or collaterally dedicated to women.[388]

C. RIGHT TO PHYSICAL INTEGRITY

The Constitution states that no person should be the victim of moral, psychological, or physical violence.[389] In Peru, 48.6% of crimes against personal freedom are cases of rape.[390] Reported cases of domestic violence increased by 50.53% in 1996 as compared with the previous year.[391]

Rape

Articles 170 and 178 of the Penal Code provide that rape is a criminal offense.[392] The Penal Code does not technically define the concept of rape and only classifies it as "a sexual or similar act," performed violently or in a manner that is seriously threatening to the victim.[393] In all rape cases, if the offense causes the victim's death and the aggressor could have foreseen such outcome, or if he proceeded with cruelty, the punishment is for between twenty and twenty-five years' imprisonment.[394] If the rape caused serious injury to the victim, the penalty is between ten and twenty years.[395] Aggravating circumstances are armed rape by two or more persons (which carries a prison sentence of between eight and fifteen years);[396] rape of a person suffering from a psychological abnormality or serious alteration of consciousness, or of a person who is mentally handicapped or unable to resist (imprisonment of between five and ten years);[397] taking advantage of a situation of dependency, authority, or supervision, where the victim is in a hospital, asylum, or other similar establishment; or if she is detained, imprisoned, or interned (imprisonment of between five and eight years and disqualification for two to four years).[398] A person convicted of rape must financially support any resulting child.[399] A person who is condemned for any of these crimes is referred for psychiatric treatment to facilitate his rehabilitation.[400] Submission to such treatment is mandatory.[401]

Until April 1997, the aggressor and any accomplices were exempt from punishment if one of them married the rape victim.[402] An amendment repealed this provision of the rape law, but the exemption for an offender convicted of seduction of an adolescent remains in force.[403] As a consequence, a person who, without violence, uses deception to engage in a sexual act with an adolescent between 14 and 18 years of age is exempt from prosecution if he marries the victim, with her consent.[404]

The Penal Code penalizes acts of indecency committed

using violence or with threat of serious harm and without intent to commit a sexual act, with up to three years' imprisonment.[405] Peruvian criminal law does not classify rape within marriage as a specific crime.

Sexual harassment

Sexual harassment is treated by labor legislation as an act of hostility by the employer comparable to dismissal without cause. A labor law also proscribes acts against morality and all dishonorable acts that affect the dignity of the worker.[406] The worker who is deemed to have been harassed for this reason may choose exclusively between either taking action to end the harassment or terminating her employment contract. In the latter case she is entitled to demand compensation for arbitrary dismissal as established by law, independently of the fine that is imposed on the employer.[407] The time limit for taking legal action for sexual harassment in the workplace is thirty days following the incident.[408] Legislation that seeks to prevent and punish sexual harassment in the workplace is under consideration by Congress.[409]

Domestic violence

In 1993, the Law Against Domestic Violence was enacted, setting out the policy of the state with regard to this form of violence.[410] The MPWHD is governmental body responsible for coordinating policy action on this issue.[411] The law defines domestic violence as "any action or omission which causes physical or psychological damage or abuse that does not cause physical injury, including serious threats and coercion" involving spouses, cohabitants, ascendants, descendants, other relatives, or those living in the same household.[412] The following stand out among the law's policy objectives: to strengthen the teaching of ethical values and respect for personal dignity; to establish effective legal procedures for victims of domestic violence; to reinforce existing law enforcement personnel with specialized staff; to promote the establishment of temporary shelters for victims of violence and to create institutions for the treatment of aggressors; and to train public and judicial functionaries.[413] The law specifies that the National Police may receive complaints of domestic violence and conduct preliminary investigations.[414] The provincial family prosecutor also receives direct complaints, verbally or in writing, from victims or their family members or from any person where the protection of a minor is involved; he or she acts ex officio once the complaint has been made. [415] The police report is remitted to the justice of the peace or to the provincial criminal prosecutor and to the family prosecutor,[416] who can issue the following immediate protective orders: removal of the aggressor from the family home, an injunction prohibiting harassment of the victim, the temporary suspension of visits, an inventory of the victim's personal property, and other measures that guarantee the physical, psychological, and moral integrity of the victim.[417] The procedures applicable to cases of domestic violence are not subject to appeal and are governed by the Law Against Domestic Violence and by the Children and Adolescents' Code.[418]

III. Analyzing the Rights of a Special Group: Adolescents

The needs of adolescents are frequently unrecognized or neglected. Given that in Peru, adolescents represent 22.5% of the population[419] and that minors under 15 years old constitute 38% of the population,[420] it is particularly important to meet the reproductive health requirements of this group. The effort to address issues of adolescent rights, including those related to reproductive health, are important for women's right to self-determination and for their health in general. In Peru, an adolescent is defined as a person between the ages of 12 and 18 years.[421]

A. REPRODUCTIVE HEALTH AND ADOLESCENTS

In Peru, 9% of women between the ages of 15 and 19 are mothers and 2% are pregnant for the first time. One in five teenagers has had between two and four pregnancies before reaching the age of 20.[422] In the Ministry of Health's hospitals, 20% of births are to teenage mothers.[423] In urban areas, teenage pregnancies are generally unwanted and occur between couples who do not live together.[424] Many teenage pregnancies end in illegal abortions, which are responsible for 15% of total maternal deaths.[425]

The Ministry of Health considers the risk of adolescent reproduction to be one of the primary public health problems[426] and proposes to develop strategies to reduce the following indexes: the frequency of teenage pregnancies; maternal mortality; the frequency and consequences of abortions; the frequency of STIs, including HIV/AIDS; and the increase in all forms of physical and sexual violence.[427] Legally, access by adolescents to reproductive health services and to contraceptive methods is not restricted. Twenty-nine percent of adolescents between 15 and 19 years old who are in a relationship use some method of contraception, but only 11% use modern methods. The traditional method of periodic abstinence (the rhythm or calendar method) is more commonly used by adolescents.[428] The Program on Reproductive Health and Family Planning 1996-2000 has as a goal that modern, safe, and effective contraceptive prevalence reach 60% of adolescent girls in a relationship.[429]

The Program for Comprehensive Health of Schoolchildren and Adolescents,[430] under the charge of the Ministry of Health, is aimed at the promotion of comprehensive health,

particularly the sexual and reproductive health of this sector of the population.[431] The comprehensive reproductive health care services for adolescents, provided pursuant to this program, are staffed by multidisciplinary teams in the facilities of the Ministry of Health and reach 40% of the population.[432] In 1992, the Technical Administrative Norms for Comprehensive Services for the Population Aged Between 5 and 19 Years were approved.[433] These norms set out guidelines for the development of promotional and preventive activities related to the health of children and adolescents. The preventive activities are aimed at controlling risk factors to avoid illnesses and to detect and treat any damage early on, as well as to identify groups at risk within the community.[434]

The Children and Adolescents' Code[435] provides that it is the state's responsibility to guarantee and society's responsibility to aid in the creation of adequate conditions for attending to teenage mothers during pregnancy, birth, and the postnatal period, by granting them special attention and facilitating breast-feeding and the introduction of day-care centers.[436] The state ensures that basic education for adolescents includes sexual guidance and family planning.[437]

B. MARRIAGE AND ADOLESCENTS

The average age of women who marry or enter into a relationship for the first time varies according to the area in which they live:[438] 21.9 years in urban areas and 19.1 years in rural areas.[439] The educational level of women is an important factor in determining when they begin the first relationship. Among uneducated women, the aforesaid average is 18.8 years, whereas it is 21.4 years for women with a secondary education.[440] Another differential factor is the region in which women live. The average age is lower in interior, jungle areas (19 years) and greater on the coast (20.8 years), not including the metropolitan area of Lima, where the average is 23.8 years. In mountain regions, the average is slightly lower than in coastal areas (20.1 years).[441]

In Peru, the right to fully exercise civil rights is attained at the age of 18.[442] Thus, this is the minimum age required for marriage without parental consent. Minors can marry if they have the express consent of their parents.[443] If one parent consents but the other refuses, that amounts to consent.[444] In the case of an absent or incapacitated parent, or a parent who has lost parental authority, the consent of the other parent will suffice. If there are no parents, grandparents may consent, and, failing these, a family judge.[445] A refusal by the parents or relatives to give their consent does not require a reason, and there is no appeal.[446]

A minor who marries without parental consent does not have rights of possession, administration, usufruct, or the right to encumber or dispose of his or her property until attaining legal majority.[447] In the exercise of civil rights, minors under the age of 16 are considered "absolutely" incompetent, while those between the ages of 16 and 18 are "relatively" incompetent. Those who are absolutely incompetent cannot marry, as a general rule. However, the judge may dispense with this impediment for serious reasons, provided, in the case of a boy, he has reached the age of 16 and, in the case of a girl, she has reached the age of 14.[448] The relatively incompetent, whether girls or boys, cease to be so if they marry or if they obtain a professional degree authorizing them to practice a profession or occupation. In the case of girls over the age of 14, incompetence also ceases upon marriage.[449]

C. SEXUAL OFFENSES AGAINST ADOLESCENTS AND MINORS

Legislation protecting minors against sexual violence is found in the Penal Code and in the Convention on the Rights of the Child, ratified by Peru in 1990.[450] The Penal Code establishes a sliding scale of punishment according to the age of the victim. If the child is under the age of 7, the penalty is for twenty to twenty-eight years in prison.[451] If the aggressor also had a position of responsibility or some family link that gave him or her particular authority or influence over the victim, this is considered an aggravating circumstance and the penalty is increased to twenty-five to thirty years.[452] When the child victim of sexual violence is aged 7 to 10 years, the established custodial sentence is for fifteen to twenty years. If there is the same aggravating circumstance involving a child aged 7 to 10 as that described for rape of a child under 7, the punishment is increased to between twenty and twenty-five years.[453] If the age of the minor ranges between 10 and 14 years, the sentence is ten to fifteen years of imprisonment. If the same aggravating circumstance occurs, the sentence is increased to fifteen to twenty years.[454] In the event of the minor's death in any of the situations described above, or if the aggressor acted with deliberate cruelty, the sentence is for life imprisonment. If, as a consequence of the aggression, the victim suffers serious injuries, the punishment is twenty-five to thirty years imprisonment.[455]

Rape of an adolescent between the ages of 10 and 14 years is punishable by ten to fifteen years' imprisonment.[456] The penalty is increased to between fifteen and twenty years' imprisonment if the rapist exploited his or her position of responsibility or his or her family or other link that gave him or her particular authority over the victim or led the victim to trust him or her.[457] If, as a result of the rape, the victim suffers serious injuries, the prison term is twenty-five to thirty years.[458] If the rape causes the adolescent's death, or if the aggressor could have foreseen such a result or proceeded with cruelty, the offense carries a life sentence.[459]

Seduction of persons between the ages of 14 and 18 years is a criminal offense when the sexual act occurs as a result of deceit.[460] It is punished with a prison term not exceeding three years or with community service for between thirty and seventy-eight days.[461] If, in such a case, the offense caused the death or serious injury to the victim or if the aggressor acted with cruelty, it is punishable with twenty to twenty-five years' imprisonment.[462] If the offense causes serious injury to the victim, the penalty is for ten to twenty years. If the rape produces a child, the aggressor is required to maintain such child.[463] In seduction cases, the aggressor is exempt from prosecution if he marries the victim.[464]

The Penal Code also provides for the protection of minors from acts "against decency."[465] Although it fails to define such acts, it does differentiate them from rape. As such, it penalizes a person who "without intending to perform a sexual or similar act commits an indecent act on a person under the age of 14 years,"[466] by a prison term of four to six years. If the offender had a position of responsibility or family link that gave him or her particular authority over the victim or led the victim to place trust in him or her, the punishment is for five to eight years in prison.[467]

D. SEXUAL EDUCATION

In 1996, 89% of school age children between 6 and 15 years old attended schools or learning centers.[468] However, only 52% of adolescents between the ages of 16 and 20 attended an educational institution and only 22.7% of young people between the ages of 21 and 24 attended educational institutions.[469]

The Constitution provides that the purpose of education is the comprehensive development of human beings and that parents have the duty to educate their children and are entitled to choose educational facilities and to participate in the educational process.[470] The state coordinates policies on education and formulates general guidelines for curricula.[471] In accordance with the Population Law, the Ministry of Education must design programs and supporting materials on sexuality, family life, the environment, and demographic dynamics for students and teachers.[472] In particular, it must facilitate education about population issues and the development of educational programs aimed at parents about the family and sexuality, so they can assist in the education of their children.[473] The Ministry of Education is required to supervise state publications and audiovisual programs that contain references to sex and family education in coordination with the various sectors and disciplines.[474]

At the beginning of 1996, the government announced that it would gradually include family planning and sex education materials in the secondary school curriculum.[475] It also announced that it would train 15,000 teachers in such matters and would print 1 million books that would include such themes and methodological guides for teachers.[476] To this end, the Ministry of Education has prepared and presented the *Guides for Family and Sex Education for Teachers and Parents*, as part of the National Program for Sex Education, which is in effect for the period from 1995 to 2001.[477] The general plan for training teachers proposes to educate children and young people in the following themes: basic aspects of family life and sexual development, moral values, self-esteem, gender roles, and equality. In secondary education, special emphasis is placed on sexual responsibility, the need to delay the commencement of sexual relations, and the prevention of STIs, AIDS, and unplanned pregnancies.[478]

Within the framework of the Program for Pupils and Adolescents' Health, *Comprehensive Health Promotion: Instruction for Parents* was recently published with the aim of achieving parents' participation in those educational responsibilities that they share with the state.[479]

ENDNOTES

1. World Almanac Books, The World Almanac and Book of Facts 1997, at 808 (1996). [hereinafter The World Almanac]
2. Political Constitution of Perú, entry into force Dec. 31, 1993, art. 48. [hereinafter Peru Const.]
3. *Id.*
4. CENTRO, Institute for Socioeconomic Studies and Promotion for Development, commissioned by ACDI, Mujeres peruanas. La mitad de la población del Perú a comienzos de los 90 [Peruvian Women. Half the Population of Perú in the early '90s], at 18 (Amelia Fort (ed.), 1993).
5. The World Almanac, *supra* note 1, at 809.
6. Isabel Coral, Violencia contra la mujer [Violence against women] (1996); Carlos Iván Degregori, *Las rondas campesinas y la derrota de Sendero Luminoso [Campesino Patrols and the Defeat of the ShiningPath]*, at 19 (1996) in Manuela Ramos Movement, Las mujeres, la violencia política y la construción de la democracia [Women, Political Violence and Building Democracy], at 7 (1997).
7. Sebastian Edwards, Crisis and Reform in Latin America, from Despair to Hope, at 6-7(1995). See Table 1-3.
8. The World Almanac, *supra* note 1, at 809.
9. *Id.*, art. 189.
10. *Id.*, art. 110.
11. *Id.*, arts. 111 and 112.
12. *Id.*, art. 118, cls. 1-24.
13. *Id.*, art. 104.
14. *Id.*, art. 118, ¶ 8.
15. *Id.*, ¶ 19.
16. *Id.*, arts. 122 and 119.
17. *Id.*, art. 120.
18. *Id.*, art. 131.
19. *Id.*, art. 132.
20. *Id.*, art. 134.
21. *Id.*
22. *Id.*, art. 90.
23. *Id.*
24. *Id.*, art. 93.
25. *Id.*, art. 102.
26. *Id.*, ¶ 1.
27. *Id.*, art. 104.
28. *Id.*, art. 107.
29. *Id.* The right to propose or initiate legislation consists of "presenting proposals and exercising such power. For example, . . . the power to propose laws, as a general rule, comes from the legislative chambers or the executive branch and from judicial cases decided by the Supreme Court." Pedro Flores Polo, Dictionary of Legal Terms (1987).
30. *Id.*, art. 108.
31. *Id.*
32. *Id.*
33. Peru Const., *supra* note 2, art. 138.
34. *Id.*, art. 143 and Organic Law on Judicial Power (OLJP), second §, Tit. 1, Ch. 1, arts. 25-27.
35. Peru Const., *supra* note 2, art. 144 and OLJP, arts. 28-35.
36. Peru Const., *supra* note 2, art. 140.
37. OLJP, art. 36.
38. *Id.*, arts. 39-43.
39. *Id.*, art. 46.
40. *Id.*, second §, Tit. I, Chs. VI and VII.
41. The National Council of the Judiciary is an independent organ of the judicial branch and is governed by its own organic law. It is made up of one member elected by each of the following institutions: the Supreme Court, the Senior Prosecutors' Committee, the Bar Association, other professional associations and deans of national and private universities. Peru Const., *supra* note 2, arts. 150-155.
42. *Id.*, art. 154, ¶2.
43. *Id.*, arts. 150 and 152. The process of popular election of justices of the peace is governed by the Organic Law on Judicial Power.
44. *Id.*, art. 149.
45. *Id.*
46. *Id.*, art. 159.
47. *Id.*
48. *Id.*, art. 162.
49. *Id.*, arts. 201 and 203.
50. *Id.*, art. 188.
51. *Id.*, art. 189.
52. *Id.*, art. 191.
53. *Id.*, art. 199.
54. *Id.*, art. 190.
55. *Id.*, art. 198.
56. *Id.*, arts. 189, 191, 197, and 198.
57. *Id.*, art. 197.
58. *Id.*
59. *Id.*, art. 191.
60. *Id.*, art. 138.
61. Marcial Rubio Correa, El sistema jurídica. Introducción al Derecho [The judicial system. Introduction to the Law], at 135 (1984).
62. There is a difference between a *law* and a *norm with the force of a law*. In addition to laws approved by Congress, "there are also other legislative norms which enjoy equal status: decree-laws, legislative decrees and certain decrees approved by the executive branch in the past…."*Id.*, at 140.
63. In the Roman civil judicial system, the term jurisprudence refers to the "… collection of decisions issued by courts relating to certain matters and their reiteration which confers the status of an interpretative source of law, constituting a legal precedent of a binding nature …." Dictionary of Legal Terms, *supra* note 29, at 24.
64. For example, in the case of an appeal seeking reversal, regulated by art. 400 of the Civil Procedures Code.
65. The general principles of law, "are an additional source [of law] par excellence, to which the judge should turn when there are gaps or deficiencies in the law … the concept is equivalent to 'judicial criteria' … there are some scholars who argue that there should be a distinction between national principles of law … and those of a universal nature, giving preference to the former and arriving at the latter only when the former are insufficient to enable the judge to reach a solution." Dictionary of Legal Terms, *supra* note 29, at 432.
66. General Law on Health No. 26842, promulgated Jul. 15, 1997 and published on Jul. 20, 1997, Preliminary Tit., art. XI.
67. Peru Const., *supra* note 2, art. 138.
68. *Id.*
69. *Id.*, art. 103.
70. *Id.*
71. *Id.*, art. 109.
72. *Id.*, arts. 51 and 55.
73. *Id.*, art. 118, ¶ 11.
74. *Id.*, art. 56. Where the treaty does not require ratification, the president still must inform Congress of the executive act of adherence to the treaty.
75. *Id.*, ¶ 2.
76. *Id.*, ¶ 3.
77. *Id.*
78. Perú is a party to, among others, the following universal instruments: The International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (*entry into force* Sept. 3, 1976) (signed by Peru on Aug. 11, 1977 and ratified on Apr. 28, 1978); The International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976) (signed by Peru on Aug. 11, 1977 and ratified on Apr. 28, 1978); The International Convention for the Elimination of all Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (*entry into force* Jan. 4, 1969) (signed by Peru on Jul. 24, 1966 and ratified on Sep. 29, 1971); The Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, *concluded* Dec. 10, 1984 S. Treaty Doc. 100-20, 23 I.L.M. 1027(1984), *as modified* 24 I.L.M. 535 (*entry into force* June 26, 1987) (signed by Peru on May 29, 1985 and ratified on July 7, 1988); and the Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 28 I.L.M. 1448 (*entry into force* Sept. 2, 1990) (signed by Peru on Jan. 26, 1990 and ratified on Sept. 4, 1990).
79. The Convention on the Elimination of all Forms of Discrimination against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (*entry into force* Sep. 3, 1981) (signed by Peru on Jul. 23, 1981 and ratified on Sep. 13, 1982).
80. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (the Convention of Belem do Pará), *adopted* Jun. 9, 1994, 33 I.L.M 1534 (*entry into force* Mar. 5, 1995) (signed by Peru on Jul. 12, 1994 and ratified on Apr. 10, 1996).
81. This designation was approved by Ministerial Resolution No. 0738-92-SA/DM on Dec. 2, 1992. Although this program was devised to support the former National Program for Attention to the Reproductive Health of the Family 1992-1996, it remains in force. It replaced the Manual of Family Planning Rules and Procedures (R.M. No. 172-89-SA-DM).

See introductory paragraph [hereinafter referred to as the "Reproductive Health Manual".
82. PERU CONST., *supra* note 2, art. 7. The General Law on Health provides that "the conceived" also have rights in the field of health. General Law on Health, art. III.
83. PERU CONST., *supra* note 2, arts. 51 and 55.
84. General Law on Health, Preliminary Tit., art. II.
85. *Id.*, art. VII.
86. *Id.*, Fifth Tit.: On Health Authorities, arts. 122 and 123, in accordance with the PERU CONST., *supra* note 2, art. 9.
87. *Id.*, art. 126.
88. *Id.*, art. 127.
89. MINISTRY OF HEALTH, LINEAMIENTOS DE POLÍTICA DE SALUD 1995-2000. UN SECTOR SALUD CON EQUALIDAD, EFICIENCIA Y CALIDAD [GUIDELINES ON HEALTH POLICY 1995-2000. A FAIR, EFFICIENT AND HIGH-QUALITY HEALTH SERVICE], at 27. [Hereinafter GUIDELINES ON HEALTH POLICY]
90. Formerly known as the Program for Consolidation, it was initiated in 1994 with funding of U.S.$88 million. *Id.*, at 16.
91. *Id.*
92. Conducted under an agreement with the Inter-American Development Bank (IDB), with financing of U.S.$98 million. *Id.*, at 17.
93. Financed by the United States Agency for International Development (USAID), with a budget of U.S.$60 million.
94. MINISTRY OF HEALTH, GENERAL PLANNING OFFICE, PROGRAMA MUJER, SALUD Y DESARROLLO [PROGRAM FOR WOMEN, HEALTH AND DEVELOPMENT]. Document concerning the reformulation of policies, objectives, strategies and courses of action, approved by Ministerial Resolution No. 391-95-SA/DM, on May 26, 1995, at 5 (2d ed., 1996).
95. *Id.*
96. *Id.*, at 12–13.
97. *Id.*
98. *Id.*
99. Dr. Marino Costa Bauer, Minister for Health, Presentation to Congress' Special Commission for Women, at 41 and 42 (Oct. 15, 1996).
100. *Id.*
101. *Id.*
102. *Id.*
103. General Law on Health, Preliminary Tit., art. VI.
104. *Id.*, art. 37.
105. Law on National Population Policy (Legislative Decree No. 346), July 6, 1985, art. 24 [hereinafter Population Law].
106. Statistics taken from the health sector's 1992 Census on Sanitary Infrastructure, in GUIDELINES ON HEALTH POLICIES, supra note 89, at 22.
107. General Regulation of Health Sector Hospitals, D.S. No. 005-90-SA, May 25, 1990, introductory section.
108. *Id.*, art. 8.
109. General Law on Health, art. 39.
110. MINISTRY OF HEALTH, OFFICE FOR STATISTICS AND INFORMATION, CENSO DE INFRAESTRUCTURA SANITARIA Y RECURSOS HUMANOS 1992 [CENSUS OF HEALTH CARE INFRASTRUCTURE AND HUMAN RESOURCES 1992], at 19 (1993). *See* also MINISTRY OF HEALTH, GENERAL DIRECTORATE OF THE PEOPLE, DIRECTORATE OF SOCIAL PROGRAMS, PROGRAMA DE SALUD REPRODUCTIVA Y PLANIFICACIÓN FAMILIAR 1996-2000 [PROGRAM FOR REPRODUCTIVE HEALTH AND FAMILY PLANNING 1996-2000], approved by Ministerial Resolution No. 071-96-SA/DM, Feb. 6, 1996.
111. *Id.*
112. *Id.*
113. GUIDELINES ON HEALTH POLICY, *supra* note 89, at 21.
114. *Id.*, at 24.
115. *Id.*
116. General Law on Health, Preliminary Tit., art. VIII.
117. Supreme Decree No. 019-81-SA, Aug. 6, 1981, ¶ XX.
118. *Id.*, art. 1, ¶ a.
119. *Id.*, ¶ b.
120. *Id.*, ¶ d. The gratuity of these services was ratified in 1985 by the Population Law, *supra* note 105, art. 34.
121. This categorization of hospitals is regulated by the Ministry of Health in the General Regulations for Health Sector Hospitals, art. 8.
122. *Id.*
123. Supreme Decree No. 019-81-SA, art. 1, ¶ c.
124. Population Law, *supra* note 105, art. 34.
125. GUIDELINES OF HEALTH POLICY, *supra* note 89, at 18.
126. *Id.*, at 19.
127. *Id.*
128. *Id.*
129. *Id.*, at 18.
130. The General Law on Health, in its Fourth Complementary Set of Provisions, expressly repeals the following norms: Decree Law No. 17505 (Sanitary Code), Decree Law No. 19609 on emergency services, Law No. 2348 of 1916, Law on medical and pharmaceutical practice of 1888, Decree No. 25596 and the Third Complementary Set of Provisions of Decree Law No. 25988. It also tacitly repeals all norms which conflict with it. Given that the General Law on Health does not conflict with or replace the content of D.S. 019-81-SA, the latter continues in force.
131. General Law on Health, art. 40.
132. Ministerial Resolution No. 572-95-SA/DM, art. 2.
133. Law on Modernization of Health Social Security (Law No. 26790), passed on May 14, 1997 and published on May 1, 1997, arts. 2, 3 and 8.
134. General Law on Health, Tit. II, Ch. I.
135. *Id.*, art. 22.
136. *Id.*, art. 23.
137. The following are professional acts: the issuing of prescriptions, certificates, and reports regarding a patient's care; surgical intervention; and the trials of drugs, medications, controlled substances, or other products to aid diagnosis and the prevention or treatment of illnesses. *Id.*, art. 24.
138.. Id., art. 25.
139. *Id.*, cl. e.
140. *Id.*, art. 30.
141. *Id.*, art. 26.
142. *Id.*, art. 28.
143. *Id.*, art. 36.
144. *Id.*, art. 134.
145. Penal Code, promulgated by Legislative Decree No. 635, Apr. 3, 1991, arts. 111 and 124. [hereinafter PENAL CODE]
146. *Id.*, art. 117.
147. *Id.*, art. 144. "A doctor or obstetrician who cooperates with a woman who pretends to be pregnant or to have given birth in order to create rights for a supposed child is liable to be sentenced to a term of imprisonment for between one and five years and to be disqualified from medical practice."
148. *Id.*, art. 165.
149. *Id.*, arts. 291 and 294.
150. *Id.*., arts. 296 and 297 (as modified by Law No. 26233) and art. 300.
151. *Id.*, art. 431.
152. Directive Resolution No. 00061-SA-DG/INPROMI, issued on Oct. 26, 1976, approved a manual of standards for training traditional birth attendants.
153. PERU CONST., *supra* note 2, art. 65.
154. General Law on Health, art. 15, cls. a and d.
155. *Id.*, art. 2.
156. *Id.*, art. 5.
157. *Id.*, art. 3.
158. *Id.*
159. *Id.*, art. 15, cl. e.
160. *Id.*, cl. h and art. 4.
161. *Id.*, art. 48.
162. *Id.*
163. PENAL CODE, *supra* note 145, art. 124.
164. *Id.*
165. *Id.*, art. 111.
166. General Law on Health, art. 134.
167. *Id.*, art. 135. The legal regulations must categorize offenses, the scale of penalties and procedures. art. 137.
168. PERU CONST., *supra* note 2, art. 6.
169. *Id.*
170. Law approved by Legislative Decree No. 346, July 6, 1985.
171. Widely cited in the section Laws and Policies on Reproductive Health and Family Planning below.
172. Prior to the modifying law (Law No. 26530, Sep. 9, 1995) Art. IV of the Population Law expressly prohibited sterilization and abortion as contraceptive methods. Currently, only abortion is excluded as such.

173. Population Law, *supra* note 105, art. 1.
174. *Id.*, art. IV.
175. *Id.*, arts. 2 and 10.
176. *Id.*, art. V of the Preliminary Tit.
177. *Id.*, chapter VI.
178. *Id.*, arts. 22 and 34.
179. *Id.*, art. 28.
180. *Id.*, art. 32.
181. *Id.*, art. 45.
182. *Id.*, arts. 18 and 19.
183. In 1996, the NPC was transferred to the jurisdiction of the Ministry for Promotion of Women and Human Development (MPWHD). Legislative Decree No. 866, first complementary provision, cl. b.
184. Population Law, *supra* note 105, arts. 47 and 48.
185. NATIONAL INSTITUTE FOR STATISTICS AND INFORMATION (NISI), DEMOGRAPHIC AND FAMILY HEALTH SURVEY (DFHS) 1996, PERÚ, PRINCIPAL REPORT, General Summary, at xxx (1997). The maternal mortality rate in Perú during the period 1982-1996 was 247 deaths for every 100,000 live births.
186. General Law on Health, arts. 5 and 6, in accordance with art. 6 of the Constitution
187. Program on Reproductive Health and Family Planning, supra note 110, at 3.
188. The Program on Reproductive Health and Family Planning is in the process of functionally integrating certain existing activities and programs related to reproductive health, such as the Program for Maternal and Perinatal Health, the Program for the Comprehensive Health of Schoolchildren and Adolescents, and the Program for the Prevention of Cervical Cancer. It already has integrated the activities of the National Program on Family Planning and coordinates with the MSD Program and that for the Control of Sexually Transmissible Infections and AIDS. *Id.*, at 19-23.
189. *Id.*, at 3.
190. *Id.*, at 5.
191. *Id.*
192. *Id.*
193. *Id.*, at 18.
194. *Id.*, at 24 and 25.
195. *Id.*
196. *Id.*
197. *Id.*, at 26.
198. *Id.*
199. DEMOGRAPHIC AND HEALTH SURVEY, *supra* note 185, at 134.
200. *Id.*, at 141.
201. Program on Reproductive Health and Family Planning, *supra* note 110, at 26 and 27.
202. *Id.*, at 28 and 30.
203. *Id.*
204. General Law on Health, art. 127.
205. *Id.*, art. 1.
206. For greater detail on the infrastructure of the public health sector, see the section on Infrastructure of Health Services.
207. Ministerial Resolution No. 572-95-SA/DM, Aug. 17, 1995, art. 2.
208. *Id.*
209. Program on Reproductive Health and Family Planning, *supra* note 110, at 20 and 28.
210. DEMOGRAPHIC AND FAMILY HEALTH SURVEY, *supra* note 185, General Summary.
211. *Id.*, General Summary, at xxix.
212. *Id.*, at 72, tbl. 4.12.
213. Program on Reproductive Health and Family Planning, *supra* note 110, at 19.
214. *Id.*
215. *Id.*
216. DEMOGRAPHIC AND FAMILY HEALTH SURVEY, *supra* note 185, General Summary, at xxix.
217. *Id.*, at 62.
218. *Id.*, at 63.
219. *Id.*, at 64.
220. *Id.*, at 72.
221. National Population Council (NPC), *Población y Pobreza: Política y Dinámica Demográfica. 1996* [*Population and Poverty: Demographic Policy and Dynamics. 1996*] in NPC, THE UNIVERSAL DAY OF THE POPULATION, Jun. 11, 1996 (on file with CRLP).
222. *Id.*, at 63 and 66.
223. Statistics provided by the Ministry of Health, Office for Statistics and Information, Social Programs Office, Family Planning Office, Nov. 26, 1996. (on file with CRLP).
224. *Id.*
225. *Id.*
226. Reproductive Health Manual, *supra* note 81, at 84 and 85.
227. General Law on Health, art. 6.
228. Population Law, *supra* note 105, art. IV.
229. *Id.*
230. Reproductive Health Manual, *supra* note 81, at 119.
231. *Id.*
232. *Id.*
233. Ministerial Resolution No. 0738-92-SA/DM, ¶ 1.
234. General Law on Health, art. 51 and Ministerial Resolution No. 930-90-SA/DM, Sep. 11, 1990, ¶ 2.
235. Ministerial Resolution No. 930-90-SA/DM, Sep. 11, 1990, ¶ 2.
236. *Id.*, art. 65.
237. Regulation of the Organization and Functions of the Ministry of Health, DS. No. 002-92-SA, art. 85.
238. General Law on Health, art. 54.
239. *Id.*, art. 6.
240. *Id.*, art. 69.
241. *Id.*
242. *Id.*
243. Regulation of the Organization and Functions of the Ministry of Health, art. 90, cl. c.
244. DEMOGRAPHIC AND FAMILY HEALTH SURVEY, *supra* note 185, at 72.
245. *Id.*, at 66.
246. Law No. 26530, in force since Sept. 11, 1995, modifies art. VI of the Population Law *supra* note 105, (Legislative Decree No. 346), in force since 1985.
247. General Law on Health, art. 6.
248. *Id.*
249. Reproductive Health Manual, *supra* note 81, at 111.
250. *Id.*
251. *Id.*
252. For more details on the family planning and reproductive health services available in Peru, see the section on Government Delivery of Family Planning Services.
253. General Law on Health, art. 7.
254. *Id.*
255. *Id.*
256. PENAL CODE, *supra* note 145, arts. 114 and 120.
257. *Id.*, art. 119.
258. PERU CONST., *supra* note 2, art. 2, cl. 2. Other laws which reaffirm the rights of the conceived are: the Peruvian Civil Code (art. 1), the Population Law, *supra* note 105 (art. VI of the Preliminary Tit.) and Decree Law No. 26102 (CHILDREN AND ADOLESCENTS' CODE, art. 1 of the Preliminary Tit.).
259. Population Law, *supra* note 105, art. VI of the Preliminary Tit., modified by Law No. 26530.
260. *Id.*, art. 29.
261. Program on Reproductive Health and Family Planning, *supra* note 110, at 17.
262. Population Law, *supra* note 105, art. 29.
263. THE ALAN GUTTMACHER INSTITUTE, CLANDESTINE ABORTIONS: A LATIN AMERICAN REALITY, at 20 (1994).
264. Program on Reproductive Health and Family Planning, *supra* note 110, at 46.
265. *Id.*
266. General Law on Health, art. 43.
267. *Id.*, arts. 25, cl. g, and 30.
268. *Id.*
269. PENAL CODE, *supra* note 145, art. 114.
270. *Id.*, arts. 115 and 116.
271. *Id.*, art. 118.
272. *Id.*, art. 119.
273. *Id.*, art. 119.
274. *Id.*, art. 114.
275. *Id.*, art. 120.
276. *Id.*, art. 115.
277. *Id.*, art. 116.
278. *Id.*, arts. 115 and 116.
279. *Id.*, art. 117.
280. *Id.*, art. 118.
281. Information provided by the Ministry of Health, Office for Statistics and Information and the Program for the Control of Sexually Transmitted Diseases and AIDS

(PROCOSTDA) (on file with the CRLP).
282. *Id.*
283. National Multisectorial Program for the Prevention and Control of the Acquired Immune deficiency Syndrome, approved by Supreme Resolution No. 011-87-SA, Apr. 2, 1987. See introductory paragraph that refers to the situation of AIDS in Perú.
284. Supreme Decree No. 031-88-SA, promulgated on Nov. 21, 1988, Art. 1 and third ¶ of the preamble.
285. Law No. 26454, May 25, 1995, deemed the acquisition, donation, conservation, processing, transfusion, and supply of human blood, its components, and its derivatives to be a matter of public order and interest. Regulations were issued pursuant to this law by Supreme Decree No. 03-95-SA.
286. Regulation of Law No. 26454, approved by Supreme Decree No. 03-95-SA, art. 23.
287. *Id.*, art. 24.
288. *Id.*
289. Approved by Law No. 25526, passed on Jun. 15, 1996 and published on Jun. 20, 1996.
290. *Id.*, art. 4.
291. *Id.*, art. 5.
292. *Id.*
293. *Id.*
294. *Id.*, art. 6.
295. *Id.*
296. *Id.*, art. 7.
297. *Id.*, art. 7, cl. b and Ministerial Resolution No. 491-96-SA/DM.
298. Supreme Decree No. 013-87-SA, art. 1.
299. *Id.*, art. 2.
300. *Id.*, art. 3.
301. *Id.*, art. 5.
302. Created by Supreme Resolution No. 011-87-SA, Apr. 2, 1987.
303. See note 316 and Vice-Ministerial Resolution No. 0160-87-SA.
304. Law No. 26626.
305. *Id.*, art. 2. It provides that the Ministry of Health shall nominate, by Ministerial Resolution, the competent body to formulate the CONTRASIDA Program.
306. Ministerial Resolution No. 235-96-SA/DM, Apr. 11, 1996.
307. *Id.*, art. 1.
308. NPC/UNFPA, WORLD POPULATION DAY, Jul. 11, 1996.
309. UNICEF, ANALYSIS OF THE SITUATION OF WOMEN AND CHILDREN, (1995).
310. *Id.*
311. In 1996 alone, the Peruvian National Police Women's Delegation reported 6,294 complaints of mistreatment of women, which represents an increase of 2,113 cases compared with 1995. MANUELA RAMOS MOVEMENT, LA PAZ EMPIEZA POR CASA [PEACE BEGINS IN THE HOME] (1997) (on file with CRLP).
312. DEMOGRAPHIC AND FAMILY HEALTH SURVEY, *supra* note 185, at 16.
313. PERU CONST., *supra* note 2, art. 2, cl. 2.
314. *Id.*, art. 2, cl. 24, ¶ h.
315. *Id.*, art. 4.
316. *Id.*
317. CIVIL CODE, Approved by Legislative Decree No. 295, passed on Jul. 24, 1984. [Hereinafter CIVIL CODE]
318. *Id.*, art. 42.
319. *Id.*, art. 234, second ¶.
320. *Id.*, art. 24.
321. *Id.*, art. 290.
322. *Id.*, arts. 291 and 300.
323. *Id.*, art. 293.
324. *Id.*, arts. 288 and 289, respectively. Art. 289 also states that the judge may suspend the obligation to cohabit where this cohabitation seriously threatens either spouse's life, health, honor, or the performance of the economic activity on which the family depends.
325. *Id.*, arts. 292 and 315.
326. *Id.*, art. 287.
327. *Id.*, arts. 302 and 305.
328. *Id.*
329. *Id.*, art. 419.
330. PENAL CODE, *supra* note 145, arts. 139 and 140.
331. DEMOGRAPHIC AND FAMILY HEALTH SURVEY, *supra* note 185, at 25.
332. PERU CONST., *supra* note 2, art. 5 and CIVIL CODE, art. 326.
333. CIVIL CODE, *supra* note 317, art. 326.
334. *Id.*
335. *Id.*
336. Physical separation suspends the rights relating to cohabitation and sexual intercourse and terminates joint rights to income and proceeds generated by property while preserving the matrimonial bond. *Id.*, arts. 332 to 347.
337. *Id.*, arts. 348 and 360.
338. *Id.*, arts. 333 and 349.
339. Property considered as pertaining to the marriage is that which remains after liquidating the marriage partnership *Id.*, art. 324.
340. *Id.*
341. *Id.*, art. 352.
342. *Id.*, art. 473.
343. *Id.* and art. 425.
344. *Id.*, art. 340.
345. *Id.*, art. 420.
346. *Id.*
347. PERU CONST., *supra* note 2, art. 2, cl. 2.
348. CIVIL CODE, *supra* note 317, art. 882.
349. *Id.*, art. 304.
350. The International Labor Organization Conventions related to these issues and subscribed to by Peru are: Convention No. 4, Convention concerning Employment of Women during the Night, *adopted* Nov. 28, 1919, <http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm> (visited Feb. 3, 1998) (*entry into force* Jun. 6, 1921); Convention No. 41, Convention concerning Employment of Women during the Night, *adopted* Jun. 19, 1934, <http://ilolex.ilo.ch:1567/public/english/50normes/infleg/ilong/conve.htm>(visited Feb. 3, 1998) (*entry into force* Nov. 22, 1936); Convention No. 45, Convention concerning the Employment of Women on Underground Work in Mines of all Kinds, *adopted* Jun. 21, 1935, <http://ilolex.ilo.ch:1567/public/english/50normes/infleg/ilong/conve.htm>(visited Feb. 3, 1998) (*entry into force* May 30, 1937); Convention No. 100, Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, *adopted* Jun. 29, 1951 <http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm> (visited Dec. 8, 1997) (*entry into force* May 23, 1953); Convention No. 111, Convention No. 111 of the International Labor Organization, Convention Concerning Discrimination in Respect of Employment and Occupation, *adopted* Jun. 25, 1958 <http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm>(visited Dec. 8, 1997) (*entry into force* Jun. 15, 1960); and Convention No. 156, Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, *adopted* Jun. 23, 1981, 1958 <http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm>(visited Dec. 8, 1997) (*entry into force* Aug. 11, 1983).
351. PERU CONST., *supra* note 2, art. 26.
352. *Id.*, art. 23.
353. *Id.*, art. 21, cl. 1.
354. Integrated Text of the Law for the Promotion of Employment, approved by Supreme Decree No. 05-95-TR of Aug. 18, 1995.
355. *Id.*, art. 62, cl. e.
356. Under Peruvian labor legislation, dismissals classified as "null" give rise to the employee's reinstatement to his or her job. *Id.*, arts. 63 and 67.
357. Law No. 26790, passed on May 1, 1997 and published on May 1, 1997.
358. *Id.*, art. 3.
359. Law No. 24705, arts. 1 and 4 and Law No. 26790, art. 3.
360. Law No. 26790, art. 3.
361. Law No. 26644, art. 1.
362. Law No. 26790, art. 12, cl. b.
363. Law Decree No. 22482, art. 30, modified by Law No. 25143, Dec. 20, 1989, repealed by Law No. 26790.
364. Law No. 26790, art. 12, cl. b, ¶¶ b.1 and b.3.
365. S.D. No. 19-90-ED, art. 65, ¶ a.
366. S.D. No. 005-90-PCM, art. 108.
367. Law No. 19990, which regulates the national pension scheme.
368. Regulated by Law No. 25897.
369. Law No. 26504, Jul. 18, 1995.
370. Legislative Decree No. 688.
371. Information obtained directly from credit institutions (Banco de Crédito, Banco Latino, Banco de Lima, Banco Wiese), and commercial credit companies (Carsa, Yompián, Casa Wensminster and others). DEMUS, Estudio para la defensa de los derechos de la mujer [Law Office for the Defense of Women's Rights], Draft Peru chapter (1997).
372. *Id.*
373. PERU CONST., *supra* note 2, art. 17.

374. *Id.*
375. Marino Costa Bauer, Minister of Health, Presentation before the Congress of the Republic's Special Commission on Women, at 11.
376. *Id.*
377. *Id.*
378. Law on Organization and Functions of the Ministry for the Advancement of Women and Human Development (MPWDH), approved by Legislative Decree No. 866, Oct. 25, 1996.
379. *Id.*, art. 2.
380. *Id.*, art. 4, cl. d.
381. *Id.*, First Complementary Provision.
382. *Id.*, cl. b. The National Population Council was created by the National Population Law *supra* note 105, (Art. 48). The NPC formulates the projects of the national population program and is responsible for following and evaluating their progress. For greater detail, see the section on Laws and Policies on Population.
383. This Commission began functioning during the Congress' First Ordinary Session of 1996; it has the character of a special congressional working commission, and, although it does not pass laws, it has the following aims: (a) to create awareness of gender inequality in leaders influencing public opinion and society's intermediary authorities, the media and the private and public sectors; (b) to promote cultural change and to reduce and eliminate the disadvantageous situation of women; (c) to publicize cases of discrimination and violence against women and to seek their prosecution; and (d) to propose and disseminate necessary legislation. Regulation of the Congress of the Republic, art. 35.
384. Created by Defense Resolution No. 017-96, Oct. 9, 1996.
385. Law No. 26520, Organic Law of the Ombudsman. This is an autonomous and independent governmental entity, dedicated to defending constitutional and fundamental individual and collective rights. The designation of auxiliary ombudsmen enables the Office of the Ombudsman to study, evaluate and adopt measures with respect to certain rights and/or sectors in the country that, due to their particular status, require special attention.
386. Lineamientos de acción de la Defensoría Adjunta de la Mujer [Guidelines for Action of the Auxiliary Ombudsman's Office for Women] (on file with the CRLP).
387. *Id.*, cls. 4 and 5.
388. At the executive level, there exist other bodies that prioritize women's issues within their activities, including the Foreign Ministry's Office for Women and Children's Matters, which exists as an official body supported by the United Nations, the Organization of American States and the Chancery on Inter-American Matters. INFORME NACIONAL DE LA MUJER [NATIONAL REPORT ON WOMEN], at 38. Other entities include the Network of Technical Cooperation and of Associations and Institutions of Support to Rural Women (Ministry of Agriculture); the Programs of the National Fund for Compensation and Social Development - FONCODES (Ministry of the President); and the Intersectoral Commission, responsible for reviewing the regulation of women's employment (Ministry of Labor), among others.
389. PERU CONST., *supra* note 2, art. 2, Clause 24, literal h.
390. CUANTO, S.A. PERÚ EN NÚMEROS 1996. ANUARIO ESTADÍSTICO [PERÚ IN NUMBERS 1996. STATISTICS YEARBOOK], at 405 (1996).
391. *Id.*
392. PENAL CODE, *supra* note 145, Vol. II, Tit. IV, Ch. IX, modified by Law No. 26293, Feb. 14, 1994, and Law No. 26357, Sept. 28, 1994.
393. *Id.*, art. 170.
394. *Id.*, art. 177.
395. *Id.*
396. *Id.*, art. 170, second ¶, modified by Law No. 26293, art. 1.
397. *Id.*, art. 172, modified by Law No. 26293, art. 1.
398. *Id.*, art. 174, modified by Law No. 26293, art. 1.
399. Law No. 26770, Apr. 7, 1997, art. 2.
400. PENAL CODE, *supra* note 145, art. 178-A.
401. *Id.*
402. *Id.*, art. 178, modified by Law No. 26770.
403. Law No. 26770, Apr. 7, 1997, art. 2, complementing art. 175 of the PENAL CODE, *supra* note 145.
404. *Id.*
405. *Id.*, art. 176.
406. Law on Promotion of Employment, art. 6, cl. g.
407. Supreme Decree No. 05-95-TR, art. 68.
408. *Id.*, art. 69.
409. Proposed Legislation No. 2842/96-CR, presented by the Congressional Commission for Women to the Employment Commission, Jul. 10, 1997.
410. Law No. 26260, Dec. 25, 1993.
411. Law on the Organization and Functions of the Ministry for the Promotion of Women and Human Development, Legislative Decree No. 866, Oct. 25, 1996, art. 4. See section on Women's Bureaus.
412. Law No. 26260, art. 2, modified by Law No. 26768, Mar. 11, 1997.
413. *Id.*, art. 3, modified by Law No. 26768, single art.
414. *Id.*, art. 5.
415. *Id.*, art. 7.
416. *Id.*, art. 5.
417. *Id.*, art. 7.
418. *Id.*, art. 9, ¶ b.
419. Program on Reproductive Health and Family Planning, *supra* note 110, at 13.
420. DEMOGRAPHIC AND FAMILY HEALTH SURVEY, *supra* note 185, at 15.
421. CHILDREN AND ADOLESCENTS' CODE, approved by Legislative Decree No. 26102, Dec. 23, 1992, art. I, Preliminary Tit..
422. Program on Reproductive Health and Family Planning, *supra* note 110, at 14.
423. *Id.*
424. *Id.*
425. *Id.*
426. *Id.*, at 24.
427. *Id.*
428. *Id.*, at 14.
429. *Id.*, at 26.
430. Program on Reproductive Health and Family Planning, *supra* note 110, at 23.
431. *Id.*
432. *Id.*
433. Approved by Ministerial Resolution No. 0023-92-SA/DM, Jan. 23, 1992.
434. In matters related to reproductive health, the provisions aim to "prevent unwanted and unplanned pregnancies and abortions, as well as STIs, especially AIDS, through sex education, guidance and counseling and the installation of support services to this end; to prevent cervical cancer, through performing Papanicolaou smears on sexually active teenagers in accordance with the norms of the Program for the Control of Cervical Cancer, and to prevent neonatal tetanus through the application of toxoid tetanus in adolescents." *Id.*, numeral 4,2.
435. Decree Law No. 26102, THE CHILDREN AND ADOLESCENT'S CODE, (n.d.).
436. *Id.*, art. 2.
437. *Id.*, art. 15, cl. f.
438. PERU IN NUMBERS, *supra* note 390, at 233.
439. *Id.*
440. *Id.*
441. *Id.*
442. CIVIL CODE, *supra* note 317, art. 42.
443. *Id.*, art. 244.
444. *Id.*
445. *Id.*, arts. 244, 245, 246, and 247; and the CHILDREN AND ADOLESCENTS' CODE, arts. 126 and 127.
446. *Id.*, art. 245.
447. *Id.*, art. 247.
448. *Id.*, art. 241.
449. *Id.*, art. 46.
450. The Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 28 I.L.M. 1448 (*entry into force* Sept. 2, 1990) (approved by Perú by Legislative Resolution No. 25278 on Aug. 4, 1990, arts. 19 and 34). Its dissemination was declared to be of national interest by Law No. 25302, published on Jan. 4, 1991.
451. PENAL CODE, *supra* note 145, art. 173, ¶ 1, modified according to art. 2 of Law No. 26293.
452. *Id.*, final ¶.
453. *Id.*, art. 173, ¶ 2 and final.
454. *Id.*, ¶ 3 and final.
455. *Id.*, art. 173-A.
456. *Id.*, art. 173, text modified according to Law No. 26293, art. 1.
457. *Id.*
458. *Id.*
459. *Id.*, ¶ A.
460. *Id.*, art. 175, text modified according to Law No. 26357, Sept. 23, 1994, art. 1.
461. *Id.*
462. *Id.*, art. 177, modified according to Law No. 26293, art. 1.
463. *Id.*, art. 170, first ¶. Incorporated according to Law No. 26293, art. 2.
464. Law No. 26770, Apr. 7, 1997, art. 2.

465. *Id.*, art. 176-A.
466. *Id.*
467. *Id.*, last ¶.
468. DEMOGRAPHIC AND FAMILY HEALTH SURVEY, *supra* note 185, at 21.
469. *Id.*
470. PERU CONST., *supra* note 2, art. 13.
471. *Id.*, art. 16. Additionally, the Children and Adolescents' Code, art. 15, cl. f, provides that the State must ensure that basic education includes sexuality and family planning.
472. Population Law, *supra* note 105, art. 15, cl. c.
473. *Id.*, ¶ ¶ c and h.
474. *Id.*, ¶ k.
475. *La educación sexual en la escuela* [*Sex Education in Schools*], SHORT CUTS (Trimestral Bulletin of the Center for the Documentation of Women [CENDOC]) Year I, No. 1, at 3 (Sept. 1996).
476. *Id.*
477. *Id.*
478. *Id.* The preparation of these methodological guides originated from a debate between the state and the Catholic Church on the subject of sex education. The Episcopal Commission of Peru has already published a separate guide for parents and teachers, entitled *Formación y Orientación para el Amor y la Sexualidad [Training and Orientation for Love and Sexuality]*, published in Mar. 1996.
479. Marino Costa Bauer, Minister of Health, Statement to the Congressional Commission on Women, at 44.