

## **Appendix**

### **INTERNATIONAL STANDARDS ON SEXUAL AND REPRODUCTIVE RIGHTS**

The analysis of the laws and judicial decisions of the countries studied was made through the lens of the legal and political standards established by the international community. The legal standards consist of the jurisprudence<sup>423</sup> issued by United Nations committees charged with monitoring compliance with international human rights treaties<sup>424</sup> and that produced by the bodies comprising the Inter-American System for the Protection of Human Rights.<sup>425</sup> The human rights standards include the agreements reached in recent international conferences that resulted in the consolidation of the recognition of reproductive rights as human rights.

### **INTERNATIONAL TREATIES**

Sexual and reproductive rights are rooted in the most basic principles of human rights contained in different international treaties. Some of the international instruments that form the basis for the protection of these rights are the Universal Declaration of Human Rights (Universal Declaration), the International Covenant on Civil and Political Rights (Political Rights Covenant), the International Covenant on Economic, Social and Cultural Rights (Economic Rights Covenant), the Convention on the Rights of the Child (Children's Convention), and the American Convention on Human Rights (American Convention). Particularly, the Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention Belém do Pará) were turning points for the protection of Latin American women's rights.

### **INTERNATIONAL CONFERENCES**

Women's human rights are an increasingly important component of the agreements reached at United Nations world conferences. For this rea-

son, the Vienna Conference in 1993, the United Nations International Conference on Population and Development (ICPD) in 1994 and the Beijing Conference in 1995 also constitute essential reference points for the interpretation of sexual and reproductive rights.<sup>426</sup>

At the ICPD, reproductive health was defined as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable, and acceptable methods of family planning of their choice, as well as other legal methods for the regulation of fecundity, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.”

### **SEXUAL AND REPRODUCTIVE RIGHTS**

Generally, sexual and reproductive rights cover two basic principles: the right to sexual and reproductive health services, and the right to sexual and reproductive self-determination.

#### ***The Right to Sexual and Reproductive Health Services***

The obligation of states to provide reproductive health services is derived from the obligation to protect the life and health of individuals without discrimination on the basis of sex. To do so, states must take into account the particular health needs of women as well as men, and given that reproductive health is fundamental to the well-being of women, states must take affirmative action to guarantee that reproductive health services are accessible and affordable for all women.

States are also obligated to eliminate legal barriers to reproductive health services. In its Recommendation on Health, the committee that monitors

compliance with the Women's Convention (CEDAW) has noted that the obstacles posed by "[...] laws that criminalize medical procedures only needed by women punish women who undergo those procedures." Among the legal barriers to reproductive health are laws that prohibit abortion, restrict advertising for contraception, require spousal consent in obtaining contraceptives, and penalize voluntary sterilization.

### ***The Right to Sexual and Reproductive Self-Determination***

The right to sexual and reproductive self-determination is based on the right to make reproductive decisions free from interference, and the right to be free from all forms of violence and coercion that affect the sexual and reproductive life of women.

The right to reproductive self-determination has been defined in international instruments as the right to "freely and responsibly" determine the number and spacing of children and to have the information and resources necessary to do so.

The right to make reproductive decisions free from interference is connected to the most basic principles of physical autonomy and it is usually referred to as the right to physical integrity. This principle is rooted in the right to respect for the inherent dignity of a person, the right to liberty and security, and the right to privacy.

The right to physical integrity protects women from unwanted intrusion or invasion of their bodies and other non-consensual restrictions on the physical autonomy of women. Reproductive self-determination also implies the right to be free from all forms of violence and coercion that affect sexual and reproductive rights.



## ***Country Statistics***

### **ARGENTINA**

#### ***GENERAL INFORMATION***

##### *POPULATION*

- In 1999, Argentina had an estimated population of 36,577,000 inhabitants with an annual growth rate of 1.3%.<sup>1</sup>
- In 2000, 90% of the Argentine population resided in urban areas and 10% resided in rural areas.<sup>2</sup>
- Twenty-eight percent of the Argentine population is below the age of 15 and 13.3% is over the age of 60.<sup>3</sup>

##### *ECONOMY*

- In 1998, the Gross National Product (GNP) per capita was estimated at USD 11,728.<sup>4</sup>
- From 1990 to 1998, the Gross Domestic Product (GDP) grew at an estimated annual rate of 5.6%.<sup>5</sup>
- From 1990 to 1998, public health expenditures were 4% of the total national budget.<sup>6</sup>

##### *EMPLOYMENT*

- In 1998, 14 million people were employed; of those, 32.7% were women.<sup>7</sup> In 1999, women represented 32.7% of the labor force.<sup>8</sup>
- The unemployment rate in 2000 was 15%.<sup>9</sup>

##### *EDUCATION*

- The illiteracy rate in 1999 was 3.3%.<sup>10</sup>

### **WOMEN'S STATUS**

- In 2000, life expectancy at birth was 71 years for men and 78 years for women.<sup>11</sup>
- The estimated female population was 18,868,000 in 2000.<sup>12</sup>
- In 2000, the illiteracy rate was 3.2% for adult women and 3.1% for men.<sup>13</sup>

### **ADOLESCENTS**

- The adolescent fertility rate in 1998 was 64 births for every 1,000 women between the ages of 15 and 19.<sup>14</sup>

### **MATERNAL HEALTH**

- The total fertility rate during 1998 and 1999 was 2.6 children per woman.<sup>15</sup>
- The maternal mortality rate from 1990 to 1998 was 38 deaths per 100,000 live births.<sup>16</sup>
- In 1998, the infant mortality rate was 19 deaths per 1,000 live births.<sup>17</sup>

### **HIV/AIDS AND OTHER STIs**

- In 1999, an estimated 130,000 people were living with HIV/AIDS. Of those, 120,000 were adults between the ages of 15 and 49, and 27,000 were women.<sup>18</sup>

ARGENTINA ENDNOTES

- 1 WORLD HEALTH ORGANIZATION (WHO), THE WORLD HEALTH REPORT 2000, at 156 (2000).
- 2 UNITED NATIONS STATISTICS DIVISION (UNSTATS), INDICATORS 2000, "HUMAN SETTLEMENTS", at 1 (2000).
- 3 *Id.*, "YOUTH AND ELDERLY POPULATION", at 1.
- 4 WHO, *supra* note 1, at 156.
- 5 WORLD BANK, WORLD DEVELOPMENT INDICATORS 2000, at 10 (2000).
- 6 *Id.*, at 182.
- 7 *Id.*, at 90.
- 8 *Id.*, at 46.
- 9 WORLD BANK, "COUNTRIES AND REGIONS" 1999, *available at* <http://www.worldbank.org/html/extdr/regions> (last visited Sep 26, 2001).
- 10 CENTRAL INTELLIGENCE AGENCY (CIA), THE WORLD FACT BOOK 2001, "Argentina", *available at* <http://www.cia.gov/cia/publications/factbook> (last visited Sep. 28, 2001).
- 11 WORLD BANK, *supra* note 9.
- 12 ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN (ECLAC), GENDER INDICATORS, *available at* <http://www.cepal.org/mujer/proyectos/perfiles/default.htm> (last visited Sep. 25, 2001).
- 13 *Id.*
- 14 UNSTATS, *supra* note 2, "LITERACY", at 1 (2000).
- 15 WORLD BANK, *supra* note 5, at 98.
- 16 *Id.*, and WHO, *supra* note 1, at 156.
- 17 WORLD BANK, *supra* note 15, at 98.
- 18 UNITED NATIONS PROGRAM ON HIV/AIDS (UNAIDS), REPORT ON THE GLOBAL HIV/AIDS EPIDEMIC, *available at* [http://www.unaids.org/epidemic\\_update/report/table\\_E.htm](http://www.unaids.org/epidemic_update/report/table_E.htm) (last visited Sep.27, 2000).

## **CHILE**

### **GENERAL INFORMATION**

#### *POPULATION*

- In 1999, Chile had an estimated population of 15,019,000 inhabitants and an annual growth rate of 1.5%.<sup>1</sup>
- In 2000, 86% of the Chilean population resided in urban areas and 14% resided in rural areas.<sup>2</sup>
- In 2000, 28% of the Chilean population was under 15 years of age<sup>3</sup> and 10% was over the age of 60.<sup>4</sup>

#### *ECONOMY*

- In 1998, the Gross National Product (GNP) per capita was estimated at USD 8,507.<sup>5</sup>
- From 1990 to 1998, the Gross Domestic Product (GDP) grew at an estimated annual rate of 7.9%.<sup>6</sup>
- From 1990 to 1998, public health expenditures were 2.4% of the total national budget.<sup>7</sup>

#### *EMPLOYMENT*

- In 1998, 6 million people were employed and of those, 32.9% were women.<sup>8</sup>
- The unemployment rate in 2000 was 9%.<sup>9</sup>

### **WOMEN'S STATUS**

- In 1998, Chilean women comprised 50.5% of the population.<sup>10</sup>
- In 1999, life expectancy at birth was approximately 79.9 years for women and 73.4 for men.<sup>11</sup>



### **ADOLESCENTS**

- The adolescent fertility rate in 2000 was 4.9 births for every 1,000 women between the ages of 15 and 19.<sup>12</sup>

### **EDUCATION**

- The illiteracy rate for people over the age of 15 was 4.5% in 1998.<sup>13</sup>
- In 2000, the illiteracy rate was 4.5% for adult women and 4.1% for men.<sup>14</sup>

### **MATERNAL HEALTH**

- The total fertility rate in 1998 was 2.2 children per woman.<sup>15</sup>
- The maternal mortality rate in 1998 was 44 deaths for every 100,000 live births.<sup>16</sup>
- In 1998, the infant mortality rate was 10 deaths for every 1,000 live births.<sup>17</sup>

### **HIV/AIDS AND OTHER STIs**

- In 1999, an estimated 15,000 people between the ages of 15 and 49 were infected with HIV/AIDS, and of those, 2,600 were women.<sup>18</sup>

CHILE ENDNOTES

- 1 WORLD HEALTH ORGANIZATION (WHO), THE WORLD HEALTH REPORT 2000, at 156.
- 2 UNITED NATIONS STATISTICS DIVISION (UNSTATS), INDICATORS 2000, "HUMAN SETTLEMENTS", at 1.
- 3 *Id.*, "YOUTH AND ELDERLY POPULATION", at 1.
- 4 WHO, *supra* note 1, at 156.
- 5 WORLD BANK, WORLD DEVELOPMENT INDICATORS 2000, at 10 (2000).
- 6 *Id.*, at 182.
- 7 *Id.*, at 90.
- 8 *Id.*, at 46.
- 9 CENTRAL INTELLIGENCE AGENCY (CIA), THE WORLD FACT BOOK 2001, "Chile", *available at* <http://www.cia.gov/cia/publications/factbook> (last visited Sep. 28, 2001).
- 10 WORLD BANK, *supra* note 5, at 18.
- 11 WHO, *supra* note 1, at 157.
- 12 POPULATION ACTION INTERNATIONAL (PAI), THE PAI REPORT CARD 2001, "THE REPRODUCTIVE RISK INDEX".
- 13 WORLD BANK, *supra* note 5, at 82.
- 14 UNSTATS, *supra* note 2, "LITERACY", at 1 (2000).
- 15 WORLD BANK, *supra* note 5, at 98.
- 16 POPULATION REFERENCE BUREAU (PRB), "WOMEN OF OUR WORLD DATA SHEET" 1998, *available at* <http://www.prb.org> (last visited Sep. 28, 2001).
- 17 WORLD BANK, *supra* note 5, at 106.
- 18 UNITED NATIONS PROGRAM ON HIV/AIDS (UNAIDS), REPORT ON THE GLOBAL HIV/AIDS EPIDEMIC, *available at* [http://www.unaids.org/epidemic\\_update/report/table\\_E.htm](http://www.unaids.org/epidemic_update/report/table_E.htm) (last visited June 28, 2001).

## **COLOMBIA**

### **GENERAL INFORMATION**

#### *POPULATION*

- In 1999, Colombia had an estimated population of 41,564,000 inhabitants with an annual growth rate of 1.9%.<sup>1</sup>
- In 2000, 74% of the Colombian population resided in urban areas while 26% resided in rural areas.<sup>2</sup>
- In 2000, 33% of the population was below the age of 15<sup>3</sup> and 6.8% was over the age of 60.<sup>4</sup>

#### *ECONOMY*

- In 1998, the Gross National Product (GNP) per capita was estimated at USD 5,861.<sup>5</sup>
- From 1990 to 1998, the Gross Domestic Product (GDP) grew at an estimated annual rate of 3.9%.<sup>6</sup>
- From 1990 to 1998, public health expenditures were 4.9% of the total national budget.<sup>7</sup>

#### *EMPLOYMENT*

- In 1998, 18 million people were employed; of those, 38.2% were women.<sup>8</sup> In 1999 women represented 38.4% of the workforce.<sup>9</sup>
- The estimated unemployment rate in 2000 was 20%.<sup>10</sup>

### **EDUCATION**

- In 2000, the illiteracy rate for adult women and men was 8.2%.<sup>11</sup>

### **WOMEN'S STATUS**

- In 1998, women comprised 50.6% of the population.<sup>12</sup>
- In 1999, life expectancy at birth was approximately 74.1 years for women and 68.1 years for men.<sup>13</sup>

- In 1998, the Institute of Forensic Medicine reported 48,751 cases of domestic violence, and in 42,347 of those cases the victims were women.<sup>14</sup>
- Only 27% of victims of domestic violence report their cases to the appropriate authority. A more exact estimate of the prevalence of domestic violence could be achieved by multiplying the domestic violence statistics by four.<sup>15</sup>

### **ADOLESCENTS**

- The adolescent fertility rate in 1998 was 86 births per 1,000 women between the ages of 15 and 19.<sup>16</sup>
- Twenty-one percent of women between the ages of 15 and 19 are sexually active. Of those, 63% do not use a contraceptive method.<sup>17</sup>

### **MATERNAL HEALTH**

- The total fertility rate in 1998 and 1999 was 2.7 children per woman.<sup>18</sup>
- The maternal mortality rate from 1990 to 1998 was 80 deaths per 100,000 live births.<sup>19</sup>
- In 1998, the infant mortality rate was 23 deaths per 1,000 live births.<sup>20</sup>

### **CONTRACEPTION AND ABORTION**

- For every 100 women who have an abortion, 29 have complications and 18 go to the hospital for emergency medical care due to serious complications.<sup>21</sup>
- Abortion is the second leading cause of maternal mortality and accounts for 15% of the total number of maternal deaths each year.<sup>22</sup>

### **HIV/AIDS AND OTHER STIs**

- In 1999, an estimated 71,000 people were living with HIV/AIDS. Of those, 70,000 were adults between the ages of 15 and 49 and 10,000 were women.<sup>23</sup>

COLOMBIA ENDNOTES

- 1 WORLD HEALTH ORGANIZATION (WHO), THE WORLD HEALTH REPORT 2000, at 156 (2000).
- 2 UNITED NATIONS STATISTICS DIVISION (UNSTATS), INDICATORS 2000, "HUMAN SETTLEMENTS", at 1 (2000).
- 3 *Id.*, "YOUTH AND ELDERLY POPULATION", at 1.
- 4 WHO, *supra* note 1, at 156.
- 5 WORLD BANK, WORLD DEVELOPMENT INDICATORS 2000, at 10 (2000).
- 6 *Id.*, at 182.
- 7 *Id.*, at 90.
- 8 *Id.*, at 46.
- 9 WORLD BANK, "COUNTRIES AND REGIONS" 1999, available at <http://www.worldbank.org/html/extdr/regions> (last visited Sep. 26, 2001).
- 10 CENTRAL INTELLIGENCE AGENCY (CIA), THE WORLD FACT BOOK 2001, "Colombia", available at <http://www.cia.gov/cia/publications/factbook/> (last visited Sep. 28, 2001).
- 11 UNSTATS, *supra* note 2, "LITERACY", at 1 (2000).
- 12 WORLD BANK, *supra* note 5, at 18.
- 13 WHO, *supra* note 1, at 157.
- 14 CONSEJERÍA PRESIDENCIAL PARA LA POLÍTICA SOCIAL [PRESIDENTIAL ADVISORY BOARD ON PUBLIC POLICY], *Política Nacional de Construcción de Paz y Convivencia Familiar, Haz Paz (National Policy on the Construction of Peace and Domestic Cohabitation, Make Peace)* at 17 (2000).
- 15 CENTRO DE REFERENCIA NACIONAL SOBRE VIOLENCIA, INSTITUTO NACIONAL DE MEDICINA LEGAL Y CIENCIAS FORENSES [NATIONAL INFORMATION CENTER ON VIOLENCE, NATIONAL INSTITUTE OF FORENSIC MEDICINE AND SCIENCES], *Boletín CRNV (CRNV Bulletin)* [cited in CENTER FOR REPRODUCTIVE RIGHTS AND CORPORACIÓN CASA DE LA MUJER, *Women's Reproductive Rights in Colombia: A Shadow Report*, at 20 (1998)].
- 16 WORLD BANK, *supra* note 5, at 98.
- 17 WOMEN'S ENVIRONMENT & DEVELOPMENT ORGANIZATION (WEDO), "COLOMBIA: MORE COVERAGE, BUT PUBLIC SERVICES LAG BEHIND", in *Risks, Rights and Reforms* 1999, at 200.
- 18 WORLD BANK, *supra* note 5, at 98, and WHO, *supra* note 1, at 156.
- 19 WORLD BANK, *supra* note 5, at 98.
- 20 *Id.*
- 21 *Id.*
- 22 *Id.*
- 23 UNITED NATIONS PROGRAM ON HIV/AIDS (UNAIDS), REPORT ON THE GLOBAL HIV/AIDS EPIDEMIC, available at [http://www.unaids.org/epidemic\\_update/report/table\\_E.htm](http://www.unaids.org/epidemic_update/report/table_E.htm) (last visited Sep. 27, 2000).

## **MEXICO**

### ***GENERAL INFORMATION***

#### *POPULATION*

- In 1999, Mexico had an estimated population of 97,365,000 inhabitants and an annual growth rate of 1.8%.<sup>1</sup>
- In 2000, 74% of the population resided in urban areas and 26% in rural areas.<sup>2</sup>
- In 2000, 33% of the population was under the age of 15<sup>3</sup> and 6.8% over the age of 60.<sup>4</sup>

#### *ECONOMY*

- In 1998, the Gross National Product (GNP) per capita was estimated at USD 7,450.<sup>5</sup>
- From 1990 to 1998, the Gross Domestic Product (GDP) grew at an estimated annual rate of 2.5%.<sup>6</sup>
- From 1990 to 1998, public health expenditures were 2.8% of the total national budget.<sup>7</sup>

#### *EMPLOYMENT*

- In 1998, 38 million people were employed, and women comprised 32.6%<sup>8</sup> of the workforce. In 1999 women comprised 32.9% of the workforce.<sup>9</sup>
- The urban unemployment rate in 2000 was 2.2%.<sup>10</sup>

#### *EDUCATION*

- In 1999, the illiteracy rate was 10.9%.<sup>11</sup>
- In 2000, the illiteracy rate for adult women was 10.6%, while for men it was 6.7%.<sup>12</sup>

### **WOMEN'S STATUS**

- In 1999, women comprised 50.5% of the population.<sup>13</sup>
- In 1999, life expectancy at birth was approximately 77.1 years for women and 71 years for men.<sup>14</sup>

### **ADOLESCENTS**

- The adolescent fertility rate in 1998 was 69 births per 1,000 women between the ages of 15 and 19.<sup>15</sup>

### **MATERNAL HEALTH**

- The total fertility rate in 1999 was 2.7 children per woman.<sup>16</sup>
- The maternal mortality rate from 1990 to 1998 was 48 deaths per 100,000 live births.<sup>17</sup>
- The infant mortality rate in 1998 was 30 deaths per 1,000 live births.<sup>18</sup>

### **HIV/AIDS AND OTHER STIs**

- In 1999, an estimated 150,000 adults between the ages of 15 and 49 were infected with HIV/AIDS; of those, 22,000 were women.<sup>19</sup>
- In 1999, the estimated number of adolescents between the ages of 15 and 19 infected with HIV/AIDS was 26, while the number of people between the ages of 20 and 24 with HIV/AIDS was 117.<sup>20</sup>

MEXICO ENDNOTES

- 1 WORLD HEALTH ORGANIZATION (WHO), *THE WORLD HEALTH REPORT 2000*, at 158.
- 2 UNITED NATIONS STATISTICS DIVISION (UNSTATS), *INDICATORS 2000*, "HUMAN SETTLEMENTS", at 1.
- 3 *Id.*, "YOUTH AND ELDERLY POPULATION", at 2.
- 4 WHO, *supra* note 1, at 158.
- 5 WORLD BANK, *WORLD DEVELOPMENT INDICATORS 2000*, at 11 (2000).
- 6 *Id.*, at 183.
- 7 *Id.*, at 91.
- 8 *Id.*, at 47.
- 9 WORLD BANK, "COUNTRIES AND REGIONS" 1999, *available at* <http://www.worldbank.org/html/extdr/regions> (last visited Sep. 26, 2001).
- 10 CENTRAL INTELLIGENCE AGENCY (CIA), *THE WORLD FACT BOOK 2001*, "Mexico", *available at* <http://www.cia.gov/cia/publications/factbook> (last visited Sep. 28, 2001).
- 11 WORLD BANK, *supra* note 9.
- 12 UNSTATS, *supra* note 2, "LITERACY", at 1 (2000).
- 13 WORLD BANK, *supra* note 5, at 18.
- 14 WHO, *supra* note 1, at 157.
- 15 WORLD BANK, *supra* note 5, at 98.
- 16 WHO, *supra* note 1, at 156.
- 17 WORLD BANK, *supra* note 5, at 98.
- 18 *Id.*, at 14.
- 19 UNITED NATIONS PROGRAM ON HIV/AIDS (UNAIDS), *REPORT ON THE GLOBAL HIV/AIDS EPIDEMIC*, *available at* [http://www.unaids.org/epidemic\\_update/report/table\\_E.htm](http://www.unaids.org/epidemic_update/report/table_E.htm) (last visited September 26, 2000).
- 20 *Id.*



## **PERU**

### **GENERAL INFORMATION**

#### *POPULATION*

- In 1999, Peru had an estimated population of 25,230,000 inhabitants and an annual growth rate of 1.8%.<sup>1</sup>
- In 2000, 73% of the population resided in urban areas and 27% in rural areas.<sup>2</sup>
- In 2000, 33% of the population was under the age of 15<sup>3</sup> and 7.1% was over the age of 60.<sup>4</sup>

#### *ECONOMY*

- In 1998, the Gross National Product (GNP) per capita was estimated at USD 4,180.<sup>5</sup>
- From 1990 to 1998, the Gross Domestic Product (GDP) grew at an estimated annual rate of 5.7%.<sup>6</sup>
- From 1990 to 1998, public health expenditures were 2.2% of the total national budget.<sup>7</sup>

#### *EMPLOYMENT*

- In 1998, 9 million people were employed and of those, 30.6% were women.<sup>8</sup>
- The unemployment rate in 2000 was 6.5%.<sup>9</sup>

#### *EDUCATION*

- In 2000, the illiteracy rate was 14.6% for adult women and 5.6% for men.<sup>10</sup>

### **WOMEN'S STATUS**

- In 1998, women comprised 50.3% of the population.<sup>11</sup>

- In 1999, life expectancy at birth was approximately 69.1 years for women and 65.6 years for men.<sup>12</sup>

### **ADOLESCENTS**

- The adolescent fertility rate in 1998 was 66 births for every 1,000 women between the ages of 15 and 19.<sup>13</sup>
- In 1999, an estimated 13% of women between the ages of 15 and 19 were mothers or became pregnant for the first time.<sup>14</sup>

### **MATERNAL HEALTH**

- In 1999, the total fertility rate was 2.9 children per woman.<sup>15</sup>
- From 1990 to 1998, the maternal mortality rate was 270 deaths for every 100,000 live births.<sup>16</sup>
- In 1998, the infant mortality rate was 40 deaths per 1,000 live births.<sup>17</sup>

### **HIV/AIDS AND OTHER STIs**

- It is estimated that in 1999 48,000 people were infected with HIV/AIDS. Of those, 47,000 were adults between the ages of 15 and 49, and 12,000 were women.<sup>18</sup>
- In 1999, the estimated number of deaths due to AIDS was 4,100.<sup>19</sup>
- In 1999, 12% of HIV/AIDS cases were among adolescents between the ages of 15 and 19 and 48% were among youth.<sup>20</sup>

PERU ENDNOTES

- 1 WORLD HEALTH ORGANIZATION (WHO), THE WORLD HEALTH REPORT 2000, at 160 (2000).
- 2 UNITED NATIONS STATISTICS DIVISION (UNSTATS), INDICATORS 2000, "HUMAN SETTLEMENTS", at 2 (2000).
- 3 *Id.*, "YOUTH AND ELDERLY POPULATION", at 2.
- 4 WHO, *supra* note 1, at 160.
- 5 WORLD BANK, WORLD DEVELOPMENT INDICATORS 2000, at 11 (2000).
- 6 *Id.*, at 183.
- 7 *Id.*, at 91.
- 8 *Id.*, at 47.
- 9 LATIN FOCUS, PERU ECONOMIC INDICATORS 1996-2001, *available at* <http://www.latin-focus.com/countries/peru/perindex.htm> (last visited Sep. 28, 2001).
- 10 UNSTATS, *supra* note 2, "LITERACY", at 1 (2000).
- 11 WORLD BANK, *supra* note 5, at 18.
- 12 WHO, *supra* note 1, at 157.
- 13 WORLD BANK, *supra* note 5, at 98.
- 14 SERVICIO DE NOTICIAS DE LA MUJER [WOMEN'S NEWS SERVICE], "Resumen de noticias de SEM del 3 al 7 de enero" [*Summary of SEM news from January 3rd to January 7th*] 2000.
- 15 WHO, *supra* note 1, at 156.
- 16 WORLD BANK, *supra* note 5, at 98.
- 17 *Id.*, at 14.
- 18 UNITED NATIONS PROGRAM ON HIV/AIDS (UNAIDS), REPORT ON THE GLOBAL HIV/AIDS EPIDEMIC, *available at* [http://www.unaids.org/epidemic\\_update/report/table\\_E.htm](http://www.unaids.org/epidemic_update/report/table_E.htm) (last visited Sep. 27, 2000).
- 19 *Id.*
- 20 *Id.*



## Endnotes

- 1 Source citations for each country have been directly translated from Spanish text to reflect original citation format.
- 2 The complete version of *Bodies on Trial* is recommended for an in-depth analysis of each section. TEMIS Publishing distributes to major legal bookstores in Latin America. For more information contact Editorial TEMIS S.A., by email at [Temis@col-online.com](mailto:Temis@col-online.com) or by telephone, 571-424-7855, in Bogotá, Colombia.
- 3 In the case of Argentina, it occurred by way of direct incorporation of ten international treaties into the body of the Constitution.
- 4 Constitutional Court, Decision T-926 of 1999, Presiding Judge Carlos Gaviria Díaz.
- 5 Compilation and analysis of interpretations of sexual and reproductive rights. See, THE CENTER FOR REPRODUCTIVE RIGHTS AND UNIVERSITY OF TORONTO INTERNATIONAL PROGRAMME ON REPRODUCTIVE AND SEXUAL HEALTH, BRINGING RIGHTS TO BEAR: AN ANALYSIS OF THE WORK OF THE UN TREATY MONITORING BODIES ON REPRODUCTIVE AND SEXUAL RIGHTS 291 (2002) [hereinafter TMB Report].
- 6 Law No. 418, Reproductive Health and Responsible Procreation Law, approved by the legislature, June 22, 2000.
- 7 Giroldi H., cassation appeal, National Supreme Court of Justice, April 7, 1995, in JA, t. III, 1995, p. 571. Signing judges: Julio S. Nazareno, Eduardo Moliné O'Connor, Carlos S. Fayt, Augusto C. Belluscio, Enrique S. Petracchi, Antonio Boggiano.
- 8 Supreme Court, "Bramajo," September 12, 1996, "Argentine Jurisprudence," November 20, 1996, clause 8.
- 9 A fetus lacking a forebrain or cranium.
- 10 Inter-American Commission on Human Rights, Case 2141 (case Baby Boy), L/V/II.52.48, 1981.
- 11 National Criminal and Correction Court Chamber IV, July 14, 1992, cited in CRISTINA MOTTA AND MARCELA RODRÍGUEZ, *Mujer y justicia. El caso argentino (Women and Justice in Argentina)*, World Bank, Buenos Aires, 2001, p. 51.
- 12 Supreme Court of Justice of Buenos Aires, Ac.82.058, "B.A. Judicial Authorization," July 22, 2001, magistrate De Lazzari vote, no. IV.
- 13 Supreme Court of Justice decisions. Vol. 314, "Comunidad Homosexual Argentina con Resolución Inspección General de Justicia" ("Homosexual Community of Argentina v. General Justice Inspection Resolution"), November 22, 1991, pp. 1585 to 1596.
- 14 FEDERAL CONSTITUTION OF ARGENTINA, in effect since August 22, 1994, art. 108 [hereinafter ARG. CONST.].
- 15 *Id.*, art. 116.
- 16 *Id.*, art. 75, no. 12.
- 17 *Id.* In "Ekmekdjian v. Sofovich," in "La Ley" ("The Law"), t. 1992-C. (regarding the position of international treaties within the Argentine framework), the court established that an adequate interpretation of constitutional provisions included that treaties should have a hierarchic range superior to that of laws. Additionally, the court found that those rights incorporated through international treaties are operative, that is, that their protection can be demanded before an internal jurisdiction automatically once the treaty has been signed. Finally, the court found that the state can fail to fulfill an international obligation by either issuing laws that are manifestly contrary to it or by failing to establish provisions necessary for compliance.
- 18 *Id.*, art. 75 no. 22. These treaties are: American Declaration on the Rights and Duties of Man; Universal Declaration of Human Rights; American Convention on Human Rights; International Covenant on Economic, Social and Cultural Rights; International Convention on Civil and Political

- Rights and the Optional Protocol; Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; and Convention on the Rights of the Child.
- 19 ARG. CONST., art. 5, par. 22. The incorporation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, adopted by Argentina July 1994 and ratified July 1996, is still pending.
- 20 CIVIL PROCEDURAL AND COMMERCIAL CODE, arts. 302 and 303.
- 21 CIVIL CODE, art. 17.
- 22 ARG. CONST., art. 31.
- 23 ARG. CONST., art. 43. Neither the constitution, nor the law definitively fix the time period to decide a case from the time of petition. However, a deadline is imposed once the defendant has responded to the petition—48 hours—or once the evidentiary hearing is held—three days. Law 16,986, arts. 7 and 9.
- 24 *Id.*, art. 43. The Civil Procedural and Commercial Code also establishes *amparo* for actions of individuals. Civil Procedural and Commercial Code, art. 321, no. 2.
- 25 *Id.*
- 26 Law 16,986, art. 5.
- 27 *Id.*, art. 4.
- 28 *Id.*, art. 6.
- 29 ARG. CONST., art. 43, final para.
- 30 *Id.*, 3d para.
- 31 Supreme Court decisions. Vol. 317, p. 283, “Nasso, José Agustín Cayetano s/ Habeas Corpus” (“Nasso, José Agustín Cayetano on Habeas Corpus”), 4/5/94.
- 32 Supreme Court decisions. Vol. 320, p. 1551, appeal for review of the facts submitted by Delfina Ozorio in the case Vera Rojas, Rolando on the crime of rape, July 15, 1997.
- 33 Supreme Court of Justice, November 4, 1975, cited in Cristina Motta and Marcela Rodríguez, *Mujer y justicia: el caso argentino (Women and Justice in Argentina)*, World Bank, Buenos Aires, 2001, p. 52.
- 34 National Criminal Court, Cassation Court. March 3, 1977, cited in *Mujer y justicia: el caso argentino (Women and Justice in Argentina)*, p. 48.
- 35 National Criminal and Corrections Court, Chamber VII, September 1, 1983, cited in *Mujer y justicia: el caso argentino (Women and Justice in Argentina)*.
- 36 National Penal Cassation Court, Chamber III, November 19, 1998, cited in *Mujer y justicia: el caso argentino (Women and Justice in Argentina)*, p. 50.
- 37 National Criminal and Corrections Court, Chamber IV, July 14, 1992, cited in *Mujer y justicia: el caso argentino (Women and Justice in Argentina)*, p. 51. In this case, the defendant was a “young father” who had committed child abuse on an eight year-old minor “in the dark”. The court stated that mere oral penetration “is not painful.” (Quotations correspond to textual citations from the decisions.)
- 38 Supreme Court decisions. Vol. 318, p. 986, “Appeal for review of the facts submitted by Jaime Pompas (in the name of the Unión Cívica Radical (Radical Civic Union) – Córdoba Province) in the case Merciadri de Morini, María Teresa on petition (Unión Cívica Radical),” May 12, 1995. In a previous decision, the court had rejected a remedy in a similar case because the elections had already taken place. See Inter-American Commission on Human Rights, Annual Report, 1999, Report 102/99, case 11,307. María Merciadri vs. Argentina. The court amended its position as a result of the decision of the Inter-American Commission on Human Rights in the case of María Merciadri v. Argentina.
- 39 Supreme Court decisions. Vol. 319, p. 3041, “B., R. E. c/ Policía Federal Argentina s/ Amparo” (“B., R. E. v. Federal Police of Argentina on *Amparo*”), December 17, 1996. (Order of reinstatement of a deputy

- commissioner of the Federal Police who had been retired from service due to his HIV positive status.)
- 40 Supreme Court of Justice decisions. Vol. 314, p. 1531. *Comunidad Homosexual Argentina v. Resolución Inspección General de Justicia* (Homosexual Community of Argentina v. General Justice Inspection Resolution) on legal entities and Appeal for review of the facts submitted by the plaintiff in the case: “Comunidad Homosexual Argentina c/ Resolución Inspección General de Justicia” (“Homosexual Community of Argentina v. General Justice Inspection Resolution”), to decide legal basis, November 22, 1991. (Denying remedy to Comunidad Homosexual Argentina against Inspección General de Justicia.)
- 41 Supreme Court decisions. Vol. 319, p. 1165, “Gabrielli, Mario Carlos c/ Estado Nacional s/ contencioso-administrativo” (“Gabrielli, Mario Carlos v. the State on administrative law branch”), July 5, 1996. Signing magistrates: Eduardo Moliné O’Connor (dissent in part), Guillermo A. F. López (dissent in part), Gustavo A. Bossert (following his vote); associate judges: Julio Víctor Reboledo, Alberto Mansur (dissenting), Gabriel Chausovsky (dissenting). (Revoking the decision which invalidated the decree that dismissed an army captain for marrying without authorization.)
- 42 Supreme Court decisions. Vol. 312, p. 123, “Appeal for review of the facts submitted by María Angélica Almos de Villacampa in the case Villacampa, Ignacio v. Almos de Villacampa, María Angélica,” February 9, 1989.
- 43 Supreme Court decisions. Vol. 321, p. 93, “Appeal for review of the facts submitted by Verónica Eva Sisto and Martín Ignacio Raúl Franzini in the case Sisto, Verónica Eva and Franzini, Martín Ignacio s/ Información sumaria – sumarísimo (Sisto, Verónica Eva and Franzini, Martín Ignacio on Summary Proceedings – summary and urgent), to decide legal basis,” February 5, 1998.
- 44 Appeal for review of the facts submitted by María Angélica Almos de Villacampa, p. 124.
- 45 Supreme Court decisions. Vol. 312, p. 2429, “Chilo de Alegre, Santos Martina c/ Estado Mayor General del Ejército s/ Ordinario” (“Chilo de Alegre, Santos Martina v. State Major General of the army on the ordinary branch”), December 14, 1989. Signing magistrates: Enrique Santiago Petracchi, Carlos S. Fayt, Jorge A. Bacqué.
- 46 Terminology used in the law and the decision cited.
- 47 Supreme Court decisions. Vol. 319, p. 655, “Appeal for review of the facts submitted by Soledad Herrasti in the case Herrasti, Soledad c/ Instituto Municipal de Previsión Social (Herrasti, Soledad v. Municipality Institute of Social Security), to decide legal basis,” April 30, 1996. (Removing from effect the decision of the first petition that allowed the petitioner to follow the procedure of readjustment of retirement benefits as heir.)
- 48 Supreme Court of Justice, January 11, 2001.
- 49 Supreme Court of Justice of Buenos Aires, Ac. 82.058, “B.A. Judicial Authorization,” June 22, 2001.
- 50 Supreme Court, “Bramajo,” September 12, 1996, “Argentine jurisprudence,” November 20, 1996, clause 8.
- 51 Inter-American Commission on Human Rights, Case 2141 (case Baby Boy), L/V/II.52.48, 1981.
- 52 Supreme Court decisions. Vol. 319, p. 3010, “Appeal for review of the facts submitted by Ricardo G. Uncal (District Attorney of the Judicial Department of Mercedes, Province of Buenos Aires) in the case Morales, Rosa Nélica on abortion in Moreno case no. 2785,” 12/10/96.
- 53 National Criminal and Correction Court, in plenary, 8/26/66, *Natividad Frías*. ED, 163, and Criminal and Correction Court, San Martín in plenary, 7/5/85, JA 1985I283.
- 54 Criminal and Correction Court of Lomas de Zamora in plenary, 7/2/81, “Marturano, Amelia M. y otra” (“Marturano, Amelia M. et al.”), JA 1981I45.
- 55 Criminal and Correction Court of Morón in plenary, 5/8/86, JA 1986I593.
- 56 Of particular interest is decision AST148P357 of August 12, 1998, in which the Supreme Court of Justice of Santa Fé supported the decision of a medical authority who broke patient confidentiality (outlined in art. 156 of the Penal Code), and reported a self-induced abortion by the patient. In sup-

port of its decision, the court cited, among other arguments, the words of Saint Thomas Aquinas in the *Summa Theologica* who stated that “revealing secrets for the harm of a person is contrary to faithfulness, but not if it is in revelation of a cause of the common good, which should always be preferred over the individual good.”

- 57 Supreme Court of Justice of the Santa Fé Province, proceedings C.J.S. no. 1105, 1996, “Insaurrealde, Mirta –self-induced abortion - on petition for unconstitutionality,” August 12, 1998.
- 58 *Id.*
- 59 Supreme Court decisions. Vol. 318, p. 871, “Appeal for review of the facts submitted by María Fernanda Baqueiro in the case Baqueiro, María Fernanda c/ Banca Nazionale del Lavoro (Baqueiro, María Fernanda v. Banca Nazionale del Lavoro),” May 4, 1995. In a previous case, however, the court had refused to order compensation. Supreme Court of Justice decisions. Vol. 314, p. 1445. “Susana Bagolini c/ Instituto Tecnológico de Hormigon S.A.” (“Susana Bagolini v. Technological Institute of Hormigon S.A.”), November 12, 1991. Summary only published.
- 60 National Court of Labor Appeals in plenary. “Drewes, Luis A. C. Coselec, S. A.,” March 23, 1990–ED Vol. 138, p. 563.
- 61 Supreme Court decisions. Vol. 312, p. 1833, “Observation of the National Accounts Court on resolution 230, 1989, in superintendence proceedings 561/88 Federal Court of San Rafael, Haberes, Family prenatal allotment, Roldán Manuel Cecilio regarding doctor’s note,” September 26, 1989. Supreme Court of Justice decisions. Vol. 313, p. 959. “Alcides Ramón Velozo,” September 28, 1989. Summary only published.
- 62 Supreme Court decisions. Vol. 319, p. 2596, “Ana María del Rosario Casares c/ resolución de la Obra Social del Poder Judicial” (“Ana María del Rosario Casares v. Social Work Office of the Judicial branch resolution,” November 25, 1996).
- 63 Supreme Court decisions. Vol. 315, p. 21067 “Pedreira de Palles, Haydée Manuela c/ Estado Nacional (Ministerio de Defensa – Estado Mayor General de la Armada) s/ cobro de australes” (“Pedreira de Palles, Haydée Manuela v. the State (Ministry of Defense – State Major General of the Navy) on charging australes”), September 17, 1992.
- 64 Supreme Court decisions. Vol. 317, p. 2037, “Appeal for review of the facts submitted by the plaintiff in the case González, María Hilda c/ INPS – Caja Nacional de Previsión de la Industria, Comercio y Actividades Civiles (González, María Hilda v. INPS – National Treasury of Industrial, Business and Civil Activities Social Security), to decide legal basis,” December 22, 1994.
- 65 Supreme Court decisions. Vol. 319, p. 2936, “Harvey, Margarita Juan c/ Estado Nacional Mrio. de Defensa – Estado Mayor del Ejército s/ juicio de conocimiento” (“Harvey, Margarita Juan v. the State Ministry of Defense”), December 10, 1997.
- 66 Supreme Court decisions. Vol. 312, p. 2429, “Chilo de Alegre, Santos Martina c/ Estado Mayor General del Ejército s/ Ordinario” (“Chilo de Alegre, Santos Martina v. State Major General of the Army on the Ordinary branch”), December 14, 1989.
- 67 Supreme Court of Justice decisions. Vol. 312, p. 1681. “Sara García de Machado c/ Caja de Jubilaciones, Pensiones y Retiros de la Provincia de Córdoba” (“Sara García de Machado v. Treasury of Retirement, Pensions and Annuities for Widows and Orphans of the Province of Córdoba”), September 19, 1989. Summary only published. *See also* Supreme Court decisions. Vol. 319, p. 2610, “Echegaray, Marta de c/ Caja de Retiro, Jubilaciones y Pensiones de la Policía Federal s/ pensión policial” (“Echegaray, Marta de v. Treasury of Retirement, Pensions and Annuities for Widows and Orphans on police pension”), November 5, 1996 and Supreme Court decisions. Vol. 320, p. 2467, “Reinolds, Diana Elizabeth c/ Caja Nacional de Previsión para el Personal del Estado y Servicios Públicos s/ pensiones” (“Reinolds, Diana Elizabeth v. National Treasury of Social Security for State Personnel and Public Works on pensions”), December 10, 1997.
- 68 Supreme Court decisions. Vol. 319, p. 195, “Appeal for review of the facts submitted by the plaintiff



- in the case Peltzer, Delfina Isabel on the unconstitutionality of article 48 of law 6983, to decide legal basis,” March 5, 1996.
- 69 Appeal for review of the facts, González de Delgado, Cristina y otros c/ Universidad Nacional de Córdoba (González de Delgado, Cristina et al. v. National University of Córdoba), September 19, 2000.
- 70 MARIANA CARVAJAL, “La cruzada contra una adolescente” (“The Crusade against an Adolescent”), in *Página 12* (Page 12), April 15, 2000, available at <http://www.pagina12.com.ar/2000/00-04/00-04-15/pag17.htm>, (last visited April 25, 2001).
- 71 See *supra* the right to decide the number and spacing of children.
- 72 Supreme Court decisions. Vol. 319, p. 3041, “B., R. E. c/ Policía Federal Argentina s/ Amparo” (“B., R. E. v. Federal Police of Argentina on Amparo”), December 17, 1996. Signing magistrates: Julio S. Nazareno, Eduardo Moliné O’Connor, Carlos S. Fayt (dissent in part), Augusto César Belluscio, Enrique Santiago Petracchi (dissent in part), Antonio Boggiano, Guillermo A. F. López, Gustavo A. Bossert, Adolfo Roberto Vázquez.
- 73 The fact that the constitution contains a list of rights protected by the petition for protection is not a sufficient argument to justify the actions of the court. In Colombia for example, in spite of a similar provision, judges have found that this list cannot be exhaustive and what is important is the urgency of the case.
- 74 *Id.*
- 75 Letter, August 8, 1997, from the Amateur Soccer Association of Copiapó.
- 76 CONSTITUTION OF CHILE, reformed by Constitutional Reform no. 18,825, August 17, 1989, art. 75 [hereinafter CHIL. CONST.].
- 77 *Id.*, art. 79.
- 78 *Id.*, art. 81.
- 79 *Id.*, art. 82.
- 80 *Id.*, arts. 6 and 80.
- 81 Civil Code, art. 1.
- 82 *Id.*, art. 2.
- 83 *Id.*, art. 3.
- 84 CHIL. CONST., art. 80.
- 85 *Id.*, art. 83.
- 86 The decrees that promulgate them expressly affirm that “it take effect as the law of the Republic in all areas.” However, the issue is debated in doctrine and jurisprudence. See SANTIAGO BENDAÑA, “Las relaciones entre el derecho internacional y el derecho interno ante los tribunales chilenos” (“The Relations between International and National Law in Chilean Courts”) *Nuevos enfoques del Derecho Internacional* (New Approaches in International Law), Editorial Jurídica de Chile, Santiago, 1992, pp. 53-58.
- 87 CHIL. CONST., art. 5.
- 88 *Id.*, art. 80
- 89 Organic Code of the Courts, arts. 80 and 96, no. 1.
- 90 CHIL. CONST., art. 82.
- 91 *Id.*, art. 20.
- 92 *Id.*
- 93 CHIL. CONST., art. 21.
- 94 Court of Appeals of San Miguel, petition for protection, no. P 20-95, named “Servicio de Salud Metropolitana Sur c/ Quilaleo” (“Southern Metropolitan Health Service v. Quilaleo”), February 6, 1995.
- 95 Court of Appeals of Santiago, petition for protection, no. 364-89-P, named “Monje c/ Isapre Promepart”

- ("Monje v. Promepart Isapre"), September 29, 1989.
- 96 Court of Appeals of San Miguel, petition for protection, no. 240-95, named "Kifafi c/ Isapre Consalud" ("Kifafi v. Consalud Isapre"), May 6, 1997.
- 97 Court of Appeals of Santiago, petition for protection, named "Olay c/ Isapre Banmédica y Leyton" ("Olay v. Banmédica and Leyton Isapre"), June 2, 1992.
- 98 Court of Appeals of Santiago, petition for protection, no. 1427-97, named "Castillo y otros c/ Corporación de Televisión de la Universidad Católica de Chile and Megavisión" ("Castillo et al. v. the Catholic University of Chile Television Corporation and Megavisión"), June 27, 1997.
- 99 Court of Appeals of Santiago, petition for protection, no. 2,614-99, named "García López c/ Servicio de Salud Metropolitano Sur-Oriente y otros" ("García López v. Southeast Metropolitan Health Service et al."), June 14, 1999. This action was requested by the Clínicas de Acciones de Interés Público (Public Interest Action Clinics), Diego Portales University School of Law.
- 100 Court of Appeals of Santiago, petition for appeal, no. 2,606, October 2, 1987. In this case, the courts have found the offense of sodomy to be proven when minors have anal injuries and the same disease as the alleged aggressor. See, Supreme Court, cassation appeal, no. 29,953, named "Aguilar Cárdenas," May 10, 1995 and Court of Appeals of San Miguel, petition for appeal, named "Lagos Esparza," August 8, 1996.
- 101 Court of Appeals of Santiago, sentencing conference, named "Felipe Bravo," November 17, 1993; petition for appeal, named "Pezoa Matus," June 23, 1992 and Supreme Court, complaint appeal, no. 3,121, named "Fuentelba Molina y otros" ("Fuentelba Molina et al."), July 1, 1992.
- 102 Court of Appeals of Santiago, petition for appeal, no. 865-95, named "JPQ" (involving a minor), March 21, 1995. (The court found that although clear evidence existed that the accused was the father of the victim's child, the occurrence of a crime could not be established because there was no proof of the use of force, other than the victim's statement.)
- 103 Court of Appeals of Talca, petition for appeal, no. 227,811, named "Andrade Carrasco," July 18, 1991; Supreme Court, cassation appeal, no. 33,886, named "Sandoval González," January 17, 1996. This same problem arises in cases of sodomy, where the majority of victims are minors. See, Court of Appeals of San Miguel, sentencing conference, named "Contreras Canihuán," March 11, 1993.
- 104 Court of Appeals of San Miguel, petition for appeal, no. 1,825-91, named "Rojas Espinoza," March 25, 1993.
- 105 Court of Appeals, petition for protection, no. 376-93, named "Nannucchi con CTC" ("Nannucchi v. CTC"), March 11, 1993. (Dismissing the plaintiff's claim, who only alleged harassment after having been fired.) The decision was upheld by the Supreme Court: Supreme Court, appeal of petition for protection, no. 20,631, named "Nannucchi con CTC," March 30, 1993.
- 106 Court of Appeals of San Miguel, sentence, no. P-56-94, May 20, 1994; no. P-48-94, May 2, 1994; Court of Appeals of Copiapó, no. 4194, February 11, 1994; no. 3294, May 23, 1991; Court of Appeals of Concepción, no. 23-93, September 15, 1993; no. 166, May 20, 1991; Court of Appeals of Santiago, no. 2803-92P, November 30, 1992. The Supreme Court however, granted the petition for protection in a case in which the brother demonstrated that his sister's husband was keeping her imprisoned and cut off from communication. The Court ordered her moved to Santiago. Court of Appeals of Punta Arenas, petition for protection, named "Salgado con Quintullanca" ("Salgado v. Quintullanca"), February 12, 1992.
- 107 Court of Appeals of Copiapó, petition for protection, no. 5,537, named "Manzano c/ Scuti y otros" ("Manzano v. Scuti et al."), September 2, 1997.
- 108 Court of Appeals of Santiago, petition for protection, no. 1941-99, named "Fries c/ Isapre Aetna y Superintendencia" ("Fries v. Aetna Isapre and Superintendence"), July 2, 1999; confirmed by the Supreme Court.
- 109 *Id.*

- 110 Information supplied by the petitioner.
- 111 Court of Appeals of La Serena, petition for protection, no. 21,633, named “Carabantes *c/* Araya” (“Carabantes *v.* Araya”), December 25, 1997; Supreme Court, appeal of petition for protection, no. 108-98, named “Carabantes Olivares,” February 18, 1998.
- 112 Court of Appeals of Santiago, petition for protection, no. 1,971-94, named “Rojas Bermedo *c/* Directora Instituto Comercial Blas Cañas” (“Rojas Bermedo *v.* Director of the Blas Cañas Comercial Institute”), September 14, 1994.
- 113 Court of Appeals of Santiago, petition for protection, no. 20,123, named “Arze-Vargas *c/* Universidad de Los Andes” (“Arze-Vargas *v.* University of the Andes”), November 12, 1992.
- 114 Supreme Court, cassation appeal, no. 297-98, named “Torrejón con Cortés” (“Torrejón *v.* Cortés”), November 24, 1998; no. 826-97, named “Muñoz *c/* Calderón” (“Muñoz *v.* Calderón”), March 24, 1998; no. 33,806-95, named “Avaria *c/* Ainzúa” (“Avaria *v.* Ainzúa”), October 15, 1996; no. 21,091, named “Acuña *c/* Vergara” (“Acuña *v.* Vergara”), June 5, 1995; no. 19,132, named “Aguilera *c/* Garrison” (“Aguilera *v.* Garrison”), January 25, 1995; no. 18,453, named “Álvarez *c/* Moltedo” (“Álvarez *v.* Moltedo”), November 10, 1994; and complaint appeal, no. 4975, named “Pérez con González” (“Pérez *v.* González”), September 30, 1994.
- 115 Supreme Court, cassation appeal, no. 19,054, named “Lizana *c/* Ayala” (“Lizana *v.* Ayala”), April 20, 1994; complaint appeal, named “Ahumada *c/* Concha” (“Ahumada *v.* Concha”), March 29, 1994, complaint appeal, named “Geel *c/* Schwartz” (“Geel *v.* Schwartz”), December 3, 1991; Court of Appeals of Santiago, appeal, no. 7,325-95, named “Pacheco *c/* Meza” (“Pacheco *v.* Meza”), April 1, 1996; and Supreme Court, cassation appeal, no. 21,214, named “Valenzuela *c/* Cerda” (“Valenzuela *v.* Cerda”), June 5, 1995.
- 116 Confirmed by the Supreme Court, cassation appeal, no. 32,041-95, named “Tarky con Degeri” (“Tarky *v.* Degeri”), July 2, 1996; Court of Appeals of San Miguel, appeal, no. 1,223-95, October 28, 1996; and Court of Appeals of Rancagua, appeal, no. 9,922, named “Huerta con Morales” (“Huerta *v.* Morales”), June 9, 1993.
- 117 Court of Appeals of Santiago, petition for appeal, named “Panicello con Alamos” (“Panicello *v.* Alamos”), November 27, 1997.
- 118 Supreme Court, appeal for review, no. 15,879, named “Garzetti con Cisterna” (“Garzetti *v.* Cisterna”), January 29, 1996.
- 119 Supreme Court, cassation decision, no. 13,595, named “Duhalde con Moreira” (“Duhalde *v.* Moreira”), July 25, 1989.
- 120 Appeals Court of Valparaíso, appeals decision, no. 3410-96, named “Bejarano con Araya” (“Bejarano *v.* Araya”), September 15, 1997.
- 121 Supreme Court, cassation decision, no. 13,595, named “Duhalde con Moreira” (“Duhalde *v.* Moreira”), July 25, 1989.
- 122 Supreme Court, cassation decision, no. 902-97, named “Navarro con Arias” (“Navarro *v.* Arias”), May 26, 1997, and Supreme Court, cassation decision, no. 13,595, named “Duhalde con Moreira” (“Duhalde *v.* Moreira”), July 25, 1989.
- 123 LIDIA CASAS, *Mujeres procesadas por aborto (Women Prosecuted for Abortion)*, Foro Abierto de Salud y Derechos Reproductivos (Open Forum on Reproductive Health and Rights), Chile, 1996, p. 92.
- 124 Court of Appeals of Santiago, sentencing conference, no. 1732-90, June 25, 1991.
- 125 Court of Appeals of Punta Arenas, petition for protection, named “Filgueira con Hospital Regional de Punta Arenas” (“Filgueira *v.* Regional Hospital of Punta Arenas”), August 11, 1998. Court of Appeals of Santiago, claim appeal, no. 6566-97, named “Signa Salud Isapre S.A. con Superintendencia de Isapres” (“Isapre Signa Salud S.A. *v.* Superintendence of Isapres”), April 14, 1998.
- 126 Court of Appeals of Santiago, claim appeal, no. 6566-97, named “Signa Salud Isapre S.A. con Superintendencia de Isapres,” April 14, 1998; Supreme Court, petition for appeal, no. 1416-98,

- named "Signa Salud Isapre con S.A. con Superintendencia de Isapres" ("Isapre Signa Salud S.A. v. Superintendencia de Isapres"), September 15, 1998.
- 127 Center For Reproductive Rights and Open Forum on Reproductive Health and Rights, *Women Behind Bars: Chile's Abortion Laws, A Human Rights Analysis* 57-58 (1998).
- 128 Court of Appeals of Santiago, petition for appeal, no. 4,696-97, named "Martínez con Hites Comercial Ltda." ("Martínez v. Hites Commercial Ltd."), April 14, 1998; petition for appeal, no. 254-94, named "Salas con Hospital Militar" ("Salas v. Military Hospital"), March 23, 1993; petition for appeal, named "Morrás con Consejo de Defensa del Niño" ("Morrás v. Children's Defense Council"), December 30, 1991; petition for appeal, no. "Zurita con Gato Pato Ltda." ("Zurita v. Gato Pato Ltda."), August 22, 1991; petition for appeal, no. 892-89-T, named "Moya con Farmacéutica Ansi" ("Moya v. Ansi Pharmaceuticals"), August 21, 1989; petition for appeal, named "Bruce con Corporación Municipal de Peñalolén" ("Bruce v. Municipal Corporation of Peñalolén"), May 23, 1989; Court of Appeals of Concepción, petition for appeal, no. 36-94, April 8, 1994; Supreme Court, complaint appeal, May 15, 1989.
- 129 Supreme Court, petition for appeal, no. 1,617-97, named "Cariz con Hospital Roberto del Río" ("Cariz v. Hospital Roberto del Río"), July 1, 1997.
- 130 Court of Appeals of Santiago, petition for appeal, no. 2511-98, named "Vega con Editora Técnica de Chile S.A." ("Vega v. Editora Técnica de Chile S.A."), November 3, 1998; petition for appeal, no. 2,897-94-T, named "Emos S.A. con Alvarez" ("Emos S.A. v. Alvarez"), November 2, 1994; Supreme Court, complaint appeal, no. 722-89, named "Banco Central de Chile con Araos" ("Central Bank of Chile v. Araos"), December 18, 1989.
- 131 Supreme Court, appeal no. 4,815, named "De la Rosa con Confecciones Machine S.A." ("De la Rosa v. Tailor Machine S.A."), September 21, 1994; Court of Appeals of Santiago, petition for appeal, named "Rojas con Empresas Ingenac S.A." ("Rojas v. Empresas Ingenac S.A."), October 2, 1992.
- 132 Supreme Court, cassation appeal, no. 1343-98 T, named "Añual con Supermercados Cosmos S.A." ("Añual v. Cosmos Supermarkets S.A."), July 31, 1998; Court of Appeals of Santiago, petition for appeal, no. 2298-89, named "Valle con Soc. Confecciones Letelier" ("Valle v. Letelier Tailor Society"), April 23, 1990.
- 133 Supreme Court, appeal, no. 8,784, named "Urta con Barrios y otra" ("Urta v. Barrios et al."), January 19, 1989.
- 134 Court of Appeals of Copiapó, petition for protection, no. 3,194, named "Oviedo con Cía. Minera Tres Cruces y otro" ("Oviedo v. Cía. Minera Tres Cruces et al."), February 8, 1991.
- 135 Supreme Court, petition for appeal, named "Martínez con Salazar Rivera y otros" ("Martínez v. Salazar Rivera et al."), October 23, 1991. In this case they had performed an unnecessary hysterectomy without having adequately examined the patient beforehand. She demanded compensation for psychological damages. The damages were awarded, although less than she had requested because "although they removed an important organ which prevents her from having a family, she already has a child . . . to whom she can offer a mother's love, and also because the plaintiff was in serious pain [before the operation]."
- 136 Supreme Court, appeal of petition for protection, no. 2,667-98, named "Villalobos con Isapre Aetna Salud S.A." ("Villalobos v. Isapre Aetna Health S.A."), August 18, 1998.
- 137 Court of Appeals of Santiago, petition for protection, no. 501-88, named "Rodrigo con Isapre Colmena Golden Cross S.A." ("Rodrigo v. Isapre Colmena Golden Cross S.A."), April 21, 1989.
- 138 Supreme Court, appeal of petition for protection, no. 22,498, named "Salvo con Isapre Banmédica S.A." ("Salvo v. Isapre Banmédica S.A."), January 27, 1994.
- 139 Supreme Court, appeal of petition for protection, no. 33868, named "Clavería con Isapre Unimed" ("Clavería v. Isapre Unimed"), January 29, 1996.
- 140 See *supra* Right to Equality.

- 141 Court of Appeals of San Miguel, conference, named "Cuevas Luna," August 26, 1992.
- 142 Supreme Court, petition for appeal, no. 3,816, named "Zamorano con Prefecto de Carabineros de Santiago Centro" ("Zamorano v. Santiago Police Chief"), December 11, 1996; petition for appeal, no. 14,131, named "Neira con Prefectura de Carabineros" ("Neira v. Office of the Chief of Police"), May 16, 1989.
- 143 See *supra* Right to Equality, for cases involving pregnant students.
- 144 Supreme Court, cassation appeal, named "Staub con Director del Diario Austral" ("Staub v. Director of Diario Austral"), June 1, 1993.
- 145 Court of Appeals of Santiago, petition for protection, no. 3,322-97, named "Rischmaui con Consorcio Periodístico de Chile S.A." ("Rischmaui v. Consorcio Periodístico de Chile S.A."), September 8, 1997.
- 146 Court of Appeals of Santiago, petition for protection, no. 2,563-92, named "Bohme con Clínica Alemana" ("Bohme v. Clínica Alemana"), November 17, 1992.
- 147 Before the 1999 reform, article 365 of the Penal Code punished the crime of sodomy, or sexual relations between men.
- 148 CONSTITUTIONAL COURT, decision T-606 of 1995, Presiding Judge Fabio Morón Díaz (ordering the payment of back wages to a pregnant woman) [hereinafter CONST. COURT].
- 149 CONST. COURT, decision T-569 of 1994, Presiding Judge Alejandro Martínez Caballero (ordering a sex change operation on a 10-year-old minor to be delayed until the minor was able to make an informed decision).
- 150 CONST. COURT, decision C-112 of 2000, Presiding Judge Alejandro Martínez Caballero (declaring unconstitutional a law requiring marriage ceremonies to take place at the woman's home on the grounds that it is not a desired end sanctioned by the constitution).
- 151 SUPREME COURT OF JUSTICE, Penal Cassation Court, decision 10672 September 18, 1997, Presiding Judge Dídimo Páez. [hereinafter SUPREME COURT].
- 152 CONST. COURT, decision C-013 of 1997, Presiding Judge José Gregorio Hernández (declaring the criminal classification of abortions in extenuating circumstances constitutional).
- 153 *Id.*
- 154 Except when is it necessary to safeguard the rights violated.
- 155 Except when an individual's living wage is threatened.
- 156 This situation is more evident when the Constitutional Court declares a law constitutional than when it declares it unconstitutional.
- 157 CONST. COURT, decision T-1104 of 2000, Presiding Judge Vladimiro Naranjo Mesa (denying the petitioner's request for coverage for her fertility treatments by her medical insurance).
- 158 CONSTITUTION OF COLOMBIA, in effect since July 7, 1991, Title VIII, Chapter 2, arts. 234-235. [hereinafter COLOM. CONST.].
- 159 *Id.*, Title VIII, Chapter 2, arts. 236-238.
- 160 *Id.*, Title VIII, Chapter 2, arts. 239-245.
- 161 *Id.*, Title VIII, Chapter 2, arts. 246.
- 162 *Id.*, art. 234.
- 163 *Id.*, art. 236.
- 164 *Id.*, art. 239.
- 165 *Id.*, art. 231.
- 166 *Id.*, Title VIII, Chapter 7, arts. 254-257.
- 167 *Id.*, art. 239.
- 168 *Id.*, art. 246.
- 169 *Id.*, art. 4.
- 170 *Id.*, art. 230.

- 171 *Law 153 of 1887*, art. 13 and *Decree Law 410 of 1971*, arts. 3-9. See CONST. COURT, decision C-486 of 1993, Presiding Judge Eduardo Cifuentes Muñoz (on mercantile custom); and C-224 of 1994, Presiding Judge Jorge Arango Mejía (on custom as a source of law and on the necessity of complying with Christian morality).
- 172 COLOM. CONST., arts. 189 no. 2, 150 no. 16.
- 173 *Id.*, art. 93.
- 174 *Id.*, art. 230.
- 175 *Id.*, art. 243.
- 176 CONST. COURT, decision C-113 of 1993, Presiding Judge Jorge Arango Mejía (on the faculty of the Constitutional Court to determine the effects of its rulings, affirming a strict interpretation of the Constitution) and C-131 of 1993, Presiding Judge Alejandro Martínez Caballero.
- 177 CONST. COURT, decision C-131 of 1993, Presiding Judge Alejandro Martínez Caballero; decision C-083 of 1995, Presiding Judge Carlos Gaviria Díaz (on the obligatory nature of constitutional doctrine); and decision T-123 of 1995, Presiding Judge Eduardo Cifuentes Muñoz.
- 178 ADMINISTRATIVE LAW CODE, art. 175, par 1.
- 179 CONST. COURT, decision T-123 of 1995, Presiding Judge Eduardo Cifuentes Muñoz.
- 180 COLOM. CONST., art. 153.
- 181 *Id.*, art. 241.
- 182 *Id.*, arts. 241, 242.
- 183 ADMINISTRATIVE LAW CODE, art. 84.
- 184 CONST. COURT, decision T-006 of 1994, Presiding Judge Vladimiro Naranjo Mesa (on the nature and viability of procedures of the motion to dismiss based on unconstitutionality.)
- 185 COLOM. CONST., art. 86.
- 186 There is no exhaustive list of fundamental rights. The court has developed various criteria to interpret the constitution on this point. See CONST. COURT, decision T-406 of 1992, Presiding Judge Ciro Angarita Barón.
- 187 Decree 2591 of 1991, art. 42.
- 188 *Id.*, art. 37.
- 189 *Id.*, arts. 3 and 14.
- 190 *Id.*, art. 32.
- 191 *Id.*, art. 2.
- 192 See, e.g., CONST. COURT, decision T-100 of 1994, Presiding Judge Carlos Gaviria Díaz.
- 193 COLOM. CONST., art. 87; law 393 of 1997.
- 194 COLOM. CONST., art. 88; law 472 of 1998.
- 195 Law 472 of 1998, arts. 15 and 16.
- 196 CONST. COURT, decision T-484 of 1992, Presiding Judge Fabio Morón Díaz.
- 197 CONST. COURT, decision T-493 of 1993, Presiding Judge Antonio Barrera.
- 198 CONST. COURT, decision T-484 of 1992, Presiding Judge Fabio Morón Díaz (ordering the Social Security Administration to decide favorably on the plaintiff's petition for disability coverage), decision T-505 of 1992, Presiding Judge Eduardo Cifuentes Muñoz (ordering the University Hospital Evaristo Porras to provide free medical attention and necessary medication to the plaintiff because he did not have the resources to pay for them); decision T-271 of 1995, Presiding Judge Alejandro Martínez Caballero (ordering the Social Security Administration to provide the plaintiff all the necessary medications for the treatment of AIDS); decision T-328 of 1998, Presiding Judge Fabio Morón Díaz (ordering the company to provide the plaintiff with the required medications for the treatment of AIDS, although the plaintiff had not worked for the required minimum time period).
- 199 CONST. COURT, decision T-488 of 1998, Presiding Judge Alfredo Beltrán (ordering the plaintiff's spouse to pay the medical costs related to her HIV infection, having proved that he infected her with

- the virus).
- 200 CONST. COURT, decision T-1104 of 2000, Presiding Judge Vladimiro Naranjo Mesa (denying the plaintiff's petition that the Social Security Administration cover fertility treatments).
- 201 CONST. COURT, decision T-348 of 1997, Presiding Judge Eduardo Cifuentes Muñoz (denying the plaintiff's petition that her health insurance plan cover the costs of a tubal ligation for her mentally retarded daughter).
- 202 CONST. COURT, decision T-926 of 1999, Presiding Judge Carlos Gaviria Díaz.
- 203 CONST. COURT, decision T-1104 of 2000, Presiding Judge Vladimiro Naranjo Mesa.
- 204 SUPREME COURT of Justice, Labor Cassation Court, decision no. 6803 of February 15, 1995, Presiding Judge José Roberto Herrera.
- 205 Council of State, Administrative Law Court, Part Three, decision of July 30, 1993, proceeding 8025, presiding member Daniel Suárez.
- 206 SUPREME COURT, Labor Cassation Court, decision, 6803, 1995.
- 207 Council of State, Administrative Law Court, decision, 1993.
- 208 CONST. COURT, decision C-285 of 1997, Presiding Judge Carlos Gaviria Díaz (action for unconstitutionality of article 25 of law 294 of 1996.)
- 209 CONST. COURT, decision C-146 of 1994, Presiding Judge José Gregorio Hernández (action for unconstitutionality of article 303 of the Penal Code).
- 210 SUPREME COURT, Penal Cassation Court, decision 10672, September 18, 1997, Presiding Judge Dídimo Páez.
- 211 SUPREME COURT, Penal Cassation Court, decision 8333, May 30, 1993, Presiding Judge Dídimo Páez.
- 212 *Id.*
- 213 SUPREME COURT, Penal Cassation Court, decision 10672, 1997.
- 214 SUPREME COURT, Penal Cassation Court, decision 9401 of May 8, 1996, Presiding Judge Fernando E. Arboleda.
- 215 SUPREME COURT, Labor Cassation Court, decision 9627 of June 26, 1997, Presiding Judge Rafael Méndez.
- 216 SUPREME COURT, Labor Cassation Court, decision 6997, February 21, 1995, Presiding Judge Rafael Méndez.
- 217 SUPREME COURT, Penal Cassation Court, decision 11907, August 12, 1998, Presiding Judge Ricardo Calvete.
- 218 Council of State, Administrative Law Court, Part Three, decision March 16, 1989, proceeding 3931, Presiding Member Julio César Uribe.
- 219 The Colombian Constitutional Court has repeatedly protected the right to personal integrity of women who have been physically abused by their spouses or domestic partners. The constitutional doctrine included in these sentences however, has been displaced in the legal milieu due to the approval of the domestic violence law.
- 220 CONST. COURT, decision C-285 of 1997, Presiding Judge Carlos Gaviria Díaz (action for unconstitutionality of article 22 of law 294 of 1996).
- 221 CONST. COURT, decision C-273 of 1998, Presiding Judge Alejandro Martínez Caballero (action for unconstitutionality of article 15 of law 294 of 1996).
- 222 SUPREME COURT, Penal Cassation Court, decision, 5696, September 10, 1991, Presiding Judge Gustavo Gómez.
- 223 CONST. COURT, decision C-082 of 1999, Presiding Judge Carlos Gaviria Díaz (action for unconstitutionality of article 140, no. 7 of the Civil Code).
- 224 CONST. COURT, decision C-112 of 2000, Presiding Judge Alejandro Martínez Caballero (action for unconstitutionality of the article of the Civil Code).

- 225 CONST. COURT, decision C-622 of 1997, Presiding Judge Hernando Herrera Vergara (action for unconstitutionality of article 342, no. 1, of the Substantive Labor Code).
- 226 CONST. COURT, decision T-624 of 1995, Presiding Judge José Gregorio Hernández (ordering the Naval School “Almirante Padilla” to admit the plaintiff as a cadet).
- 227 CONST. COURT, decision T-326 of 1995, Presiding Judge Alejandro Martínez Caballero (ordering Ingeominas to employ the plaintiff).
- 228 CONST. COURT, decision T-098 of 1994, Presiding Judge Eduardo Cifuentes Muñoz (ordering the Risaralda Retirement Fund to enroll the plaintiff as a dependent beneficiary); decision T-202 of 1995, Presiding Judge Antonio Barrera Carbonell (ordering the Social Security Administration to grant a replacement pension to the plaintiff, whose companion had died).
- 229 CONST. COURT, decision T-341/94. In this decision, however, the plaintiff was not granted the requested reinstatement due to the consideration that the ruling had to be made by a labor judge. This, in spite of the fact that the plaintiff had been employed for 40 years and that further postponing fertility treatments would mean a decrease in the likelihood that they would be successful. *See* right to health and to reproductive health.
- 230 CONST. COURT, decision T-026 of 1996, Presiding Judge Vladimiro Naranjo Mesa (ordering the *Casa Cultural de Yumbo* to reinstate the plaintiff).
- 231 CONST. COURT, decision T-145 of 1995, Presiding Judge Jorge Arango (ordering the *Instituto Colombiano de Bienestar Familiar* (Colombian Institute for the Well-Being of the Family) give the plaintiff the same health coverage by social security that women receive when they act as community mothers).
- 232 Council of State, Administrative Law Court, Part Five, decision, October 26, 1995 proceeding AC-3123, presiding member Miren de la Lombana de Magyaroff.
- 233 CONST. COURT, decision C-588 of 1992 (action for unconstitutionality of article 250 of decree 1211 of 1990 establishing a system for replacement pensions that is more favorable to daughters of military personnel than to sons); decision C-410 of 1994, Presiding Judge Carlos Gaviria Díaz (action for unconstitutionality of articles 33, 36, 61, 64, 65, 117, 133 of law 100 of 1993, establishing a pension system that is more favorable to women); decision C-623 of 1998, Presiding Judge Hernando Herrera Vergara (action for unconstitutionality of article 7 of law 71 of 1988 establishing a lower age at which women have the right to access retirement pensions).
- 234 CONST. COURT, decision C-371 of 2000, Presiding Judge Carlos Gaviria Díaz (review of the presidential objections to law 581 of 2000).
- 235 CONST. COURT, decision T-101 of 1998, Presiding Judge Fabio Morón Díaz (ordering a public school administered by a religious community to readmit two students whose petition for reinstatement had been denied because they were homosexual).
- 236 CONST. COURT, decision C-481 of 1998, Presiding Judge Alejandro Martínez Caballero (action for unconstitutionality of article 46 of decree 2277 of 1999).
- 237 CONST. COURT, decision C-507 of 1999, Presiding Judge Vladimiro Naranjo Mesa (action for unconstitutionality of articles 65, 75, 141-3, 183-5 of decree 85 of 1989, reform of the armed forces disciplinary system).
- 238 *Id.*
- 239 CONST. COURT, decision T-569 of 1994, Presiding Judge Hernando Herrera Vergara.
- 240 CONST. COURT, decision C-507 of 1999.
- 241 CONST. COURT, decision C-098 of 1996, Presiding Judge Eduardo Cifuentes Muñoz (action for unconstitutionality of articles 1 and 2 of law 54 of 1990).
- 242 CONST. COURT, decision T-999 of 2000, Presiding Judge Fabio Morón Díaz (denying *tutela* against the Social Security Administration for a man who wanted to enroll his spouse as a beneficiary). However, in T-618 of 2000, Presiding Judge Alejandro Martínez Caballero, the court protected the



- right of a homosexual couple against the arbitrary act of the Social Security Administration, allowing the enrollment and then invalidating it.
- 243 COLOM. CONST., art. 42.
- 244 CONST. COURT, decision SU-256 of 1996, Presiding Judge Vladimiro Naranjo Mesa.
- 245 *Id.*
- 246 CONST. COURT, decision T-377 of 1995, Presiding Judge Fabio Morón Díaz (ordered the private school to allow the plaintiff to enroll).
- 247 CONST. COURT, decision T-012 of 1995, Presiding Judge Vladimiro Naranjo Mesa.
- 248 CONST. COURT, decision C-477 of 1999, Presiding Judge Carlos Gaviria Díaz (action for unconstitutionality of articles 89, 91, 95 and 98 of decree-law 2737 of 1989).
- 249 In decisions on this issue the court has emphasized the presence of emotional bonds over formal bonds – meaning marriage – as well as the equality of families formed by formal bonds and domestic partnerships. CONST. COURT, decision T-190 of 1993, Presiding Judge Eduardo Cifuentes Muñoz (denying *tutela* against the *Industria Licorera de Caldas* because the plaintiff had not submitted a request); T-553 of 1994, Presiding Judge José Gregorio Hernández (denying the request for pension replacement because the principal was still alive, but ordering the Social Security Administration to enroll the partner in the health insurance program); T-018 of 1997, Presiding Judge Jorge Arango Mejía (denying *tutela* against the Ministry of Defense, but ordering the proceedings on pension replacement to be resubmitted, inviting both the spouse and the partner to do so); T-266 of 1997, Presiding Judge Carlos Gaviria Díaz (denying *tutela* against the Social Security Administration, but ordering the proceedings on pension replacement to be resubmitted, inviting both the spouse and the partner to do so); and T-660 of 1998, Presiding Judge Alejandro Martínez Caballero (ordering that a widow, having proven that the marriage had not been dissolved and due to her advanced age, receive the pension that the permanent domestic partner had been receiving). The Supreme Court of Justice has ruled in the same way. See Supreme Court of Justice, Labor Cassation Court, decision, 6932 of March 27, 1995, Presiding Judge Jorge Iván Palacio; 7575 of September 6, 1995, Presiding Judge Rafael Méndez; 7323 of October 4, 1995, Presiding Judge Ramón Zúñiga; 8877 of April 7, 1997, Presiding Judge Fernando Vásquez.
- 250 CONST. COURT, decision T-190 of 1993 and T-266 of 1997.
- 251 CONST. COURT, decision C-309 of 1996, Presiding Judge Eduardo Cifuentes Muñoz (action for unconstitutionality of article 2 of law 33 of 1973).
- 252 CONST. COURT, decision C-182 of 1997, Presiding Judge Hernando Herrera Vergara (action for unconstitutionality of articles 188 of decree no. 1211 of 1990, 174 of decree no. 1212 of 1990, 131 of decree no. 1213 of 1990 and 125 of decree 1214 of 1990, all similar decrees).
- 253 CONST. COURT, decision C-588 of 1992. All of the following decisions ordered the reinstatement of the plaintiffs to the same level of study as before their pregnancies. CONST. COURT, decision T-420 of 1992, Presiding Judge Simón Rodríguez; T-079 of 1994, Presiding Judge Antonio Barrera; T-211 of 1995, Presiding Judge Alejandro Martínez Caballero; T-590 of 1996, Presiding Judge Antonio Barrera Carbonell; T-393 of 1997, Presiding Judge José Gregorio Hernández Galindo; T-580 of 1998, Presiding Judge Antonio Barrera; T-618 of 1998, Presiding Judge José Gregorio Hernández; T-656 of 1998, Presiding Judge Eduardo Cifuentes.
- 254 CONST. COURT, decision T-377 of 1995.
- 255 CONST. COURT, decision T-273 of 1993, Presiding Judge Carlos Gaviria (ordering the director of a prison to end the requirement that the plaintiff show contraceptive use in order to receive conjugal visits).
- 256 CONST. COURT, decision C-133 of 1994, Presiding Judge Antonio Barrera Carbonell (action for unconstitutionality of article 343 of the Penal Code).
- 257 CONST. COURT, decision C-013 of 1997, Presiding Judge José Gregorio Hernández (action for uncon-

- stitutionality of article 345 of the Penal Code).
- 258 Law 599 of 2000, art. 124, paragraph.
- 259 CONST. COURT, decision C-647 of 2001, Presiding Judge Alfredo Beltrán (action for unconstitutionality regarding article 124, law 599 of 2000).
- 260 Council of State, Administrative Law Court, Part Three, decision, July 9, 1993, proceeding 7795, presiding member Julio César Uribe.
- 261 CONST. COURT, decision C-710 of 1996, Presiding Judge Jorge Arango Mejía (action for unconstitutionality of article 240 of the Substantive Labor Code, among others not related to the subject); C-470 of 1997, Presiding Judge Alejandro Martínez Caballero (action for unconstitutionality of article 239 of the Substantive Labor Code).
- 262 CONST. COURT, decision T-606 of 1995, Presiding Judge Fabio Morón Díaz (ordering the payment of back wages to a pregnant woman).
- 263 CONST. COURT, decision T-311 of 1996, Presiding Judge José Gregorio Hernández (ordering the payment of disability incurred before the pregnancy).
- 264 CONST. COURT, decision T-496 of 1999, Presiding Judge Carlos Gaviria Díaz (ordering that maternity leave be granted); T-567 of 1999, Presiding Judge José Gregorio Hernández (ordering that maternity leave be granted because the decree on which the decision to deny it was entered into effect after the beginning of the pregnancy); T-662 of 1997, Presiding Judge Alejandro Martínez Caballero (ordering the Social Security Administration to pay what was due for reason of maternal leave); T-792 of 1998, Presiding Judge Alfredo Beltrán (ordering that decrees affecting pregnant women's economic protection be interpreted in their favor); T-270 of 1997, Presiding Judge Alejandro Martínez Caballero (ordering paid maternity leave be granted because the plaintiff's only means of support were her wages).
- 265 CONST. COURT, Decision T-326 of 1993, Presiding Judge Antonio Barrera; SU-491 of 1993, Presiding Judge Eduardo Cifuentes; T-517 of 1993, Presiding Judge Hernando Herrera; T-042 of 1994, Presiding Judge Fabio Morón; T-090 of 1994, Presiding Judge Hernando Herrera; T-122 of 1994, Presiding Judge Hernando Herrera; T-165 of 1994, Presiding Judge Hernando Herrera; T-358 of 1995, Presiding Judge Alejandro Martínez.
- 266 Council of State, Administrative Law Court, Part Two, decision, November 3, 1993, proceeding 8928 of March 10, 1995, Presiding Member Carlos Arturo Orjuela and proceeding 9298 of October 16, 1997, proceeding 5065, Presiding Member Silvio Escudero Castro.
- 267 Council of State, Full Administrative Law Court, decision, August 28, 1996, proceeding S638, Presiding Member Carlos Orjuela.
- 268 CONST. COURT, decision T-620 of 1995, Presiding Judge Vladimiro Naranjo Mesa (ordering the police to apply laws regulating residential areas); SU-476 of 1997, Presiding Judge Vladimiro Naranjo Mesa (ordering the police to apply mayoral resolutions prohibiting transvestism and sex work in residential areas).
- 269 *Id.*
- 270 In cases of pregnant students, the court also referred to the minors' right to education. However, protection was granted under the concept of equality.
- 271 CONST. COURT, decision T-440 of 1992, Presiding Judge Eduardo Cifuentes.
- 272 CONST. COURT, decision T-440 of 1992, Presiding Judge Eduardo Cifuentes Muñoz (ordering the disciplinary proceedings against the plaintiff to be reopened because the penalty imposed was not proportional – she was deprived of the benefits of her years of work and dismissed – and ordered the Ministry of Education to develop adequate sex education in public schools).
- 273 *Id.*
- 274 CONST. COURT, decision C-264 of 1996, Presiding Judge Eduardo Cifuentes Muñoz (action for unconstitutionality of articles 37 and 38 of law 23 of 1981).
- 275 CONST. COURT, decision T-623 of 1996, Presiding Judge Jorge Arango Mejía (ordering the notary

- public to marry the plaintiff and her fiancé).
- 276 CONST. COURT, decision T-073A of 1996, Presiding Judge Vladimiro Naranjo Mesa (ordering the psychological evaluation removed from the plaintiffs' files and ordering the defendants not to disclose the information.)
- 277 CONST. COURT, decision, T-225 of 1997, Presiding Judge Antonio Barrera (ordering the removal of the penalties for public displays of affection from the rules of conduct).
- 278 CONST. COURT, decision, C-507 of 1999, Presiding Judge Vladimiro Naranjo Mesa.
- 279 CONST. COURT, decision, T-424 of 1992, Presiding Judge Fabio Morón Díaz (denying the plaintiff *tutela*).
- 280 *Id.*
- 281 *Id.* In its decision the court invoked the International Covenant on Civil and Political Rights and the United Nations Human Rights Committee's recommendations in *Dudgeon v. United Kingdom*.
- 282 CONST. COURT, decision, T-569 of 1994, Presiding Judge Alejandro Martínez Caballero.
- 283 CONST. COURT, decision SU-337 of 1999, Presiding Judge Alejandro Martínez Caballero.
- 284 *Id.*
- 285 CONST. COURT, decision, T-551 of 1999, Presiding Judge Alejandro Martínez Caballero (ordering the father's authorization to decide what treatment to follow for his daughter, a hermaphrodite, because the child was only two years old).
- 286 Ninth Sess., Supreme Court of Justice in plenary, *Semanario Judicial (Judicial Weekly)*, t. II, August, 1995, thesis, P. LV/95, p. 72. *Amparo* in review 622/93.
- 287 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. VI, Second Part, p. 645. Attorney review 243/90, Antelmo Isaac Bustamante Camarena, June 5, 1990, unanimity of votes; Judge Genaro David Góngora Pimentel.
- 288 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XI, February, p. 343. Direct *amparo* 523/92, Raymundo Zúñiga Ramírez, November 24, 1992, unanimity of votes, Judge José Galván Rojas. Direct *Amparo* 45/88, José Luis González Reyes, March 15, 1988, unanimity of votes; Judge Gustavo Calvillo Rangel.
- 289 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. I, Second Part, p. 326. Direct *Amparo* 13/88, Luis Figueroa Martínez, February 25, 1988, unanimity of votes, Judge Elvia Díaz de León de López.
- 290 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. VIII, December, p. 152. Direct *Amparo* 3536/88, José Serraldo Orihuela, March 20, 1989, unanimity of votes, Judge Rafael Corrales González.
- 291 FEDERAL CONSTITUTION OF MEXICO, in effect since 1998, art. 94 [hereinafter MEX. CONST.]
- 292 *Id.*, art. 116, section III.
- 293 *Id.*, art. 103.
- 294 *Id.*, art. 104.
- 295 *Id.*, art. 124.
- 296 *Id.*, arts. 40, 41 and 133.
- 297 *Id.*, arts. 14 and 16.
- 298 *Id.*, art. 14.
- 299 *Id.*, art. 4.
- 300 SUPREME COURT OF JUSTICE, thesis LXXVII/99. [hereinafter SUPREME COURT]. *Amparo* in review 1475 of 1998, May 11, 1999, unanimity of ten votes, Judge Humberto Román Palacios.
- 301 MEX. CONST., art. 94.
- 302 *Id.*
- 303 MEX. CONST., art. 193.
- 304 *Id.*, art. 105, last paragraph.

- 305 *Id.*, art. 105, section I.
- 306 *Id.*, art. 105, section II.
- 307 *Id.*, art. 105, last paragraph.
- 308 *Id.*, art. 105, section I.
- 309 *Id.*, art. 103.
- 310 *Amparo* Law, art. 5.
- 311 *Id.*, arts. 122 and 170.
- 312 Decree creating the National Commission on Human Rights as an independent body of the Department of the Interior, published in the *Diario Oficial de la Federación (Official Paper of the Federation)*, June 6, 1990.
- 313 National Commission on Human Rights Law, art. 36.
- 314 *Id.*, art. 44.
- 315 SUPREME COURT, *Amparo* in review 2231 of 1997, José Luis Castro de Ramírez, October 25, 1999, unanimity of seven votes, Judge Sergio Salvador Aguirre Anguiano (ordering the Mexican Social Security Administration provide the drugs the plaintiff requested for the treatment of AIDS even though they were not in the public health establishment registry).
- 316 Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t.II, December, 1995, thesis VI.2nd.37 P, p.574. *Amparo* in review 561 of 1995, Teresa Juárez Hernández representing her son Tráncito Pedro Solís Juárez, November 15, 1995, unanimity of votes, Judge Clementina Ramírez Moguel.
- 317 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t.VI, Second Part, p. 645. Attorney review 243 of 1990, Antelmo Isaac Bustamante Camarena, June 5, 1990, unanimity of votes, Judge Genaro David Góngora Pimentel.
- 318 National Commission on Human Rights (CNDH), resolution 19, 1999, available at <http://www.cndh.org.mx> (last visited May 25, 2001).
- 319 Seventh Sess., Federal Judiciary, First Court, *Semanario Judicial (Judicial Weekly)*, t.59 second part, p. 36. Supreme Court, Direct *Amparo* 3310/73, José Atilano Rodríguez Estrada, November 22, 1973, unanimity of four votes, Judge Ernesto Aguilar Alvarez. Direct *Amparo* 1698/73, Salvador González Comejo, August 20, 1973, five votes, Judge Ernesto Aguilar Alvarez.
- 320 Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t.III, April, 1996, thesis VIII, 2nd. 10P, p. 498. *Amparo* in review 623/95, Luis Antonio González García, February 29, 1996, unanimity of votes, Judge Enrique Rodríguez Olmedo.
- 321 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t.XI., February, p.343. Direct *Amparo* 523/92, Raymundo Zúñiga Ramírez, November 24, 1992, unanimity of votes, Judge José Galván Rojas. Direct *amparo* 45/88, José Luis González Reyes, March 15, 1988, unanimity of votes, Judge Gustavo Calvillo Rangel.
- 322 *Id.*, t.52, April, 1992, thesis XX, J/17, p.63. *Amparo* in review 54/89, José Luis Mendoza Paxtian, May 24, 1989, unanimity of votes, Judge Homero Ruiz Velásquez. *Amparo* in review 15/91, Fernando Olivero Franco, April 11, 1991, unanimity of votes, Judge Angel Suárez Torres. Direct *amparo* 223/91, Pablo Díaz (et al.), June 13, 1991, unanimity of votes, Judge Angel Suárez Torres. Direct *amparo* 465/91, Néstor Bautista Celis, October 17, 1991, unanimity of votes, Judge Francisco A. Velasco. *Amparo* in review 86/92, Genaro Álvarez López, March 12, 1992, unanimity of votes, Judge Angel Suárez Torres. Ninth Epoch, Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t.V, January, 1997, thesis VI 2nd J/86, p. 397. *Amparo* in review 457/90, Ismael González Hernández, February 6, 1991, unanimity of votes. *Amparo* in review 648/93, Adolfo Arenas Flores, January 13, 1994, unanimity of votes. *Amparo* in review 74/94, Claudio Morales Méndez, March 24, 1994, unanimity of votes. *Amparo* in review 193/96, Abel Santos Rendón, May 15, 1996, unanimity of votes. *Amparo* in review 648/96, Samuel Calvario Mena, December 4, 1996, unanimity of votes.

- 323 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t.XIV, December, thesis II, 1 129P, p. 455. Direct *amparo* 603/94, Adolfo Isidro Jerónimo, June 28, 1994, majority of votes, Judge Raúl Díaz Infante; t.IX, January, p.278. Direct *amparo* 342/91, Augusto Sol Mijangos, September 12, 1991, unanimity of votes, Judge Mariano Hernández Torres.
- 324 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XI, February, p. 343. Direct *amparo* 523/92, Raymundo Zúñiga Ramírez, November 24, 1992, unanimity of votes, Judge José Galván Rojas. Direct *amparo* 45/88, José Luis González Reyes, March 15, 1988, unanimity of votes; Judge Gustavo Calvillo Rangel.
- 325 Eighth Sess., Circuit Courts, *Apéndice, 1995 (1995 Appendix)*, t. II, part TCC, thesis 764, p. 492. Direct *amparo* 507/89. Direct *amparo* 627/89. Direct *amparo* 645/89. Direct *amparo* 254/90. Direct *amparo* 186/93. Eighth Epoch, Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. IV, second part, thesis VI, 1st J/25, p. 673. Direct *amparo* 342/88, Agustín Cruz Ciriaco Santos, January 31, 1989, unanimity of votes, Judge Eric Roberto Santos. *Amparo* in review 28/89. *Amparo* in review 136/89. *Amparo* in review 337/89.
- 326 Eighth Sess., Circuit Courts, *Apéndice de 1995 (1995 Appendix)*, t. II, part TCC, thesis 764, p. 492. Direct *amparo* 507/89, Eduardo Navarro Pérez, February 9, 1990, unanimity of votes. Direct *amparo* 627/89, José María Valenzuela, February 9, 1990, unanimity of votes. Direct *amparo* 645/89, Víctor González Domínguez, November 9, 1990, unanimity of votes. Direct *amparo* 254/90, Abigail Herrera Cruz, January 18, 1991, unanimity of votes. Direct *amparo* 186/93, Audomaro Tosca Barahona, December 7, 1993, unanimity of votes. Eighth Sess., Circuit Courts, *Apéndice de 1995 (1995 Appendix)*, t. II, part TCC, thesis 758, p. 488. Direct *amparo* 324/88, Agustín Cruz Ciriaco et al., January 31, 1989, unanimity of votes. *Amparo* in review 28/89, Elías Aguilar Pablo, February 21, 1989, unanimity of votes. *Amparo* in review 136/89, Cruz Lozano García, June 1, 1989, unanimity of votes. *Amparo* in review 337/89, Apolinar Zamopalteca Moreno, November 8, 1989, unanimity of votes. Eighth Sess. Circuit Courts. *Semanario Judicial (Judicial Weekly)*, t. XV, January, thesis II, 1° CT 174 P, p. 325. Direct *amparo* 512/94, José Luis Arriaga Piña, September 1, 1994, unanimity of votes, Judge Fernando Narváez Barker. Eighth Sess. Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XIV, June, p. 865. *Amparo* in review 61/88, Lamberto Vásquez Herrera, March 15, 1988, unanimity of votes, Judge Gustavo Calvillo Rangel. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. 77 May, 1994, thesis X, 1st. J/16, p. 83. Direct *amparo* 627/89. Direct *amparo* 507/89. Direct *amparo* 645/89. Direct *amparo* 254/90. Direct *amparo* 186/93.
- 327 Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. 217-228, sixth part, p. 684. Direct *amparo* 209/87, Erasmo Sepúlveda Ruiz, August 16, 1987, unanimity of votes, Judge Manuel Ernesto Saloma Vera.
- 328 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. V, second part, p. 529. Direct *amparo* 1120/89, Guillermo Horta Osorio, January 15, 1990, unanimity of votes, Judge J. Jesús Duarte Cano, Secretary A. Enrique Escobar Angeles. Direct *amparo* 36/86, Juan Merino Vázquez et al., March 19, 1986, unanimity of votes, Judge J. Jesús Duarte Cano.
- 329 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XIII, April, p. 464. *Amparo* in review 21/94, Gustavo Solís Estrada, February 2, 1994, unanimity of votes, Judge Arturo Barocio Villalobos, Secretary Eduardo Ochoa Torres.
- 330 *Id.*, t. XII, July, p. 329. Direct *amparo* 25/93, Arturo Esquivel Limón, February 23, 1993, unanimity of votes, Judge Miguel Angel Morales Hernández.
- 331 *Id.*, t. I, second part, p. 126. Direct *amparo* 117/88, Eduardo Enrique Villafuerte Casas, April 26, 1988, unanimity of votes, Judge Humberto Román Palacios.
- 332 *Id.*, t. III, second part, p. 233. Direct *amparo* 130/89, Sergio Javier Moreno García and Rosa María Gualo Hernández, July 14, 1989, unanimity of votes, Judge Gonzalo Ballesteros Tena. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. I, second part, p. 126. Direct *amparo* 117/88.

- Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. V, second part, p. 155. Direct *amparo* 754/89, Vicente Garduño Vásquez, January 10, 1990, unanimity of votes, Judge José Angel Mandujano Gordillo. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. V, second part, p. 154. Direct *amparo* 754/89. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. VII, June, thesis I.2nd.P 212 P, p. 243. Direct *amparo* 1102/90, Alejandro Medina Barrón, October 15, 1990, unanimity of votes, Judge Gonzalo Ballesteros Tena. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XI, February, p. 230. Direct *amparo* 31/92, Juan Morales Vargas, February 27, 1992, unanimity of votes, Judge Rogelio Sánchez Alcáuter. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XII, July, p. 186. *Amparo* in review 52/93, Jesús Carballo Hernández, May 27, 1993, unanimity of votes, Judge José Galván Rojas. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XIII, February, p. 297. *Amparo* in review 144/93, Fernando Torres Medina, January 12, 1994, unanimity of votes, Judge Homero Ruiz Velásquez. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XIV, July, p. 522. *Amparo* in review 280/93, Cirilo Hernández Juárez, July 14, 1993, unanimity of votes, Judge Gustavo Calvillo Rangel.
- 333 Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. I, June, 1995, thesis VI. 2nd. 7P, p. 423. *Amparo* in review 166/95, Daniel Sánchez Vareal and Ascensión de Jesús Flores, April 26, 1995, unanimity of votes, Judge Gustavo Calvillo Rangel.
- 334 Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. II, November, 1995, thesis VI, 7 P, p. 60. Direct *amparo* 327/95, Alfonso Ramírez Juárez, September 6, 1995, unanimity of votes, Judge Clementina Ramírez Moguel Goyzueta.
- 335 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XII, July, p. 186. *Amparo* in review 52/93.
- 336 Seventh Sess., Supreme Court of Justice, First Chamber, *Semanario Judicial (Judicial Weekly)*, t. 84, second part, p. 50. Direct *amparo* 5778/74, Mario Eloy Rodríguez Merlín, July 23, 1975, unanimity of four votes, Judge Mario G. Rebolledo F. Sixth Chamber, second part, vol. XCV, p. 10. Direct *amparo* 6253/63, Manuel Maldonado Escoboza, May 12, 1965, five votes, Judge Mario G. Rebolledo F. Sixth Chamber, second part, vol. XXIV, p. 32, vol. XLVIII, p. 25, vol. CXX, p. 22. Seventh Sess., second part, vol. 41, p. 16, vol. 56, p. 29.
- 337 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. IV, second part, p. 51. *Amparo* in review: 588/89, Julieta Alles Serrano and Manuel Aguilar, November 23, 1989, unanimity of votes, Judge Gustavo García Romero. Seventh Sess., Third Chamber, *Apéndice de 1995 (1995 Appendix)*, t. IV, part SCJN, thesis 216, p. 148. Direct Civil *Amparo* 9634/49, Enrique Cerezo, August 3, 1951, unanimity of four votes. Direct *amparo* 1271/59, María Concepción Taobada de Olivera, March 4, 1960, unanimity of four votes. Direct *amparo* 37/62, Leovigilda Navarrete de Pérez, March 29, 1963, five votes. Direct *amparo* 9448/66, Cointa Aguilera de Elal, July 31, 1967, five votes. Direct *amparo* 2916/73, Julio César Jesús Acosta, August 19, 1973, unanimity of four votes. Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. IV October, 1996, thesis II.2nd. P.A. 39 P, p. 528. *Amparo* in review 207/96, Orlando Manuel Gómez Peña, May 15, 1996, unanimity of votes, Judge Rogelio Sánchez Alcáuter. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XIII, June, p. 509. *Amparo* in review 167/93, Luis Ángel Ortega, February 7, 1994, unanimity of votes, Judge Alfonso Núñez Salas.
- 338 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XII, August, p. 326. Direct *Amparo*: 776/92, Julia Coronado González et al; January 6, 1993, unanimity of votes, Judge Fernando Narváez Barker.
- 339 The court had maintained that the crime of rape could not be committed between spouses when the sexual act was in a “normal manner,” in private, when the aggressor did not have venereal diseases, and the victim did not have an illness that prevented her from having sexual relations. In these cases the behavior was considered typical of the crime of undue exercise of a right. Eighth Sess., SUPREME

- COURT, First Court, *Apéndice, 1995 (1995 Appendix)*, t. II, part SCJN, thesis 378, p. 209. Contradiction of thesis 5/92 between that issued by the First and the Third Courts of the Sixth Circuit, February 28, 1994, majority of three votes. 120 Eighth Sess., First Court, Appendix, 1995, t. II, Part SCJN, thesis 381, p. 210. Contradiction of the thesis 5/92, February 28, 1994, majority of three votes. 126 Eighth Sess., First Chamber, *Semanario Judicial (Judicial Weekly)*, t. 77, May, 1994, thesis 1st./J.9/94, p. 18. Contradiction of the thesis 5/92 between that issued by the First and the Third Courts of the Sixth Circuit, February 28, 1994, majority of three votes: Judges Clementina Gil de Lester, Luis Fernández Doblado and Victoria Adato Green, against those issued by Judges Samuel Alba Leyva and Ignacio M. Clay Mayor Gutiérrez, Clementina Gil de Lester and Luis Fernández Doblado. Eighth Sess., First Chamber, *Semanario Judicial (Judicial Weekly)*, t. 77, May, 1994, thesis 1st./J.10/94, p. Contradiction of the thesis 5/92 between that issued by the First and the Third Courts of the Sixth Circuit, February 28, 1994, majority of three votes: Judges Clementina Gil de Lester, Luis Fernández Doblado and Victoria Adato Green, against those issued by Judges Samuel Alba Leyva and Ignacio M. Clay Mayor Gutiérrez, Clementina Gil de Lester and Luis Fernández Doblado. Jurisprudence Thesis 12/94, approved by the First Chamber of this honorable court, in private session May 11, 1994, by an unanimity of votes of the senior Judges President Victoria Adato Green, Samuel Alba Leyva, Ignacio M. Cal Mayor Gutiérrez, Clementina Gil de Lester and Luis Fernández Doblado.
- 340 National Commission on Human Rights (CNDH), Recommendation 44, 1998, available at <http://www.cndh.org.mx> (last visited May 25, 2001).
- 341 Eighth Sess., Supreme Court of Justice in plenary, *Semanario Judicial (Judicial Weekly)*, t. II, first part, p. 201. *Amparo* in review 666/89, María Auxilia Solórzano de Huerta, June 14, 1989, unanimity of 17 votes.
- 342 Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. II, November, 1995, thesis XIV 2nd 3 C, p. 502. Direct *amparo* 461/95, Vilma del Carmen Cobos Paat, unanimity of votes, Judge Fernando A. Yates Valdez.
- 343 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XII, August, p. 447. *Amparo* in review 250/88, Tomás Páramo, October 18, 1988, unanimity of votes, Judge Gloria Tello Cuevas.
- 344 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XII, July, p. 260. Direct *amparo* 185/93, Federico Tecayehualt Rodríguez, May 18, 1993, unanimity of votes, Judge Gustavo Calvillo Rangel.
- 345 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XIV, July, p. 765. *Amparo* in review 75/90, Roberto Bautista Arce, March 16, 1990, unanimity of votes, Judge Gustavo Calvillo Rangel. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XVII February, thesis VI.Ind.140P, p. 507. *Amparo* in review: 356/89, Efrén Candela López, November 8, 1989, unanimity of votes, Judge Eric Roberto Santos Partido.
- 346 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. I, second part, p. 326. Direct *amparo* 13/88, Luis Figueroa Martínez, February 25, 1988, unanimity of votes, Judge Elvia Díaz de León de López.
- 347 Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. IV, November, 1996, thesis XX. 121 C, p. 443. Direct *amparo* 73/96, Eloína Montejo, José de Gómez, August 22, 1996, unanimity of votes, Judge Francisco A. Velasco Santiago. Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. II, August, 1995, thesis XX.41C, p. 529. *Amparo* in review 136/95, Amílcar Hernández Pérez, June 8, 1995, unanimity of votes, Judge Francisco A. Velasco Santiago. Eighth Sess., Third Chamber, *Semanario Judicial (Judicial Weekly)*, t. I, first part, p. 363. *Amparo* in review 8362/87, Concepción Perla Bellot Campos, December 15, 1987, five judges, Judge Mariano Azuela Guitrón.
- 348 Third Court on First Circuit Civil Matter, direct *amparo* 4843/93, María de Lourdes Castañeda Martínez, September 23, 1993, unanimity of votes, Judge José Becerra Santiago.
- 349 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. VIII, December, p. 152. Direct

- amparo* 3536/88, José Serraldo Orihuela, March 20, 1989, unanimity of votes, Judge Rafael Corrales González. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. XIV, July, p. 417. Direct *amparo* 176/89, Martha Agustina Hernández López, June 13, 1989, unanimity of votes, Judge Gustavo Calvillo Rangel. Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. IX, February, 1999, thesis II 2nd. C J/6, p. 381. Direct *amparo* 255/97, Guillermo Colín Hernández. April 2, 1997, unanimity of votes, Judge Raúl Solís Solís. Direct *amparo* 31/98, Jaime Jaimes Arizmendi, May 20, 1998, unanimity of votes, Judge Raúl Solís Solís. Direct *amparo* 316/98, Jorge Ávila Dorantes, August 11, 1998, unanimity of votes, Judge Virgilio A. Solorio Campos. Direct *amparo* 610/98, Rodrigo Benito Ruiz Alejandro, November 17, 1998, unanimity of votes, Judge Virgilio A. Solorio Campos. Direct *amparo* 769/98, Emiliano Rogelio González Jiménez, January 12, 1999, unanimity of votes, Judge Virgilio A. Solorio Campos.
- 350 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. VII June, p. 436. *Amparo* in review 9/91, Francisca Ortega de Blanco, March 7, 1991, unanimity of votes, Judge María de los Ángeles Chavira Martínez.
- 351 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. V, second part, p. 134. Direct *amparo* 1518/90, Luis Manuel Alcaraz Ballesteros and copetitioner, May 23, 1990, unanimity of votes, Judge José Becerra Santiago.
- 352 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. VIII, October, p. 175. Direct *amparo* 306/91, Victor Zamudio Velasco and copetitioner, June 5, 1991, unanimity of votes, Judge Raúl Solís Solís.
- 353 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. VI, November, 1997, thesis VI 3rd. 25 P, p. 465. *Amparo* in review 431/97, Jorge Chío Meléndez, August 21, 1997, unanimity of votes, Judge Filiberto Méndez Gutiérrez. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. VIII, November, 1991, p. 141. Direct *amparo* 44/90, Martín Rzepka Glocker; t. VIII, November, p. 142.
- 354 *Id.*, direct *amparo* 44/90.
- 355 *Id.*, direct *amparo* 44/90.
- 356 *Id.*, direct *amparo* 44/90.
- 357 National Commission on Human Rights, Recommendation 18 of 2000.
- 358 Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. VI, July, 1997, thesis IV 1st 7L, p. 431. Direct *amparo* 965/96, María Belem Saldívar García, March 10, 1997, unanimity of votes, Judge Jorge Meza Pérez. Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. I, second part, p. 343. Direct *amparo* 4405/87, Mexican Social Security Administration, April 13, 1988, unanimity of votes, Judge Francisco Zapata Mayorga. Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. IX, January, 1999, thesis IV 3rd. 51L, p. 862. Direct *amparo* 23/97, Mexican Social Security Administration, March 26, 1997, unanimity of votes, Judge Ramiro Barajas Plasencia. Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. VI, July, 1997, p. 431. Direct *amparo* 965/96, María Belem Saldívar García, March 10, 1997, unanimity of votes, Judge Jorge Meza Pérez.
- 359 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. IX, January, p. 256. *Amparo* in review 706/89, Timotea Ángeles widow of Hernández, March 15, 1991, unanimity of votes, Judge Aurelio Sánchez Cárdenas.
- 360 Federal District of Mexico Commission on Human Rights, Recommendation 6/95
- 361 Recommendation 6/95 of the Federal District of Mexico Commission on Human Rights, Mexico, D.F., June 1, 1995.
- 362 Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. V, February 1997, thesis III.2nd. P.32 P, p. 725. *Amparo* in review 234/96, Isamu Fujii or Isamu Fujii and Shuitsu Sato, October 24, 1996, unanimity of votes, Judge Oscar Vázquez Marín.
- 363 Ninth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. I, June 1995, thesis VI. 2nd. 5



- P, p. 473. *Amparo* in review 161/95, Ricardo Carvente Carreto, April 19, 1995, unanimity of votes, Judge María Eugenia Estela Martínez Cardiel, *Semanario Judicial de la Federación (Federal Judicial Weekly)*, t. VII, October, 1998, thesis XII 1st. 8th, p. 1217. Complaint 40/98, Pedro Hernández Pascacio et al., August 13, 1998, unanimity of votes, Judge Luis Francisco González Torres. Ninth Sess., Second Chamber, *Semanario Judicial (Judicial Weekly)*, t. IV, November, 1996, thesis 2nd. J.54/96, p. 147. contradiction of the thesis 4/90, five votes, August 30, 1996, Judge Genaro Góngora Pimentel; Jurisprudence Thesis 54/96, August 30, 1996; complaint 70/88, Sául de Paz y Paz, February 25, 1988, unanimity of votes; complaint 105/88, Jorge Cores Muradas, April 5, 1988, unanimity of votes; complaint 115/88, Enrique Ramón García, April 12, 1988, unanimity of votes.
- 364 Ninth Sess., Circuit Courts; complaint 135/88, Jorge Cores Muradas, April 19, 1988, unanimity of votes; complaint 155/88, Blanca Martínez Sánchez, April 26, 1988, unanimity of votes.
- 365 Eighth Sess., Circuit Courts, *Semanario Judicial (Judicial Weekly)*, t. III, second part, p. 811. Incident in review 503/89, Gastronomía Rivera, S.A, unanimity of votes, March 14, 1989, Judge Carlos Alfredo Soto Villaseñor.
- 366 CONSTITUTION OF PERU, in effect since December 31, 1993, art. 144 [hereinafter PERU CONST.].
- 367 *Id.*, art. 141.
- 368 *Id.*, arts. 151 and 154.
- 369 *Id.*, art. 200.
- 370 *Id.*, art. 201.
- 371 *Id.*, art. 149.
- 372 In 1995, the Executive Commission of the Judicial Branch was created, and in June 1996 the Judicial Coordination Council and the Executive Commission of the Justice Department were created (Laws no. 6546, 1995 and 26623, 1996). These executive commissions were created for the purpose of reorganizing the judicial branch and the Justice Department and they continued to make fundamental decisions for institutional operation until law 27367 was issued November 6, 2000. This law deactivated these executive commissions and established the Interim Council of the Judicial Branch and the Interim Council of the Justice Department; in turn, the law mandated their deactivation after the establishment of the Executive Council of the Judicial Branch and the Justice Department Board of Supreme Prosecutors. These bodies guide the operation of the Peruvian judicial system.
- 373 THE CONSTITUTIONAL COURT [hereinafter CONST. COURT] was closed between 1992 and 1996. In 1997, Law 26081 modified the quorum to four judges and abolished the use of abstention. One week later, three judges were dismissed by the congress.
- 374 CÉSAR LANDA., *Tribunal Constitucional y Estado democrático (The Constitutional Court and the Democratic State)*, Pontifical University of Peru, Fondo Editorial, Lima, 1999, p. 383.
- 375 The reason given for this dismissal was the finding of inapplicability of law no. 26657 specific to reappointing the current head of state. See *supra* control of constitutionality.
- 376 PERU CONST., art. 51.
- 377 *Id.*, art. 146.
- 378 CIVIL CODE, Introductory Title, VIII; CIVIL PROCEDURAL CODE, art. 50, no. 4. Neither the constitution or these codes include provisions that refer to the scope of custom. However, the COMMERCIAL CODE refers to custom on multiple occasions. See COMMERCIAL CODE arts. 255, 592 no. 2, 664, 669, 792, 833 no. 1.
- 379 PERU CONST, art. 56. For treaties to enter into force, they only need to be ratified by the president, except when they deal with human rights; territory; national defense; financial obligations of the state; the creation, modification or repeal of taxes; or when they effect any law or require legislation for their implementation. In these cases, the treaty must be supported by the congress.
- 380 PERU CONST., art. 55.
- 381 *Id.*, art. 200, no. 4.

- 382 CIVIL PROCEDURAL CODE, art. 400. In accordance with the Organic Law of the Judicial Branch, these final decisions must be published. Single Arranged Text of the Organic Law of the Judicial Branch, art. 22.
- 383 Law No. 25,398, Complementary with the Law of Habeas Corpus and Amparo, art. 5.
- 384 PERU CONST., art. 204.
- 385 *Id.*, art. 202 no. 1.
- 386 Single Arranged Text of the Organic Law of the Judicial Branch, art. 35.
- 387 Supreme final decision published November 10, 1998, by official notice no. 116-98-ADM-L-CS-PJ of the SUPREME COURT OF JUSTICE [hereinafter SUPREME COURT], Constitutional and Labor Court, petition for *amparo*, proceeding no. 303-97, Lima.
- 388 PERU CONST., art. 202, nos. 1 and 2.
- 389 *Id.*, art. 203.
- 390 *Id.*, art. 200, no. 5.
- 391 *Id.*, art. 200, no. 1. Res. of the CONST. COURT, August 6, 1996, proceeding 318-96-HC/TC, finding that “the basic rights to health and life, by their nature, are protected in cases of threat or violation by an expeditious and exceptional petition for habeas corpus, [. . . .]” COMISIÓN ANDINA DE JURISTAS, (ANDEAN LAWYERS COMMITTEE) *Derechos fundamentales e interpretación constitucional (Fundamental Rights and Constitutional Interpretation)*. Ensayos-jurisprudencia (Jurisprudence Essays), CAJ, Lima, 1997, pp.152-153. See also article 12 of Law 26506, which describes situations in which *amparo* can be applicable.
- 392 Law 26506, art. 13.
- 393 *Id.*, art. 14.
- 394 Legislative Decree 900 of 1998, modifying article 15 of law 25506.
- 395 PERU CONST., art. 200, no. 3.
- 396 *Id.*, art. 200, no. 2. Article 24 of law 25506 includes a description of situations in which *amparo* can be applicable. It is clear, however, that the list is not exhaustive.
- 397 *Id.*, art. 26.
- 398 Legislative Decree 900 of 1998, modifying article 29 of law 25506.
- 399 Law 25506, arts. 30 and 32.
- 400 *Id.*, arts. 27 and 28.
- 401 PERU CONST., art. 200, no. 6.
- 402 CONST. COURT, Habeas Corpus proceeding 318-96-HC/TC, resolution of August 6, 1996.
- 403 SUPREME COURT, cassation appeal, proceeding no. 2740-98, case Augusto Sergio Villafañe Olivera contra el Instituto Peruano de Seguridad Social (IPSS) (Augusto Sergio Villafañe Olivera v. Peruvian Social Security Administration), decision May 4, 1999.
- 404 SUPREME COURT, appeal for annulment, proceeding no. 783-86-Piura, decision September 22, 1986, published in “Normas Legales” (“Legal Norms”) [hereinafter Normas]. *Revista de Legislación y Jurisprudencia (Legislation and Jurisprudence Magazine)*, volume 150, January – February, 1988, year XLIV, Editorial Normas Legales, Trujillo, p. 422. (Ordering the decision convicting the accused null and void.)
- 405 SUPREME COURT, appeal for annulment, proceeding no. 1325-91- Lima, decision February 28, 1992, supreme final decision published in “Normas,” vol. CCXVI, May, 1994, pp. J-13 and J-14. (Ordering the decision convicting the accused null and void.)
- 406 SUPREME COURT, appeal for annulment, proceeding no. 731-93- Piura, decision May 26, 1993, supreme final decision published in “Normas,” vol. CCXX, September, 1994, pp. J-22 and J-23. (Ordering the conviction for homicide and crimes against public health null and void, but increasing the original penalty, for reason of the victim’s character – illiteracy – and the circumstances of the crime.)

- 407 SUPREME COURT, appeal for annulment, proceeding no. 620-96-B- Piura, decision May 3, 1996. Supreme final decision published in “Normas,” volume 253, June, 1997, pp. A-37 and A-38. (Ordering the decision convicting the accused null and void.)
- 408 SUPREME COURT, First Transitory Penal Court, appeal for annulment, proceeding no. 5072-98- Junín, decision May 28, 1999, supreme final decision published in “Normas,” volume 279, August, 1999, pp. A-13 and A-14. (Reducing the sentence from ten to six years in prison, but increasing reparations from 1,000 to 20,000 new sols).
- 409 SUPREME COURT, appeal for annulment no. 3235-93- Junín, decision January 27, 1994, supreme final decision published in “Normas,” Vol. CCXLII, July, 1996, pp. J-16 and J-17. (Increasing the sentence from 15 to 18 years and reparation from 5,500 to 20,000 new sols.)
- 410 Anal “carnal access.”
- 411 CONST. COURT, action for unconstitutionality of art. 337 of the Civil Code, proceeding no. 018-96-I/TC, resolution of April 29, 1997.
- 412 SUPREME COURT, Second Civil Court, appeal for annulment, proceeding 855-85- Lima, decision February 19, 1988.
- 413 SUPREME COURT, Second Civil Court, appeal for annulment, proceeding no. 1434-88- Lima, decision August 16, 1991.
- 414 SUPREME COURT, Civil Court, cassation no. 675-98- Amazonas, decision October 15, 1998.
- 415 In 1999 the Supreme Court declared a woman who assaulted her 10-year-old daughter so brutally that she died eight days later as unindictable. MARÍA ISABEL ROSAS BALLINAS, “La criminalidad femenina y su relación con la violencia familiar” (“Female Criminality and Its Relation to Domestic Violence”), Study for the Defense of the Rights of Women (DEMUS), *Gaceta Jurídica (Legal Gazette)*, year 1, no. 1, May 2000.
- 416 CONST. COURT, No. 968-99-AA/TC, 1999.
- 417 SUPREME COURT, Permanent Civil Court, cassation no. 577-98, Lima, decision October 16, 1998. (Finding that abandonment could not be proven in a case involving a husband who had left more than ten years earlier, saying he was “headed for the city of Arequipa to look for work,” *Id.*)
- 418 SUPREME COURT, cassation no. 1288 - 96, Lima, decision July 21, 1998; and SUPREME COURT, Civil Court, appeal for annulment, proceeding no. 1523-85- Lambayeque, decision February 27, 1987.
- 419 CONST. COURT, action for unconstitutionality of law no. 26530 (modifying article VI of the National Population Law, whose original text excluded sterilization as a method of family planning) proceeding no. 014-96-I/TC Lima, decision published in the official paper *El Peruano (The Peruvian)*, May 31, 1997, p. 149688 and subsequent pages.
- 420 SUPREME COURT, appeal for annulment, proceeding no. 3421-93- Arequipa, decision April 19, 1994, adopted with supreme voting members (*vocales supremos*) votes Pantoja Rodulfo, Iberico Mas, Montes de Oca Begazo, Almenara Bryson, and Sivina Hurtado.
- 421 See *supra* right to equality.
- 422 SUPREME COURT, appeal for annulment, proceeding no. 870-92- Lima, decision May 22, 1992.
- 423 By jurisprudence, we are referring to the observations and recommendations issued by these bodies.
- 424 See TMB Report, *supra* note 5.
- 425 See CENTER FOR REPRODUCTIVE RIGHTS, REPRODUCTIVE RIGHTS IN THE INTER-AMERICAN SYSTEM FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS 21 (2002), for more information.
- 426 The agreements signed by governments at these conferences do not create legal obligations for the governments of the signatory countries. However, the agreements are important because they establish concepts and instruments for political action that define the direction in which human rights are advancing and contribute to the interpretation of those rights in the international arena as well as at the national level.

