

Brazil

# Women of the World:

## Laws and Policies Affecting Their Reproductive Lives



Latin America and the Caribbean

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

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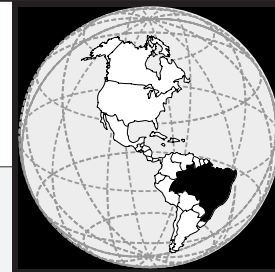
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# Brazil



## Statistics

### GENERAL

#### *Population*

- Brazil has a total population of 163.1 million,<sup>1</sup> of which 50.9% are women.<sup>2</sup> The growth rate is approximately 1.2% per year.<sup>3</sup>
- 34% of the population is under 15 years old,<sup>4</sup> and 4% is over 60.<sup>5</sup>
- In 1996, 75.47% of the population lived in urban areas; 57.83% of the population of the northern region, 60.64% of the northeast region, 81.26% of the central-western region, 88.01% of the southeastern region, and 74.12% of the southern region lived in urban areas.<sup>6</sup>

#### *Territory*

- Brazil covers 8,580,444 square kilometers.<sup>7</sup>

#### *Economy*

- In 1994, the World Bank estimated the gross national product per capita at U.S.\$2,970.<sup>8</sup>
- From 1990 to 1994, the gross domestic product ("GDP") grew at an estimated rate of 2.2%. This is a fall from the period from 1980 to 1990, when the rate was 2.7%.<sup>9</sup>
- In 1990, the government's budget for health, sanitation, and education was 5.5% of the GDP.<sup>10</sup>

#### *Employment*

- In 1994, approximately 71 million people were employed in Brazil, of which 47.9% were women.<sup>11</sup>

### WOMEN'S STATUS

- The average life expectancy for women is 71.2 years, compared with 63.4 years for men.<sup>12</sup>
- The illiteracy rate for women and men is the same: 17%.<sup>13</sup>
- Women's representation in the economically active population grew in the last decade (1981 to 1990) from 31% to 35%.<sup>14</sup>
- Women represent 3.9% of the unemployment rate in urban areas and 1.4% in rural areas.<sup>15</sup>
- Violence against women is common in Brazil. Of all reported incidents of violence in 1991, 70% took place within the home, and, in nearly all cases, the aggressor was the woman's spouse or partner.<sup>16</sup>

### ADOLESCENTS

- Approximately 34% of the population of Brazil is under 15 years old.<sup>17</sup>
- The median age of first marriage or domestic partnership for women is 22.6 years.<sup>18</sup>
- From 1990 to 1995, the fertility rate in adolescents between the ages of 15 and 19 was 41 per 1,000.<sup>19</sup>

### MATERNAL HEALTH

- In the three years prior to 1996, the total fertility rate of women between the ages of 15 and 49 was 2.5 children per woman. In urban areas, the rate was 2.3, and in rural areas, 3.5.<sup>20</sup>
- The maternal mortality rate is 220 per 100,000 live births.<sup>21</sup>
- The most frequent cause of maternal deaths is toxemia, which is responsible for 30% of deaths.<sup>22</sup>
- The practice of surgical births has reached striking levels. In 1970, 15% of births were by cesarean section. In 1980 that figure rose to 31%, and in 1990 to 34%.<sup>23</sup> By 1996, 36.4% of births were registered as cesareans.<sup>24</sup>
- From 1995 to 2000, it is estimated that the infant mortality rate is 42 per 1,000 live births.<sup>25</sup>
- In Brazil, 73% of births are attended by a health professional.<sup>26</sup>

## CONTRACEPTION AND ABORTION

- Currently, 76.6% of Brazilian women in a stable relationship use some form of contraception. Sterilization and the contraceptive pill are the most frequently used methods, with prevalence rates of 40.1% and 20.7%, respectively.<sup>27</sup> Together they represent about 87% of the modern contraceptive methods used and 80% of all methods employed by women in relationships.<sup>28</sup>
- In 1992, 7.5 million women were sterilized during cesarean operations.<sup>29</sup>
- Other methods used are condoms (4.4%), abstinence (3%), withdrawal (3.1%), male sterilization (2.6%), injectable contraceptives (1.2%), the intrauterine device (1.1%), and others (0.4%).<sup>30</sup>
- In 1991, estimates of the number of women who had induced abortions ranged from 866,003 to 2,020,674.<sup>31</sup> In the three years between 1989 and 1992, the number of women hospitalized because of abortion complications was between 290,965 and 327,157.<sup>32</sup>
- In 1995, the Single Health System registered 274,698 hospitalizations for abortions.<sup>33</sup>

## HIV/AIDS AND STIs

- According to information given by the Ministry of Health, between 1987 and 1995, 451,708 cases of sexually transmitted infections were registered.<sup>34</sup>
- Brazil has one of the highest rates of AIDS in the world. It is estimated that at the end of 1996, 146,000 people had developed the disease of the total number of approximately 500,000 infected.<sup>35</sup> Officially, the country has only 94,997 cases registered.<sup>36</sup>

## ENDNOTES

1. UNITED NATIONS POPULATION FUND (UNFPA), *THE STATE OF WORLD POPULATION, 1997*, at 72 (1996).
2. UNITED NATIONS, *THE WORLD'S WOMEN 1995, TRENDS AND STATISTICS*, at 25 (1995).
3. *THE STATE OF WORLD POPULATION* *supra* note 1, at 72.
4. WORLD ALMANAC BOOKS, *THE WORLD ALMANAC AND BOOK OF FACTS, 1997*, at 746 (1996).
5. *Id.*
6. MINISTRY OF HEALTH ATG/GM, SAÚDE NO BRAZIL [HEALTH IN BRAZIL], INDICATORS: DEMOGRAPHIC, SOCIOECONOMIC, MORTALITY, DISEASE, FUNDS AVAILABLE FOR HEALTH SERVICES AND ACTIVITIES (1996).
7. *THE WORLD ALMANAC*, *supra* note 4, at 746.
8. WORLD BANK, *WORLD DEVELOPMENT REPORT 1996: FROM PLAN TO MARKET*, at 189 (1996).
9. *Id.*, at 208.
10. UNITED NATIONS DEVELOPMENT PROGRAM (UNDP), INSTITUTE FOR APPLIED ECONOMIC RESEARCH (IAER), *REPORT ON HUMAN DEVELOPMENT IN BRAZIL 1996*, at 182 (1996).
11. *WORLD DEVELOPMENT REPORT 1996*, *supra* note 8, at 195.
12. *THE STATE OF WORLD POPULATION*, *supra* note 1, at 69.
13. *Id.*
14. *REPORT ON HUMAN DEVELOPMENT IN BRAZIL 1996*, *supra* note 10, at 33.
15. *THE WORLD'S WOMEN 1995*, *supra* note 2, p 123.
16. HUMAN RIGHTS WATCH, *CRIMINAL INJUSTICE: VIOLENCE AGAINST WOMEN IN BRAZIL. AN AMERICAS WATCH REPORT*, at 14 (1991).
17. *THE WORLD ALMANAC*, *supra* note 4, at 746.
18. *THE WORLD'S WOMEN 1995*, *supra* note 2, at 35.
19. *Id.*, at 86.
20. CIVIL SOCIETY AND FAMILY WELL-BEING IN BRAZIL (BEMFAM), PROGRAM OF RESEARCH ON DEMOGRAPHY AND HEALTH, NATIONAL RESEARCH ON DEMOGRAPHY AND HEALTH 1996: PRELIMINARY REPORT (cited in Silvia Pimentel and Valeria Pandjjarjian, Institute for the Promotion of Equality, Draft Brazil chapter, at 5 (1997)).
21. *THE STATE OF WORLD POPULATION*, *supra* note 1, at 69.
22. *REPORT ON HUMAN DEVELOPMENT IN BRAZIL 1996*, *supra* note 10, at 43.
23. NATIONAL RESEARCH ON DEMOGRAPHY AND HEALTH 1996, *supra* note 20, at 5-6.
24. *Id.*
25. *THE STATE OF WORLD POPULATION*, *supra* note 1, at 69.
26. *Id.*, at 72.
27. NATIONAL RESEARCH ON DEMOGRAPHY AND HEALTH 1996, *supra* note 20, at 6.
28. *Id.*
29. Katrin Oliveira, *In Brazil: sterilization contributes to curbing demographic explosion; however, for some women, it is a prerequisite to obtaining work; for others, it is done out of ignorance*, *THE GAZETTE*, Feb. 6, 1992, (cited in THE CENTER FOR REPRODUCTIVE LAW AND POLICY (CRLP), *WOMEN*

OF THE WORLD: FORMAL LAWS AFFECTING THEIR REPRODUCTIVE LIVES, at 2 (1995)).

30. NATIONAL RESEARCH ON DEMOGRAPHY AND HEALTH 1996, *supra* note 20, at 6-7.

31. SUSHHEELA SINGH AND DEIDRE WULF, ESTIMATED LEVELS OF INDUCED ABORTION IN SIX LATIN AMERICAN COUNTRIES, (cited in *WOMEN OF THE WORLD*, *supra* note 29, at 2).

32. *Id.*

33. Data from the Ministry of Health, Office for Coordination of Women's Health, in Draft Brazil chapter, *supra* note 20, at 7.

34. Ministry of Health, *National Program for Sexually Transmitted Diseases: AIDS, STDs*, BOLETIM EPIDEMIOLOGICO [EPIDEMIOLOGICAL BULLETIN], Year IV, No. 4, Sept. 1995 — Feb. 1996, at 8.

35. Epidemiological Bulletin presented by the Ministry of Health at the close of the First National Conference for the Prevention of AIDS, Salvador, Dec. 1996. Draft Brazil chapter, *supra* note 20, at 8.

36. *Id.*

Brazil is located in the eastern central part of South America and is the largest country on the continent.<sup>1</sup> To the north, it is bordered by French Guyana, Suriname, Guyana and Venezuela; to the west by Colombia, Peru, Bolivia, Paraguay, and Argentina; to the south by Uruguay; and to the east by the Atlantic Ocean.<sup>2</sup> The official language in Brazil is Portuguese, and Roman Catholicism is the prevalent religion.<sup>3</sup> The ethnic composition of the country is Caucasian (58%), mulatto (38%), and African (6%).<sup>4</sup>

Brazil was a Portuguese colony from 1500, when Portuguese navigator Pedro Alvares Cabral arrived on the Brazilian coast,<sup>5</sup> until 1822, when Prince Pedro I declared Brazil independent of the Portuguese kingdom and proclaimed himself emperor of the new kingdom of Brazil.<sup>6</sup> In 1889, his successor, Emperor Pedro II, was overthrown, and the Republic of the United States of Brazil was formed.<sup>7</sup> In 1967, the country adopted the name the Federal Republic of Brazil.<sup>8</sup> From 1964 to 1985, Brazil was governed by successive military dictatorships. In 1985, the first democratic presidential elections were held.<sup>9</sup> Fernando Henrique Cardoso is currently Brazil's president. He was inaugurated on January 1, 1995.<sup>10</sup> Brazil is implementing economic reforms to open up the market through both privatization of state companies and elimination of laws and policies that restrict free market competition.<sup>11</sup>

## I. Setting the Stage: the Legal and Political Framework

To understand the various laws and policies affecting women's reproductive rights in Brazil, it is necessary to consider the legal and political systems of the country. By considering the bases and structure of these systems, it is possible to attain a better understanding of how laws are enacted, interpreted, modified, and implemented as well as the process by which governments adopt reproductive health and population policies.

### A. THE STRUCTURE OF NATIONAL GOVERNMENT

Brazil is a democratic state,<sup>12</sup> formed as a federal republic,<sup>13</sup> consisting of the Union of Federal Territories (the "Union"), the Federal District, states, and municipalities.<sup>14</sup> The federal territories constitute only a form of administrative-territorial decentralization of the Union,<sup>15</sup> whose creation is prescribed by the Constitution,<sup>16</sup> but presently there are no federal territories in Brazil.<sup>17</sup>

Power emanates from the people and is exercised through their representatives. These representatives are elected directly by the people according to terms established by constitutional norms.<sup>18</sup> The Constitution of the Federal Republic of Brazil

(the "Federal Constitution")<sup>19</sup> is the supreme law of the Republic.<sup>20</sup> However, the states are also ruled by their own constitutions.<sup>21</sup> The state constitutions and all other laws of the Brazilian legal order must be compatible with the principles contained in the Federal Constitution.<sup>22</sup> The branches of power of the Federal Republic of Brazil are the executive, the legislative, and the judiciary, and they are "independent" and "coordinated."<sup>23</sup>

### *Executive Branch*

Executive power is exercised by the president of the republic and the ministers of state.<sup>24</sup> The president is elected through universal, direct, and secret suffrage,<sup>25</sup> requiring a majority of the votes cast.<sup>26</sup> The president is elected for four years and can be reelected for another consecutive period.<sup>27</sup> The president, together with the ministers of state, administers the federal government.<sup>28</sup> The functions of the President are, among others, to appoint ministers of state;<sup>29</sup> propose and veto legislation; approve, enact, and have laws published; enter into international treaties, conventions, and agreements; appoint justices to the Federal Supreme Court; and appoint the territorial governors and magistrates.<sup>30</sup>

Relations between the executive and the legislative branches are regulated by the Federal Constitution. The Chamber of Deputies, the Federal Senate, or any of their standing commissions can convoke ministers of state or any official directly subordinate to the president of the republic to present reports about issues of national interest.<sup>31</sup> If a minister or official is not present to deliver the report or if he or she gives false information, he or she has committed a crime of responsibility<sup>32</sup> and is judged in accordance with the Federal Constitution.<sup>33</sup> The president of the republic commits a crime of responsibility if he or she undertakes any act contrary to the Federal Constitution, the internal security of the country, or the free exercise of power by the legislative and judicial branches of government or the constitutional powers of the states that make up the Federation.<sup>34</sup> The President is tried before the Federal Supreme Court for common crimes and by the Senate for crimes of responsibility.<sup>35</sup>

### *Legislative Branch*

Legislative power is exercised through the National Congress,<sup>36</sup> which is composed of the Chamber of Deputies and the Chamber of the Federal Senate.<sup>37</sup> The Chamber of Deputies<sup>38</sup> is made up of representatives of the people elected for a four-year term<sup>39</sup> by a quota system<sup>40</sup> in each state, territory,<sup>41</sup> and the Federal District.<sup>42</sup> The Federal Senate<sup>43</sup> comprises three representatives from each state and the Federal District, elected by an absolute majority, for an eight-year term.<sup>44</sup> Decisions in both chambers are taken by an absolute majority of members.<sup>45</sup>

The National Congress's principal function is to address and to legislate on the issues under federal competency.<sup>46</sup> These issues include, among others the tax system; the financial and monetary system; national, regional, and sector development plans and programs; the incorporation, subdivision, or breakup of territorial areas in the republic; and the administrative and judicial organization of the Office of the Attorney General and the Public Defender.<sup>47</sup> Congressional legislation on these matters must have presidential approval to be valid.<sup>48</sup> However, Congress has exclusive competence<sup>49</sup> to ratify international treaties, accords, and other agreements that involve commitments of national resources; to suspend acts by the executive branch that exceed the executive's legislative capacity; to approve the annual budgets presented by the President; and to evaluate reports on the execution of governmental plans.<sup>50</sup> Congress oversees and exercises control over the executive branch directly or through either one of the chambers.<sup>51</sup>

The National Congress carries out the legislative process,<sup>52</sup> which encompasses drafting constitutional amendments, laws, and other legal norms of lesser authority.<sup>53</sup> Constitutional amendments may be introduced through a proposal by a minimum of a one-third of the members of the Chamber of Deputies or the Federal Senate, by the president, or by more than half of the state legislative assemblies.<sup>54</sup> Legislative proposals can be made by any member of the Chamber of Deputies, or the Federal Senate or by the entire National Congress, the President, the Federal Supreme Court, the High Courts, the Attorney General of the Republic, and any citizen, through the right to the "popular initiative."<sup>55</sup> Laws, once proposed and approved according to constitutional procedure, are sent to the president, who promulgates them.<sup>56</sup> If the president has observations to make about the law, they must be presented to the National Congress within fifteen days.<sup>57</sup> If the president does not present observations, the law is considered approved.<sup>58</sup>

The National Congress can delegate powers to the president of the republic to enact laws.<sup>59</sup> Likewise, the president can adopt provisional measures that have the force of law in cases of urgency and public necessity, but these must be immediately submitted to Congress for approval.<sup>60</sup> These executive measures cease to have legal effect if they are not converted into a law with congressional approval within thirty days of their publication.<sup>61</sup>

### ***Judicial Branch***

The judicial branch of Brazil consists of the following judicial bodies, in hierarchical order: the Federal Supreme Court and the higher courts of justice; the federal regional courts; the courts with jurisdiction over labor, electoral, and military matters; and courts with jurisdiction over the states, the Federal District, and the territories.<sup>62</sup>

The Federal Supreme Court and the higher courts are composed of judges appointed by the President after being approved by a majority of the members of the Federal Senate.<sup>63</sup> These courts have territorial jurisdiction throughout the national territory.<sup>64</sup> The subject matter jurisdiction of the Federal Supreme Court includes determining the constitutionality of federal laws and other legal norms; trying the president of the republic, the vice president, members of the National Congress, justices of the Supreme Court, and the attorney general of the republic when they are accused of common crimes; and trying crimes of responsibility allegedly committed by ministers of state, members of the higher courts, and heads of diplomatic missions.<sup>65</sup> To be a justice on the Federal Supreme Court, one must be a Brazilian over 35 and under 65 years old, who is a recognized specialist in law with an irreproachable reputation.<sup>66</sup>

The high courts have jurisdiction, in the first instance, to judge common crimes allegedly committed by state governors, Federal District governors, and judges of federal regional courts, regional electoral courts and labor courts. They are also responsible for resolving conflicts of jurisdiction between courts, hearing appeals, and hearing actions involving writs of habeas corpus.<sup>67</sup> To be a judge of a high court, the same requirements are necessary as those for justices of the Federal Supreme Court.<sup>68</sup> The courts and judges with jurisdiction over military matters are responsible for hearing and adjudicating military crimes defined as military crimes under the law.<sup>69</sup> Labor courts have jurisdiction to mediate and resolve individual and collective disputes between workers and employers.<sup>70</sup> The electoral courts and judges are regulated by a special law.<sup>71</sup>

The states' judicial systems follow principles established in the Federal Constitution.<sup>72</sup> The jurisdiction of the courts and tribunals is defined in each state's constitution and by a state law on judicial organization.<sup>73</sup> The states and the Federal District each constitute a separate judicial district based in the state capital.<sup>74</sup> There are also special tribunals responsible for judging civil cases of lesser complexity and minor penal crimes, and Justices of the Peace who are empowered to perform marriages and arbitrate disputes, among other functions.<sup>75</sup>

## **B. THE STRUCTURE OF THE TERRITORIAL DIVISIONS**

### ***Regional and local governments***

The political-administrative organization of the Federal Republic of Brazil is constituted by the Union,<sup>76</sup> the states, the Federal District, and the municipalities.<sup>77</sup> It is the responsibility of the Union to maintain relations with foreign states and participate in international organizations; prepare and execute national and regional plans about territorial organization and



economic and social development; organize and maintain the judicial branch, the Attorney General's Office the Public Defender of the Federal District, and the federal territories; and legislate in civil, commercial, penal, procedural, electoral, agrarian, maritime, aeronautic, space, and labor matters.<sup>78</sup> Among other duties, the union prepares the framework of the national education system.<sup>79</sup>

The states are ruled by the constitutions and laws they adopt, following principles mandated in the Federal Constitution.<sup>80</sup> The union determines policies and programs for different sectors,<sup>81</sup> such as health, but the states are responsible for enacting the regulations for these programs so they can be applied at the regional and state levels.<sup>82</sup> There is a governor<sup>83</sup> and a state assembly,<sup>84</sup> which are in charge of the administration and management of internal state issues.<sup>85</sup> States are divided into municipalities,<sup>86</sup> or local governments, represented by a prefect who is elected by direct suffrage for a four-year term.<sup>87</sup> The Federal District is represented by a governor who has the same legislative and administrative responsibilities as those reserved to the states and municipalities.<sup>88</sup>

#### C. SOURCES OF LAW

##### ***Domestic sources of law***

Laws determining women's legal status, including their reproductive rights, are derived from diverse sources. In the Brazilian legal system, formal sources of law are ranked in order of hierarchy, under the supremacy principle that establishes the superiority of the Federal Constitution; above all other laws.<sup>89</sup> The levels of Brazilian legislation, in hierarchical order, are the Federal Constitution, international treaties that do not deal with human rights;<sup>90</sup> state constitutions and complementary laws; ordinary laws; delegated laws; provisional measures; legislative decrees; and regulations.<sup>91</sup> No law can be contrary to the provisions of the Constitution.<sup>92</sup> International human rights treaties have the legal status of "constitutional norms."<sup>93</sup>

##### ***International sources of law***

Multiple international human rights treaties specifically recognize and promote reproductive rights. These treaties legally commit governments to impose measures in order to advance and protect these rights. The Federal Constitution, in one of its articles,<sup>94</sup> provides that rights and guarantees laid out in the constitution do not exclude other rights and principles that are adopted through international treaties signed by Brazil.<sup>95</sup> Judicial decisions interpret this provision as a direct incorporation of human rights treaties into the internal legal order, giving such treaties a special status equivalent to that of constitutional provisions.<sup>96</sup>

International treaties that do not deal with human rights have subconstitutional<sup>97</sup> status and are approved and ratified in accordance with constitutional provisions dealing with international agreements.<sup>98</sup> Brazil is a member state of the United Nations and the Organization of American States. As such, Brazil has signed and ratified the majority of relevant treaties of the universal and Inter-American systems for the protection of human rights.<sup>99</sup> In particular, Brazil has ratified treaties related to women's rights, such as, the Convention on the Elimination of All Forms of Discrimination Against Women<sup>100</sup> and the Inter-American Convention on the Punishment, Prevention and Eradication of Violence against Women ("Convention of Belém do Pará").<sup>101</sup>

## II. Examining Health and Reproductive Rights

In Brazil, issues related to the reproductive health of women fall within the scope of the country's national health and population policies. Thus, in order to understand reproductive rights in Brazil, it is necessary to analyze the laws and programs in both areas.

#### A. HEALTH LAWS AND POLICIES.

The Federal Constitution establishes that "everyone has the right to health and it is the duty of the State to guarantee it through social and economic policies aimed at reducing the risk of illness."<sup>102</sup> The Constitution also creates the Single Health System ("SHS"), whose purpose is to provide health care to all Brazilians through public services sponsored by the government.<sup>103</sup> The Fundamental Health Law<sup>104</sup> is the law that regulates standards for health promotion, protection, and recuperation and the organization and management of the corresponding services.<sup>105</sup> This law recognizes health as a fundamental human right and the state's obligation to create conditions that will ensure respect for this right.<sup>106</sup>

##### ***Objectives of the health policy***

In Brazil, health policy is overseen by the Ministry of Health and the National Health Council,<sup>107</sup> in accordance with constitutional and other legal norms. The Ministry of Health establishes and regulates national programs,<sup>108</sup> and the states and municipalities are in charge of their implementation. The states and municipalities are free to determine health priorities in accordance with regional needs, provided they follow applicable federal norms.<sup>109</sup> The National Health Council was created in 1937 as a technical body of the Ministry of Health.<sup>110</sup> Today, it constitutes a forum for civil society to participate in the health system. The Council establishes guidelines to be observed in the development of health programs. It works in

conjunction with the Ministry of Health and with state and municipal health councils, which together are responsible for formulating strategies and overseeing the execution of health policies in each corresponding body.

The Single Health System is responsible for undertaking activities included in the national health policy. It encompasses health initiatives and services provided by federal public institutions, state and municipal institutions (directly or indirectly managed), and by public foundations.<sup>111</sup> The primary goals of the SHS are to identify and disseminate the most salient issues affecting the status of health in Brazil and to formulate health policies that ensure that all Brazilians have access to health assistance and preventive services.<sup>112</sup>

The Brazilian government pronounced 1997 to be the Year of Health.<sup>113</sup> Thus, for the period from 1997 to 1998, the government has established as essential goals the "coherent and joint" organization of activities to improve the population's health and the incorporation of federal, state, municipal, and private organizations in the attainment of this goal.<sup>114</sup> Strategies during this one-year period have been divided into three categories:<sup>115</sup> improving the quality of health services;<sup>116</sup> "pro health" social mobilization campaigns;<sup>117</sup> and prevention programs emphasizing primary care, which, among others, include community health promoters running family health projects around themes of basic medical care, women's and children's health, and sexually transmissible infections ("STIs"), among others.<sup>118</sup>

#### **Infrastructure of health services**

Public health services form a network divided both by region and by level of care provided in each establishment. This network functions as a unit. It is a system organized on the basis of principles of decentralization, coordination, and community participation.<sup>119</sup> Private entities can be incorporated into the SHS in a complementary way, through public rights contracts or agreements with the relevant health authority.<sup>120</sup> Charitable or nonprofit institutions are given preference in joining the SHS.<sup>121</sup>

According to statistics provided by the Brazilian Federation of Hospitals,<sup>122</sup> in 1996, there were 6,378 hospitals in the country, including 2,877 private, 107 federal, 731 state, 1,096 municipal, 1,419 charitable, and 148 university hospitals.<sup>123</sup>

In Brazil, human resources statistics show the average ratio of doctors to residents is 1 to 486.<sup>124</sup> Of the personnel employed in the health sector, a larger percentage work in administrative areas than in technical or medical areas,<sup>125</sup> revealing a distortion in the occupational structure of the health sector in Brazil.<sup>126</sup> The number of medical staff grew significantly during the last decade, increasing 5% from 1980 to 1987, and 8.3% from 1987 to

1992. However, this growth of employment took place principally within the private sector in the last few years, while the percentage of medical employees in the public sector dropped from 54% in 1987 to 48% in 1992.<sup>127</sup>

#### **Cost of health services**

The Single Health Service is financed by funds from the social security budget,<sup>128</sup> the federal government, the states, the Federal District, and the municipalities. Funds also come from other sources such as donations or the SHS's own income from payments for services. Charging for services cannot compromise the SHS's obligation to provide health care.<sup>129</sup> Since January 1997, and as a means to make up for the health sector budget deficit, the Brazilian government has instituted the collection of a Provisional Contribution on Financial Movement.<sup>130</sup> This means that, for thirteen months, all movements in bank accounts and financial and contractual obligations incurred by individuals and institutions are to be taxed 0.20%, which amounts are to be used to finance the health system.<sup>131</sup>

#### **Regulation of health care providers**

In Brazil, the exercise of the medical profession is regulated by the Federal Council of Medicine and the regional Councils of Medicine.<sup>132</sup> The Federal Council of Medicine, the body that supervises ethical medical practice nationally,<sup>133</sup> enacted the Medical Ethics Code,<sup>134</sup> which establishes that in order to practice medicine, it is mandatory for professionals to register with their respective state or territory, or the Federal District's regional council.<sup>135</sup>

The provisions of the Medical Ethics Code are mandatory for all registered doctors. Physicians have the following general duties, among others, under the code: to respect human life; to always act for the benefit of the patient,<sup>136</sup> without any form of discrimination;<sup>137</sup> and to respect patients' confidentiality.<sup>138</sup> Doctors who fail to comply with the code will be tried by the respective regional Council of Medicine, which applies the applicable disciplinary measures, as provided by law.<sup>139</sup> Doctors are prohibited from carrying out any medical procedure without the express consent of the patient or his or her legal representative.<sup>140</sup> The Medical Ethics Code also contains rules about the doctor-patient relationship concerning reproductive health, such as the doctor's obligation to respect the patients' right to decide freely which contraception or conception methods they prefer and to explain to the patient the risks and consequences of each method.<sup>141</sup> The doctor is prohibited from carrying out artificial insemination without the patient's prior written consent.<sup>142</sup>

#### **Patients' rights**

In accordance with the Medical Ethics Code, a doctor will be sanctioned if he or she negligently causes harm to a patient

in the course of treatment<sup>143</sup> or if he or she does not comply with national legislation referring to organ or tissue transplant, sterilization, assisted fertility methods or abortion.<sup>144</sup> Patients are also protected from medical negligence under the Penal Code, which provides that in cases of negligent homicide<sup>145</sup> and injuries,<sup>146</sup> the sentence shall be increased by one-third when “the crime is the result of the nonobservance of technical regulations of a profession, art or occupation.”<sup>147</sup>

With regard to patients’ rights as consumers of health services, Law No. 8142<sup>148</sup> provides for community participation in the management of the SHS, through the health councils. These institutions are composed of government representatives, service providers, health professionals, and consumers.<sup>149</sup> The health councils are active in the formulation of health strategies and the execution of health policy in each state, municipality, and the Federal District.<sup>150</sup>

#### B. POPULATION, REPRODUCTIVE HEALTH, AND FAMILY PLANNING

##### ***Population laws and policies***

A significant structural transformation that Brazilian society has undergone in the last decades of this century has been a change in its demographic profile. This is due to population growth, which has been accelerating since the end of the 1960s.<sup>151</sup> However, there is no specific government policy dealing with population issues in Brazil. Recently, the issue of the demographic transformation has been incorporated into development plans and programs and social projects and policies,<sup>152</sup> such as education and employment policy.<sup>153</sup> In 1996, a law was passed that prohibits forcing or requiring anyone to practice family planning as a means of demographic control.<sup>154</sup>

##### ***Reproductive health and family planning laws and policies***

The Federal Constitution establishes that the state must provide the necessary educational and scientific resources in order that the right to family planning may be exercised.<sup>155</sup> It also prohibits any form of coercion with regard to this right by public or private institutions.<sup>156</sup>

The 1996 Family Planning Law defines family planning as “the totality of methods to control fertility that guarantee to the woman, the man, or the couple equality of constitutional rights regarding the decisions regarding the founding, limiting, or increasing of their descendants.”<sup>157</sup> Experimentation with human beings in the field of fertility control is permitted only when prior authorization has been given, when it is managed and controlled by the National Directorship of the SHS, and when it corresponds to the World Health Organization’s established criteria.<sup>158</sup> The above-mentioned law designates the SHS as the body responsible for providing reproductive health and family planning services. In issues of reproductive health,

the law states that the SHS is responsible for prenatal, child birth, postnatal, and neonatal care, and is also in charge of the prevention of STIs and prevention and care of cervical, breast and prostate cancer.<sup>159</sup> With regard to family planning, the SHS is required to provide comprehensive women’s, men’s, and couple’s health care in issues of fertility and contraception.<sup>160</sup>

The Single Health Service outlines governmental policy on family planning within the framework of the Family Planning Law.<sup>161</sup> Family planning measures and programs can be carried out by both public and private bodies.<sup>162</sup> With prior authorization from the National Directorship of the SHS, foreign organizations and funds can cooperate in research activities and programs on family planning carried out in Brazil. The SHS manages and oversees all activities.<sup>163</sup>

In 1983, the government implemented the Comprehensive Women’s Health Care Program<sup>164</sup> with the aim of providing care to women in all stages of life,<sup>165</sup> but with particular emphasis on problems related to reproductive health.<sup>166</sup> In this regard, the program includes detection and treatment of STIs, cervical and breast cancer,<sup>167</sup> prenatal, childbirth, postnatal, and lactation care.<sup>168</sup> It has enlarged family planning services in the public sector to include services related to contraception, infertility, and sexuality.<sup>169</sup> However, due to various factors, including a lack of funds and lack of cooperation by local governments, implementation of the program has been incomplete.<sup>170</sup>

##### ***Government delivery of family planning services***

The SHS, at all levels and through its network of health service establishments, is in charge of providing fertility and contraception services to women, men, and couples.<sup>171</sup> It is also responsible for promoting training for health sector employees, especially for technical personnel, in order to encourage the provision of information on methods and available techniques for controlling fertility.<sup>172</sup>

#### C. CONTRACEPTION

##### ***Prevalence of contraceptives***

Currently, the percentage of Brazilian women in stable relationships who use contraception is 76.6%.<sup>173</sup> Sterilization and oral contraceptives are the most frequently used methods, representing 40.1% and 20.7%, respectively, of the total prevalence rate.<sup>174</sup> These two methods represent approximately 87% of the average of modern methods used and 80% of all methods used by women in stable relationships.<sup>175</sup> Other less widely used methods are the condom (4.4%), abstinence (3%), the withdrawal method (3.1%), male sterilization (2.6%), injectable contraception (1.2%), the intrauterine device (“IUD”; 1.1%), and others (0.4%).<sup>176</sup>



### ***Legal status of contraceptives***

The Family Planning Law states that to facilitate the exercise of the right to family planning, all fertility and contraceptive methods and techniques that are scientifically proved not to place people's health or lives at risk, are to be available, guaranteeing the freedom to choose.<sup>177</sup> Dispensation of contraceptives should always be accompanied by substantive information about risks, advantages, disadvantages, and effectiveness of the methods and techniques, as well as a clinical evaluation and follow-up visits.<sup>178</sup>

At the federal level, the National Secretary for Health Monitoring of the Ministry of Health ("NSHM") and the National Methodology, Standards and Industrial Quality Institute ("NMSIQI")<sup>179</sup> are responsible for guaranteeing the quality of contraceptives.<sup>180</sup> The NSHM must publish guidelines regarding the registration, and authorization for marketing and sale of contraceptive products as well as controls on the manufacture of these products.<sup>181</sup> The decision as to whether a product must be registered is the responsibility of a scientific commission, headed by the president of the Brazilian Society for Medical Monitoring and consisting of ten members, all leaders of the medical and pharmaceutical communities.<sup>182</sup> The NMSIQI, in conjunction with NSHM, is the federal governmental body responsible for condom quality control.<sup>183</sup>

At the state level, authorities responsible for implementation of product manufacturing regulations monitor adherence to health standards.<sup>184</sup> The states can establish more rigorous standards than those in effect at the federal level.<sup>185</sup>

### ***Regulation of information on contraception***

There are no restrictions on the dissemination of information about contraceptive methods. The Family Planning Law obliges the government to promote conditions and the necessary informational, educational, technical, and scientific resources to assure free exercise of the right to family planning.<sup>186</sup>

### ***Sterilization***

Female sterilization constitutes 57% of all modern contraceptive methods used by women in stable relationships, indicating an excessive reliance on this method.<sup>187</sup> In 1992, 7.5 million women were sterilized during cesarean operations.<sup>188</sup>

Until August 1997, there was heated debate about the legal status of sterilization. The Family Planning Law, promulgated in 1996, contained some provisions referring to sterilization<sup>189</sup> that were vetoed by the president. This provoked opposition from civil society, especially from the feminist movement. As a consequence, the president retracted his veto and officially asked Congress to reinstate the vetoed provisions. On August 12, 1997, Congress repealed President Fernando E. Cardoso's veto of the fourteen provisions on sterilization. The vetoed articles

provided that voluntary sterilization be available to women and men who have full legal capacity and who are over 25 years old or have at least two living children. There must be a waiting period of sixty days between expressing the wish for sterilization and the surgery.<sup>190</sup> During this period, the party requesting sterilization will be provided access to fertility control services, including guidance by a multidisciplinary group whose objective is to discourage premature sterilization and avoid risking the life and health of the women and future fetuses. This process must be certified as completed by a written report signed by two doctors.<sup>191</sup> Second, the reinstated provisions also provide that conditions for sterilization must include recording the expressed desire by the interested party<sup>192</sup> and that surgical sterilization of a woman during delivery or miscarriage is prohibited, except in cases where it is proven necessary because of successive previous cesareans.<sup>193</sup> Also according to the Family Planning Law, the only forms of surgical sterilization that are permitted as contraception are tubal ligation, vasectomy, and other scientifically accepted methods. Hysterectomy and ovariectomy are prohibited.<sup>194</sup> Finally, the consent of both partners is required for sterilization during marriage.<sup>195</sup>

After congressional repeal of the presidential veto of the articles regulating the above-described situations, the revocation requires the approval of the president. A regulation that permits the application of the law must be enacted within the ninety days after the promulgation of the law.<sup>196</sup> Other articles of the Family Planning Law prohibit individual or collective incentives to promote surgical sterilization<sup>197</sup> and prohibit the demand of proof of sterilization or pregnancy for any purpose.<sup>198</sup>

## **D. ABORTION**

### ***Legal status of abortion***

In Brazil, abortion is illegal and is defined in the Penal Code as a crime against life.<sup>199</sup> There are two exceptions to the illegality: abortion carried out by a medical professional when no other measures exist to save the life of the pregnant woman<sup>200</sup> and abortion to terminate a pregnancy that is the result of rape.<sup>201</sup> Outside of these circumstances, the Penal Code punishes the women who "induces her abortion" or "consents to another performing it."<sup>202</sup> Equally, the person who performs a woman's abortion, with or without the woman's consent, is punished.<sup>203</sup> The Penal Code, in the section of crimes of grave injury, also punishes a person who, through physical aggression, causes a woman to miscarry.<sup>204</sup>

### ***Requirements for obtaining legal abortion***

In order to perform an abortion in the two exceptional cases permitted by law, the person performing the abortion must be a doctor<sup>205</sup> and the pregnant woman or her legal representative must consent.<sup>206</sup>

Currently, the Brazilian judiciary permits the performance of abortion in cases where the fetus has grave and irreversible anomalies. This is not provided for in the law but is regularly authorized by the judiciary.<sup>207</sup> It is estimated that 350 such authorizations have been granted countrywide. The most common cases are anencephaly, gastroschisis, Turner syndrome, Arnold Chiari II syndrome, and achondrogenesis.<sup>208</sup>

There is proposed legislation in the final stages of approval that establishes the SHS's duty to provide abortion services in those circumstances permitted by the Penal Code.<sup>209</sup> The proposed law states that abortion, in legally permitted cases, can be carried out in any SHS public hospital.<sup>210</sup> It also sets out the different requirements for establishing each of the two exceptional cases of abortion that are not punishable.<sup>211</sup>

#### **Penalties for abortion**

The law provides that women who induce their own abortion or consent to another performing it are punished by imprisonment of no less than one year and no more than three.<sup>212</sup> Those who perform abortions with the consent of the pregnant woman receive a punishment of one to four years of imprisonment.<sup>213</sup> If an abortion is performed without the woman's consent, the punishment is three to ten years in prison.<sup>214</sup>

If the pregnant woman gives her consent for the abortion, but is under 14 years old or is mentally handicapped, the punishment for the person performing it is three to ten years in prison.<sup>215</sup> The same punishment is applied in cases where consent has been secured through fraud, threat, or physical violence.<sup>216</sup> In all cases, the punishment is extended by a third if as a consequence of the abortion or the measures employed to perform the abortion the pregnant woman suffers serious injury.<sup>217</sup> If the woman dies, the sentence is doubled.<sup>218</sup>

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

Examining the problem of HIV/AIDS issues within the reproductive health framework is essential, as the topics are interrelated from both a medical and a public health standpoint. Moreover, a full evaluation of laws and policies affecting reproductive rights in Brazil must examine the status of HIV/AIDS and STIs because of the extent and implications of both diseases, as reflected in the following statistics. In 1996, there were 500,000 people infected with AIDS in Brazil, of which 146,000 had already developed the disease.<sup>219</sup> Officially, there are only 94,997 registered cases. The number of Brazilian women infected with AIDS is growing significantly. In 1985, for every twenty-eight men with the disease there was one woman. In 1991, this ratio changed to five to one.<sup>220</sup>

#### **Laws on HIV/AIDS and STIs**

In spite of the dimension of the problem of HIV/AIDS in Brazil, legislation on this subject is scant. In 1978, the Ministry of Health declared, as a priority public interest, the need to eradicate STIs such as syphilis, gonorrhea, soft chancre, and lymphogranuloma venereum.<sup>221</sup> In 1986, the Ministry of Health added AIDS to the list of diseases whose notification by doctors and health centers is obligatory.<sup>222</sup> The legislation provides that all blood donations must be tested to screen for HIV and AIDS.<sup>223</sup> One of the most significant laws on this subject is one that assures social benefits for victims of AIDS who are forced to retire or temporarily leave their work for health reasons.<sup>224</sup>

The Brazilian Penal Code punishes anyone who places others in danger of infection of venereal disease through sexual relations or through any "lustful act," when the perpetrator knows or should have known that he or she was infected.<sup>225</sup> This crime is punishable by incarceration for no less than three months and no more than one year or by payment of a fine.<sup>226</sup> Those who commit such acts with the intention of transmitting the disease are punished with imprisonment for one to four years and the payment of a fine.<sup>227</sup> The Penal Code also declares it a crime to expose someone to a contagion of a serious disease like HIV/AIDS.<sup>228</sup> Moreover, anyone infected with a serious disease who engages in an act likely to transmit the disease with the intention of transmitting the disease will be punished with incarceration for one to four years and the payment of a fine.<sup>229</sup>

#### **Policies on prevention and treatment of HIV/AIDS and STIs**

Government action to prevent and treat HIV/AIDS in Brazil has been slow and has been limited by the severe national budget crisis that has coincided with the period of the fastest growth of the disease.<sup>230</sup> Currently, the prevention of AIDS in Brazil is overseen by the National STI/AIDS Program, implemented in 1985, under the Division of STIs and HIV/AIDS of the Ministry of Health.<sup>231</sup> This body carries out the program in close collaboration with various local government and nongovernmental organizations.<sup>232</sup> The National STI/AIDS Program gives priority to AIDS prevention, applying two strategies: the strengthening of activities related to the diagnosis and care of STIs and the coordination of information, education, and counseling campaigns.<sup>233</sup> These are directed at specific groups of the population, such as children, adolescents, women, workers, indigenous populations, and the armed forces.<sup>234</sup> There are also special programs for members of high-risk groups, such as homosexuals, prisoners, intravenous, drug users, and prostitutes.<sup>235</sup> The program has also appealed to the mass media to disseminate information

about HIV/AIDS and STIs.<sup>236</sup> One of the most important contributions of this program has been the increase in the supply of condoms and a corresponding increase in their use.<sup>237</sup> The program promotes free condom distribution within specific groups, principally the poor.<sup>238</sup>

In 1987, the government created the National Commission for the Control of AIDS. This commission advises the Ministry of Health in its formulation of AIDS policies in Brazil and is composed of doctors, scientists, public officials, and leaders of civil society groups and organizations.<sup>239</sup> Since 1988, the Ministry of Health has made efforts to decentralize the campaign to reduce STIs and AIDS, in order to benefit the largest segment of the population possible.<sup>240</sup> To achieve this goal, regional consultation centers have been established, which provide services according to the needs of the specific region.<sup>241</sup> Each state has its own AIDS committee, which is responsible for presenting monthly reports to the Ministry of Health.<sup>242</sup> Additionally, there are national consultation centers, universities, and hospitals that conduct research on AIDS and offer related training.<sup>243</sup> These institutions are financed by the federal government and/or national or international institutions.<sup>244</sup> The Ministry of Health has prepared training guides for health professionals who work in clinics where STIs and AIDS are treated.<sup>245</sup>

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

Women's health and reproductive rights cannot be fully evaluated without investigating women's legal and social conditions. Not only do laws relating to women's legal status reflect societal attitudes that affect their reproductive rights, but such laws often have a direct impact on women's ability to exercise their reproductive rights. The legal context of family life and couple relations, women's educational level, economic resources, and legal protection determine women's ability to make choices about their reproductive health care needs and their right to obtain health care services.

The Federal Constitution recognizes the principle of equality through a provision stating that all persons "are equal before the law, without any distinction of any nature."<sup>246</sup> The Federal Constitution also specifically recognizes equality of rights and duties between women and men.<sup>247</sup> Also, Law No. 9100,<sup>248</sup> a national law passed in 1995, provides that the lists of candidates in municipal elections for each party or political alliance must have a minimum of 20% women.<sup>249</sup>

Despite the rights to equality and nondiscrimination included in the Federal Constitution, the Civil Code contains provisions that discriminate against women and violate fundamental constitutional rights.

#### A. CIVIL RIGHTS WITHIN MARRIAGE

##### *Marriage law*

The Federal Constitution states that the family is the basis of society and as such has special state protection.<sup>250</sup> Men and women in a marriage have equal rights and duties.<sup>251</sup>

The Civil Code<sup>252</sup> establishes that the minimum age for marriage without parental consent is 21 years.<sup>253</sup> Sixteen-year-old girls and 18 year-old-boys can marry with the authorization of a responsible person.<sup>254</sup> The law provides that minors under the age of 16 are considered totally incapable of carrying out acts of civil life, such as entering into marriage.<sup>255</sup> Civil marriage may be contracted free of charge and has the same legal effect as a religious marriage.<sup>256</sup>

Contrary to the principle of equality established in the Federal Constitution, a provision of the Civil Code establishes that the husband has authority over jointly held property.<sup>257</sup> This status confers on him the right to legally represent the family<sup>258</sup> and exercise parental authority during the marriage.<sup>259</sup> The husband can request an annulment of the marriage up to ten days after it is celebrated, if he discovers that his wife is not a virgin.<sup>260</sup> Under the Civil Code, a married woman is designated as her husband's "companion," "consort," and "collaborator,"<sup>261</sup> and is charged with the "material and moral" direction of the family.<sup>262</sup> The wife must have received express authorization from her husband — consisting of either a publicly or privately duly authenticated legal document<sup>263</sup> — in order to sell or encumber real property; sell property rights she has in a third party's property; and acquire liabilities that may impair marital property.<sup>264</sup> A wife who works at a profession different from that of her husband has the right to practice said profession and the right to spend and save for herself the income she receives, as long as this principle does not undercut her duty to protect the well-being of the family.<sup>265</sup> The law presumes that a woman who occupies a public post or has a profession outside of the home for more than six months is authorized by the husband to carry out all of the acts mentioned above.<sup>266</sup>

The husband has the right to manage the jointly owned property and the wife's property that is under his care, according to the marital property regime agreed to in the prenuptial agreement.<sup>267</sup> The Civil Code specifies four kinds of marital property regimes: the universal community, partial community, separation, and endowment regimes. In the case of universal community, all present and future assets of the couple are jointly owned, including debts, save for certain exceptions

specified in the law.<sup>268</sup> The regime for partial community excludes from joint ownership those properties that each spouse owned at the time of marriage and those that one of them acquires during the marriage such as by gift or inheritance.<sup>269</sup> In the separation regime, each partner administers his or her own property.<sup>270</sup> In the endowment regime each piece of real or personal property is classified to determine whether it constitutes part of the dowry in the prenuptial agreement. The dowry can include all or part of the woman's present and future property.<sup>271</sup> When there is no prenuptial agreement that elects the property regime applicable to the marriage, the law provides that the partial community property regime is applicable.<sup>272</sup>

Polygamy is not permitted in Brazil. The Penal Code punishes with two to six years of imprisonment those who enter into a new marriage while legally married to another.<sup>273</sup> The same punishment applies to a single person who enters into marriage with someone who is married, knowing that person's marital status.<sup>274</sup> The Penal Code also punishes adultery with fifteen days to several months of detention.<sup>275</sup>

### ***Regulation of domestic partnerships***

Unlike the laws that regulate marriage, the laws that regulate domestic partnerships in Brazil respect the principles of equality and nondiscrimination against women. The Federal Constitution recognizes a domestic partnership as the "stable union of a woman and a man as a family entity" and obliges the state to protect it.<sup>276</sup> In 1996, Law No. 9278<sup>277</sup> recognized as a family unit the permanent, public, and continual domestic partnership of a man and woman that has been established with the aim of constituting a family for a period longer than five years.<sup>278</sup> Both partners have equal rights and owe each other mutual respect, protection, consideration, moral assistance, and reciprocal financial support. Both should provide support and education to their children.<sup>279</sup> Real estate and other property acquired by one of the partners or by both during their relationship is considered to be jointly owned property and is to be shared, unless a written agreement between the partners provides otherwise.<sup>280</sup> If there is no agreement stating otherwise, the administration of the property is the joint responsibility of both partners.<sup>281</sup> If the relationship is dissolved, it is the duty of either of the partners to pay alimony to the other, if he or she is unable to provide for himself or herself.<sup>282</sup>

There is a specific law governing inheritance and alimony for domestic partnerships,<sup>283</sup> which provides that any woman who is "the verified companion" of a man who is either single, legally separated, divorced, or widowed for more than five years, or with whom she has had children, has the right to request alimony, as long as she does not enter into a new relationship and can prove she lacks economic resources.<sup>284</sup> The

same rights are granted to a man who can show his situation meets the same conditions.<sup>285</sup> In cases where one partner dies, the surviving man or woman, without distinction, is entitled to one-fourth of the estate of the partner who has died, if they have children together.<sup>286</sup> If the partners did not have children, the surviving partner is entitled to half the estate of the partner who has died.<sup>287</sup> If the partner who has died has no living parents or descendants, the surviving partner is entitled to inherit the entire estate.<sup>288</sup>

### ***Divorce and custody law***

Divorce and legal separation are regulated by Law No. 6515 of 1977.<sup>289</sup> The law distinguishes between the termination of the joint property regime and conjugal rights, called separation, and the termination of the marriage. The former occurs when one of the spouses dies, the marriage is annulled, or there is a legal separation or divorce.<sup>290</sup> The marriage terminates only when one spouse dies or there is a divorce.<sup>291</sup> A legal separation can be requested by both spouses by mutual agreement, as long as the marriage has lasted at least two years.<sup>292</sup> One spouse may also seek legal separation for "dishonorable conduct" when the other is guilty of acts that seriously violate marital duties and make shared life intolerable, or when the couple in fact has been separated for more than a year and reconciliation is impossible.<sup>293</sup> A divorce terminates the marriage, including the civil effect of a religious marriage.<sup>294</sup> To obtain a divorce, there needs to be a previous and final decree of legal separation.<sup>295</sup> The request to have the decree changed from separation to divorce can be done by either of the spouses<sup>296</sup> one year or more after the separation decree has been issued.<sup>297</sup>

The civil effects of legal separation and divorce include the division of jointly owned property<sup>298</sup> and the right to alimony. Alimony is to be provided by the spouse who is "guilty" of causing the separation to the other if he or she needs it,<sup>299</sup> provided the other spouse does not remarry.<sup>300</sup> With regard to custody of the children, the law provides that, in an agreed separation, custody is to be determined by the couple.<sup>301</sup> When the separation is the fault of one of the spouses, that spouse is not entitled to custody of the children.<sup>302</sup> If both partners are responsible for the separation, the mother gets custody.<sup>303</sup> However, the court may conclude that neither of the parents is fit to assume custody of the children. In such a case, custody is granted to a suitable third person, preferably a relative of one of the spouses.<sup>304</sup>

## **B. ECONOMIC AND SOCIAL RIGHTS**

### ***Property rights***

The Federal Constitution establishes the inviolability of the right to property, without discrimination.<sup>305</sup> Referring specifically to agrarian reform, the Constitution specifically



guarantees to both men and women the right to own and to use rural property, independent of their civil status.<sup>306</sup> Law No. 8629/93<sup>307</sup> implements the constitutional provisions relating to agrarian reform, assuring women the right to hold title to real property, independent of their civil status.<sup>308</sup>

However, as described in the previous section, the Civil Code establishes restrictions on married women in the exercise of this property right.<sup>309</sup> With respect to inheritance, the Civil Code states that the testator has the right to disinherit an “indecent” daughter who lives in the paternal home,<sup>310</sup> defining indecency specifically as related to her sexual behavior.<sup>311</sup>

### **Labor rights**

The state protects employment, defining it as a social right.<sup>312</sup> The Constitution provides that the state must provide specific protection to women’s right to employment.<sup>313</sup> The Federal Constitution also recognizes a pregnant woman’s right to 120 days of paid maternity leave.<sup>314</sup>

The Brazilian government has ratified various international agreements adopted by the International Labor Organization (“ILO”), referring to the rights of women workers. Among them are the following: Convention No. 100 of the ILO, Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value,<sup>315</sup> and Convention No. 111 of the ILO Convention Concerning Discrimination in Respect of Employment and Occupation, which guarantees equality of opportunity and treatment for men and women.<sup>316</sup>

The Unified Labor Law (“ULL”)<sup>317</sup> contains a chapter dedicated to women’s employment.<sup>318</sup> It establishes that all legal norms that regulate male employment are applicable to women, as long as they do not contradict special protections granted to women workers.<sup>319</sup> However, labor laws do not extend to those cases where women work with relatives, their husband, father, mother, guardian, or children.<sup>320</sup>

The ULL states that the fact that a woman worker marries or becomes pregnant does not constitute just cause for dismissal.<sup>321</sup> The legislation prohibits women from working for four weeks before the birth of the child and eight weeks after.<sup>322</sup> If the birth is premature, the woman reserves the right, by law,<sup>323</sup> to twelve weeks of paid leave.<sup>324</sup> In cases of a miscarriage certified by a doctor, the woman has the right to two weeks’ paid leave.<sup>325</sup> During lactation, women workers enjoy the right to two breaks during each workday to feed the child, until the child is six months old.<sup>326</sup> The ULL obliges the employer to provide a place for women workers to care for their children during this period.<sup>327</sup> This duty is only applicable if the workplace has more than 30 women workers over 16 years old.<sup>328</sup>

Other complementary labor rules regulate the maternity leave for urban, rural, and domestic women workers and the maternity benefits for small rural farmers and unemployed women workers.<sup>329</sup> It is prohibited for employers to request pregnancy or sterilization certificates, or similar discriminatory practices, in hiring women or in continuing their employment.<sup>330</sup>

### **Access to credit**

There are no express legal restrictions on women’s capacity to obtain credit, but certain provisions in the Civil Code relating to the property regime constitute a limitation on their exercise of this right.<sup>331</sup> Particularly discriminatory is the provision that prohibits women from contracting obligations that may impair the marital property,<sup>332</sup> because it constitutes a legally sanctioned presumption that women are incapable of entering into agreements regarding financial obligations or their inherited property.

### **Access to education**

The Federal Constitution grants everyone the right to a free education<sup>333</sup> and establishes the duty of the state and the family to guarantee this right.<sup>334</sup> It also states that everyone who desires to study must be granted equal access to educational facilities for as long as he or she wishes to remain in school.<sup>335</sup> The government recognizes education as a basic requirement for human development and, as such, endeavors to develop education policies.<sup>336</sup> However, as the United Nations Development Program points out, in Brazil, women’s education has always been secondary to men’s.<sup>337</sup>

Confronting this situation, the Brazilian government has proposed not only to increase the number of people with access to formal education but also to improve the quality of teaching that is offered in schools.<sup>338</sup> In the last few decades, the participation of girls in the education system has improved considerably.<sup>339</sup> From 1980 to 1986 the number of girls in secondary school grew by 31% as compared with 10% for boys.<sup>340</sup>

### **Women’s bureaus**

The National Women’s Rights Council (“NWRC”) is the government entity involved in formulating national policies and programs that incorporate women’s rights.<sup>341</sup> The NWRC played an important role in the constitutional reform process from 1986 to 1988, assuring that 80% of women’s proposals were incorporated in the Constitution of 1988.<sup>342</sup>

Likewise, the National Human Rights Program,<sup>343</sup> founded by the Ministry of Justice in conjunction with organizations from civil society, has a women’s section. In this section, concrete strategies are developed to benefit women, such as coordinating activities with the National Women’s Rights Council to formulate and implement public policies for the defense of women’s rights;<sup>344</sup> supporting state and municipal government

policies to prevent domestic and sexual violence;<sup>345</sup> encouraging the modification of the Penal Code relating to crimes of sexual violence against women;<sup>346</sup> and modification of the Civil Code in relevant respects relating to the family.<sup>347</sup>

#### C. RIGHT TO PHYSICAL INTEGRITY

The Federal Constitution guarantees the right to life and security without discrimination of any kind.<sup>348</sup> However, violence against women is common in Brazil. In 1991, of all incidents of violence reported to the justice system, 70% took place in the home and, in nearly all of those cases, the aggressor was the male spouse or partner of the victim.<sup>349</sup>

#### **Rape**

Rape is defined in articles 213 through 218 of the Penal Code as a crime “against sexual freedom.”<sup>350</sup> Rape is committed when a man “forces a woman to engage in ‘sexual intercourse’ through violence or threat of violence.”<sup>351</sup> The punishment for this crime is between six and ten years of imprisonment.<sup>352</sup> Indecent assault<sup>353</sup> is a crime committed when, through violence or serious threats, one person forces another to engage in “lustful acts” other than carnal intercourse.<sup>354</sup> This crime is punished with the same term of imprisonment as rape.<sup>355</sup>

In the Penal Code, a woman’s “decency” is what determines whether she is entitled to legal protection. Sexual intercourse with a “decent” woman, without violence, but through deceit, is punishable with one to three years in jail.<sup>356</sup> The punishment is one to two years if the perpetrator induces a woman to engage in “lustful acts” other than intercourse.<sup>357</sup> The abduction of a “decent” woman through violence, serious threats, or deceit, for the purpose of engaging in lustful acts, is punishable by two to four years’ imprisonment.<sup>358</sup> In all of the cases described above, if, as a consequence of the violence, the victim is seriously injured or dies, the punishment is increased to eight to twelve years in the former case and to twelve to twenty-five years in the latter case.<sup>359</sup> If the crime is committed by two or more persons, if the perpetrator is a relative, a relative through adoption, a stepparent, a sibling, a guardian, a health care provider, a teacher or an employer of the victim or exercises other authority over her, or if the perpetrator is married, the punishment is increased by one-fourth.<sup>360</sup> If the crime of abduction is committed with intent to enter into marriage or if the perpetrator returns the victim to a safe place or to her family, without having committed any lustful act, the punishment is reduced by a third.<sup>361</sup>

Law No. 8072, of 1990,<sup>362</sup> classifies rape and indecent assault as “sordid crimes” and provides that in such cases amnesty, forgiveness, pardon, and provisional release with or without bail are not applicable.<sup>363</sup>

#### **Sexual harassment**

Several legislative proposals on sexual harassment are currently pending in Congress. Among the proposals is one that regards sexual harassment as a crime and another that regulates sexual harassment only in cases of employment and teaching relations.<sup>364</sup>

#### **Domestic violence**

The Federal Constitution guarantees protection to the family and its members by setting out public policies to deter violence within the family.<sup>365</sup> Brazil does not have a specific law against domestic violence, though there is proposed legislation,<sup>366</sup> which is facing great resistance. The principal opposition comes from a group of jurists who argue that protection against this kind of violence already exists in the Penal Code, within the provisions that deal with assault. The jurists also argue that modern legal reform has tended toward decriminalizing conduct rather than penalizing additional conduct.<sup>367</sup>

In Brazil, among the institutions dedicated to women’s defense and protection, are those known as Police Delegations for Women’s Defense (“PDWD”), which have served as a means for Brazilian women to report cases of family violence to the police. However, the PDWD are created at a state level and do not have federal legal status. In São Paulo, there are 124 PDWDs.<sup>368</sup>

With regard to violence against women, the Brazilian government ratified the Inter-American Convention for the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará),<sup>369</sup> adopted by the Organization of American States in 1994.

## IV. Analyzing the Rights of a Special Group: Adolescents

The needs of adolescents are often ignored or neglected. Considering that 34%<sup>370</sup> of the Brazilian population is under the age of 15, it is particularly important to attend to the reproductive health needs of this group. Efforts to address adolescent rights, including reproductive rights, are important for women’s right to self-determination and health generally.

The Federal Constitution states that the family, society, and the state have a duty to guarantee the child and adolescent the right to life, health, and, in general, comprehensive personal development.<sup>371</sup> The Child and Adolescent Statute<sup>372</sup> defines children as all persons under 12 years old and adolescents as all persons between 12 and 18 years old.<sup>373</sup>

#### A. REPRODUCTIVE HEALTH AND ADOLESCENTS

The Federal Constitution guarantees health protection to the child and adolescent through the implementation of social policies that protect their birth and stable healthy development in dignified living conditions<sup>374</sup> without discrimination.<sup>375</sup> The Constitution guarantees pregnant adolescents prenatal and perinatal care within the SHS.<sup>376</sup>

In 1983, the Ministry of Health created a program aimed specifically at adolescent health, called the Program of Adolescent Health. The program is based on a comprehensive approach to health, emphasizing growth and development, sexuality, and mental and reproductive health.<sup>377</sup> It is in operation and offers services through municipal and state health service centers.<sup>378</sup> However, implementation of the planned program activities has been very limited.<sup>379</sup>

In 1993, the Brazilian government established the National Child and Adolescent Comprehensive Care Program ("NCACCP").<sup>380</sup> The principal objectives of NCACCP are to offer comprehensive health care to children from birth to age 6, to protect child and adolescent health, and to offer vocational counseling and education to adolescents.<sup>381</sup> The National STI/AIDS Program,<sup>382</sup> within the Ministry of Health, has intervention projects aimed at specific populations, one of which is for children and adolescents.<sup>383</sup> The objective of this program is to prevent transmission of AIDS or other STIs, unwanted pregnancies, clandestine abortions, prostitution, and drug abuse.<sup>384</sup>

#### B. MARRIAGE AND ADOLESCENTS

The minimum age to marry without authorization is 21 years,<sup>385</sup> which is the age of majority.<sup>386</sup> Girls over 16 and boys over 18 can marry, but only with permission from both parents.<sup>387</sup> If there is disagreement between the parents, the father's decision prevails.<sup>388</sup> If the parents are separated or divorced, the decision rests with the parent who has parental authority.<sup>389</sup>

#### C. SEXUAL OFFENSES AGAINST ADOLESCENTS AND MINORS

The Federal Constitution establishes that severe legal penalties are applicable in cases of abuse, violence, and exploitation of children and adolescents.<sup>390</sup> Despite legislative advances on these issues, the current situation is troubling, as sexual abuse of children and adolescents has grown, especially within the home.<sup>391</sup>

Rape is a crime punishable by no less than six and no more than ten years of incarceration.<sup>392</sup> Any incidence of sexual intercourse with a minor under 14 years old is considered rape. The consent of the minor does not exempt the perpetrator from criminal responsibility.<sup>393</sup> When, through deceit, a sexual act is practiced on a "decent" girl between 14 and 18, the prison

sentence is two to six years.<sup>394</sup> Crimes against decency,<sup>395</sup> committed by deceiving a "decent" girl under 18 and over 14 years old, are punishable with two to four years in prison.<sup>396</sup>

The Brazilian Penal Code also criminalizes seduction and corruption of minors.<sup>397</sup> Anyone who seduces and has sexual intercourse with a girl who is a virgin under 18 and over 14, "by taking advantage of her inexperience or trust" will be punished by incarceration of one to four years.<sup>398</sup> The same punishment is applicable in cases where a minor, over 14 and under 18 is "corrupted" or the perpetrator facilitates his or her corruption.<sup>399</sup> The crime of abduction of adolescents involves the abduction of someone who is between 14 and 21 years old with his or her consent, and is punished by one to three years in prison.<sup>400</sup> This punishment is reduced by a third if the abductor, without having engaged in "lustful acts," returns the victim to a safe place or to her family.<sup>401</sup> The punishment is reduced by the same amount when the abductor intends to marry the victim.<sup>402</sup>

#### D. SEXUAL EDUCATION

The Child and Adolescent Statute provides that education should be oriented toward the comprehensive development of the person, preparing him or her to be a good citizen and training him or her for employment.<sup>403</sup>

Although there is no official program of sex education in the formal schooling system, the National STI/AIDS Program has recognized the need for sex education among young people<sup>404</sup> and is developing important educational strategies in coordination with the Ministry of Education, to incorporate these themes in the school curriculum.<sup>405</sup> As part of the preventive aspect of this program, training is provided to teachers, materials are developed on issues around AIDS, and informational courses are offered to the student population of Brazil.<sup>406</sup> Training is also being planned for adolescent community promoters, to develop educational programs outside of school<sup>407</sup> and among high-risk children and adolescents, such as children who live on the streets and those who use drugs.<sup>408</sup>

## ENDNOTES

1. WORLD ALMANAC BOOKS, THE WORLD ALMANAC AND BOOK OF FACTS 1997, at 746 (1996).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*, at 747.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. UNITED STATES DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1996, at 364 (1997).
11. *Id.*, at 365.
12. Constitution of the Federal Republic of Brazil, art. 1; promulgated Oct. 5, 1988, reformed by constitutional amendment No. 15, Sept. 12, 1996 [hereinafter BRAZ. CONST.].
13. *Id.*
14. *Id.*
15. JOSE ALFONSO DA SILVA, CURSO DE DERECHO CONSTITUCIONAL POSITIVO [DEFINITIVE CONSTITUTIONAL LAW COURSE], at 406 (5th ed., 1989).
16. BRAZ. CONST., art. 18, second ¶. The Brazilian Federal Constitution recognizes the feasibility of creating a territory, later transforming it into a state, or reintegrating it into the state of which it originally formed a part.
17. DEFINITIVE CONSTITUTIONAL LAW COURSE, *supra* note 15, at 406.
18. BRAZ. CONST., art. 1.
19. *Id.*
20. *Id.*, art. 25.
21. *Id.*
22. *Id.*, art. 18, 25, 29, and 32.
23. *Id.*, art. 2.
24. *Id.*, art. 76.
25. *Id.*, art. 14.
26. *Id.*, art. 77.
27. Constitutional amendment to art. 77 of the BRAZ. CONST.
28. BRAZ. CONST., art. 84.
29. *Id.*
30. *Id.*
31. *Id.*, art. 50.
32. DEFINITIVE CONSTITUTIONAL LAW COURSE, *supra* note 15, at 554: "Crimes of responsibility by ministers are: (I) when, without an adequate justification, a minister or official does not appear before the Chamber of Deputies, the Federal Senate or any of their commissions, when they have been summoned to present reports on previously determined issues. (FC, art. 50 and 58, III); (II) The practice, including by the President of the Republic, of acts defined as crimes of responsibility (art. 52, I, 85)."
33. BRAZ. CONST., art. 50.
34. *Id.*, art. 85.
35. *Id.*, art. 86.
36. *Id.* The total number of deputies per state and for the Federal District is proportionally determined according to the number of inhabitants. No state or the Federal District can have less than eight or more than seventy deputies.
37. *Id.*
38. *Id.*, art. 45.
39. *Id.*, art. 44.
40. *Id.*, art. 45, second ¶. Each territory elects four deputies.
41. *Id.*
42. *Id.*, art. 44.
43. *Id.*, art. 46.
44. *Id.*
45. *Id.*, art. 47.
46. *Id.*, art. 48.
47. *Id.*
48. *Id.*
49. *Id.*, art. 49.
50. *Id.*
51. *Id.*
52. *Id.*, Tit. IV, Ch. I, § VII.
53. *Id.*, art. 59.
54. *Id.*, art. 60.
55. *Id.*, art. 61. The popular initiative can be exercised through presentation of a proposed law to the Chamber of Deputies, if it is signed by a minimum of one percent of the national electorate after being circulated in at least five states.
56. *Id.*, art. 66.
57. *Id.*
58. *Id.*
59. *Id.*, art. 67.
60. *Id.*, art. 62.
61. *Id.*
62. *Id.*, art. 92.
63. *Id.*, art. 101 and 104.
64. *Id.*, art. 92.
65. *Id.*, art. 102.
66. *Id.*, art. 101 and 104.
67. *Id.*, art. 105.
68. *Id.*, art. 101 and 104.
69. *Id.*, art. 124.
70. *Id.*, art. 114.
71. *Id.*, art. 121.
72. *Id.*, art. 125.
73. *Id.*
74. *Id.*, art. 110.
75. *Id.*, art. 98.
76. For more detail about the definition of the Union, see section above on the Structure of National Government.
77. BRAZ. CONST., art. 18.
78. *Id.*, art. 21 and 22.
79. *Id.*
80. *Id.*, art. 25.
81. *Id.*, art. 48.
82. Single Health System ("SHS"), Basic Operational Norms of SHS, NOB-SUS-01/96, Official Daily Gazette of the Union, at 7 and 8 (Nov. 6, 1996).
83. BRAZ. CONST., art. 28.
84. *Id.*, art. 27.
85. *Id.*, art. 25.
86. *Id.*, third ¶.
87. *Id.*, art. 29.
88. *Id.*, art. 32.
89. *Id.*, art. 59, 97 and 102, I.
90. *Id.*, art. 102, III, b. See also the discussion on this subject in the next section.
91. *Id.*, art. 59.
92. *Id.*, art. 97 and 102, I.
93. DEFINITIVE CONSTITUTIONAL LAW COURSE, *supra* note 15, at 318.
94. BRAZ. CONST., art. 5, second ¶.
95. *Id.*
96. DEFINITIVE CONSTITUTIONAL LAW COURSE, *supra* note 15, at 317-319.
97. *Id.*, at 318.
98. See sections on legislative and executive branches, for a detailed description of the process of and those branches' role in the adoption of treaties.
99. The Federal Republic of Brazil has ratified, among others, the following instruments for the universal protection of human rights: The International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (*entry into force* Mar. 23, 1976) (ratified by Brazil on Jan. 24, 1992); The International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 (*entry into force* Sept. 3, 1976) (ratified by Brazil on Jan. 24, 1992); The International Convention for the Elimination of all Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (*entry into force* Jan. 4, 1969) (ratified by Brazil on Mar. 27, 1968). Brazil has also signed Inter-American instruments, such as: The American Convention on Human Rights, signed Nov. 22, 1969, 9 I.L.M. 101 (*entry into force* Jul. 18, 1978) (ratified by Brazil on Sept. 25, 1992); The Inter-American Convention for the Prevention and Punishment of Torture, *adopted* Feb. 28, 1987 OEA/SER. L.V/II 92 doc. 31 rev. 3 May 3, 1996 (ratified by Brazil on Jul. 20, 1989) and the Inter-American Convention on the Granting of Civil Rights to Women, *adopted* May 2, 1948, O.A.S. T.S. 23 (ratified by Brazil on Mar. 19, 1952).
100. The Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (*entry into force* Sept. 3, 1981) (ratified by Brazil on Feb. 1, 1984).



101. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará), *adopted* Jun. 9 1994, 33 I. L. M. 1534 (1994) (ratified by Brazil on Nov. 27, 1995).
102. BRAZ. CONST., art. 196.
103. *Id.*, art. 198.
104. Fundamental Health Law, Law No. 8080, Sept. 19, 1990.
105. *Id.*, art. 1.
106. *Id.*, art. 2.
107. Decree 99 438/90; Fundamental Health Law, art. 37; Federal Law No. 8142, Dec. 28, 1990, art. 1.
108. Basic Operational Norm of SHS, *supra* note 82, at 7 and 8.
109. *Id.*, at 4 and 5.
110. Law No. 8142, Dec. 28, 1990.
111. Fundamental Health Law, art. 4.
112. *Id.*, art. 5.
113. FEDERAL REPUBLIC OF BRAZIL, MINISTRY OF HEALTH, O ANO DE SAÚDE NO BRASIL. AÇOES E METAS PRIORITARIAS [THE YEAR OF HEALTH IN BRAZIL. PRIORITY ACTIONS AND GOALS] (1997).
114. *Id.*, at 2.
115. *Id.*, at 5.
116. *Id.*, at 6.
117. *Id.*, at 8.
118. *Id.*, at 5 and 6.
119. BRAZ. CONST., art. 198. "Community participation" is carried out through health councils, at a state and municipal level. For more information, see section on Objectives of Health Policy.
120. *Id.*, art. 199.
121. *Id.*
122. Brazilian Federation of Hospitals (BFH), Census of Unified Health Service Hospitals, Brazil, 1996 (visited, Jul. 24, 1997) <<http://fbh.com.br/hospit.htm>>. This federation groups together all private hospitals in Brazil and was founded in 1965.
123. *Id.*
124. UNITED NATIONS DEVELOPMENT PROGRAM (UNDP), INSTITUTE FOR APPLIED ECONOMIC RESEARCH (IAER), BRAZIL HUMAN DEVELOPMENT REPORT 1996, at 49 (1996).
125. *Id.*, p 48.
126. *Id.*
127. *Id.*, at 49.
128. BRAZ. CONST., art. 195. The Social Security budget is financed by funds from the central government, the states, the Federal District and the municipalities. It also comes from social contributions from employers' and employees' taxes, and taxes on gambling.
129. *Id.*, art. 198; Fundamental Health Law, art. 31 and 32.
130. Law No. 9311, Oct. 24, 1996.
131. *Id.*, Treasury Ministry No. 6, Jan. 10, 1997; Interview with Dr. Fernando Proença de Gouvea, representative of the Ministry of Health in São Paulo (Dec. 22, 1996).
132. Created by Decree-Law No. 7955, Sept. 13, 1945.
133. Federal Council of Medicine (visited Jul. 24, 1997) <<http://www.cfm.org.br>>.
134. Medical Ethical Code, Resolution CFM No. 1246/88.
135. *Id.*, Preamble, cl. III.
136. *Id.*, art. 6.
137. *Id.*, art. 1.
138. *Id.*, art. 11.
139. *Id.*, Preamble, cls. IV and VI.
140. *Id.*, art. 46.
141. *Id.*, art. 67.
142. *Id.*, art. 68.
143. *Id.*, art. 29.
144. *Id.*, art. 43. For more detail, see sections on Abortion and Sterilization.
145. Penal Code, Decree Law No. 2848, Dec. 7, 1940. São Paulo, Revista do Tribunais Publishers, 1997; art. 121, cl. 4 [hereinafter PENAL CODE].
146. *Id.*, art. 129 cl. 7.
147. *Id.*, art. 121, cls. 4 and 129 cl. 7.
148. Law No. 2142, Dec. 28, 1990.
149. *Id.*, art. 1, cl. 1.
150. *Id.*, In the last National Health Councils Plenary that took place on Apr. 16, 1997, it was agreed to undertake lobbying efforts to support a constitutional amendment that would mandate an increased budget for the health sector. National Health Conference On Line, 2nd National Health Councils Plenary (visited Aug. 4, 1997) <<http://datasus.gov.br/cns/plenaria/2plenar.htm>>
151. BRAZIL HUMAN DEVELOPMENT REPORT, *supra* note 124, at 65.
152. *Id.*, p 69.
153. *Id.*, at 70, 71 and 73.
154. Law No. 9263 (Family Planning Law), promulgated Jan. 12, 1996, art. 2.
155. BRAZ. CONST., art. 226, seventh ¶.
156. *Id.*
157. Family Planning Law, art. 2.
158. *Id.*, art. 8.
159. *Id.*, art. 3.
160. *Id.*
161. *Id.*, art. 7.
162. *Id.*
163. *Id.*
164. THE CENTER FOR REPRODUCTIVE LAW AND POLICY (CRLP), WOMEN OF THE WORLD: FORMAL LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES, at 3 (1995).
165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.*
169. *Id.*
170. *Id.*
171. Family Planning Law, art. 3.
172. *Id.*, art. 4 and 5.
173. BENFAM-PNDS 1996 and the Office of Women's Health Coordination, cited in Silvia Pimentel and Valeria Pandjarian, Institute for the Promotion of Equality (IPE), Draft Brazil chapter, at 6 (1997).
174. *Id.*
175. *Id.*
176. *Id.*, at 7.
177. Family Planning Law, art. 9.
178. *Id.*
179. UNITED NATIONS POPULATION FUND (UNFPA), CONTRACEPTIVE REQUIREMENTS AND LOGISTIC MANAGEMENT NEEDS IN BRAZIL, Technical Report No. 21, 7 (1995), in WOMEN OF THE WORLD, *supra* note 164, at 4.
180. *Id.*
181. *Id.*
182. *Id.*
183. *Id.*
184. *Id.*
185. *Id.*
186. Family Planning Law, art. 5.
187. BENFAM-PNDS 1996, *supra* note 173, at 7.
188. Katrin Oliveira, *In Brazil: sterilization contributes to curbing demographic explosion; however, for some women, it is a prerequisite to obtaining work; for others, it is done out of ignorance*, THE GAZETTE, Feb. 6, 1992, cited in WOMEN OF THE WORLD, *supra* note 164, at 2.
189. Family Planning Law, art. 12 and 14.
190. Message by the President of the Republic to the Federal Senate President, No. 66, Jan. 15, 1996, communicating the partial veto to the proposed legislation on family planning, referring to art. 10, 11 ¶ one of arts. 14, and 15, and presenting the alleged reasons by the Ministry of Health to justify the veto.
191. *Id.*
192. *Id.*
193. *Id.*
194. *Id.*
195. *Id.*
196. HOJA DE SÃO PAULO, Aug. 13, 1997, notebook 3, at 3.
197. Family Planning Law, art. 12.
198. *Id.*, art. 13.
199. PENAL CODE, Tit. I, Ch. I of Special Section.
200. *Id.*, art. 128.
201. *Id.*
202. *Id.*, art. 124.
203. *Id.*, art. 125 and 126.
204. *Id.*, art. 129 cl. 5.
205. *Id.*, art. 128.
206. *Id.*

207. Interview with Dr. Marcos Frigerio, (Nov. 1996). On file with the Institute for the Promotion of Equality (IPE).
208. *Id.*
209. Proposed Legislation No. 2021, art. 1.
210. *Id.*
211. *Id.*, art. 1-3.
212. PENAL CODE, art. 124.
213. *Id.*, art. 126.
214. *Id.*, art. 125.
215. *Id.*, art. 126.
216. *Id.*
217. *Id.*, art. 127.
218. *Id.*
219. VARGAS Y MUNOZ SAFFIOTI, MULHER BRASILEIRA É ASSIM [THE BRAZILIAN WOMAN IS LIKE THIS], at 118 (n. d.).
220. *Id.*
221. Ministry of Health, National Dermatological Health Division, Resolution No. 22, issued on Jul. 18, 1978.
222. Ministry of Health, Resolution No. 542, Dec. 22, 1986.
223. Executive Directorate issued in 1987 and the law passed by Congress and signed by President José Sarney in 1988. Barbara Misztal and David Moss (eds.), *Action on AIDS, National Policies in Comparative Perspective*. "Response in Brazil" in CONTRIBUTIONS IN MEDICAL STUDIES, No. 28, 66 (n. d.).
224. *Id.*
225. PENAL CODE, art. 130.
226. *Id.*
227. *Id.*
228. *Id.*, art. 131.
229. *Id.*
230. *Action on AIDS*, *supra* note 223, at 65.
231. Ministry of Health, Directive No. 236, May 2, 1985, which establishes the guidelines of the National STIs/AIDS Program, and gives the authority for the coordination of the program to the National Dermatological Health Division of the National Secretary for Special Health Programs.
232. National STI/AIDS Program Home Page (visited Aug. 6, 1997). <<http://www.aids.gov.br/prevencao/link111.htm>>
233. *Id.*
234. *Id.*
235. *Id.*
236. *Id.*
237. *Id.*
238. *Id.*
239. *Action on AIDS*, *supra* note 223, at 68.
240. WOMEN OF THE WORLD, *supra* note 164, at 5.
241. *Id.*
242. *Id.*
243. *Id.*
244. *Id.*
245. *Id.*
246. BRAZ. CONST., art. 5.
247. *Id.*, cl. I.
248. Law No. 9100/95 (Law of Quotas), Oct. 2, 1995.
249. *Id.*, art. 11, second ¶.
250. BRAZ. CONST., art. 226.
251. *Id.*, cl. 5.
252. Civil Code and Civil Legislation in Effect, Law No. 3071, Jan. 1, 1916 and modifications, São Paulo, Saraiva Publishers (1997). See art. 9 and 180, cl. I (hereinafter CIVIL CODE).
253. *Id.*, art. 9 and 180, cl. I.
254. *Id.*, art. 183, cl. XII.
255. *Id.*, art. 5, cl. I.
256. BRAZ. CONST., art. 226, cl. 2.
257. CIVIL CODE, art. 253.
258. *Id.*, cl. I.
259. *Id.*, art. 380.
260. *Id.*, art. 178, first ¶, and art. 219.
261. *Id.*, art. 240.
262. *Id.*
263. *Id.*, art. 243.
264. *Id.*, art. 242.
265. *Id.*, art. 246.
266. *Id.*, art. 247, first ¶.
267. *Id.*, art. 233, cl. II.
268. *Id.*, art. 262 and 268.
269. *Id.*, art. 269.
270. *Id.*, art. 276.
271. *Id.*, art. 278. This regime has nearly disappeared in practice, but it is still valid under national legislation. Draft Brazil chapter, *supra* note 173, at 13.
272. *Id.*, art. 258. There are cases where it is obligatory to adopt a specific regime. For example, the separation regime is mandatory when a man older than 60 enters into marriage with a woman over 50 (*Id.*, cl. II) or when the marriage is between two persons who require permission to marry. (*Id.*, cl. IV).
273. PENAL CODE, art. 235.
274. *Id.*, cl. 1.
275. *Id.*, art. 240.
276. BRAZ. CONST., art. 226, cl. 3.
277. Law No. 9278 (Law on Domestic Partnerships), May 10, 1996. Implements cl. 3 of art. 226 of the Federal Constitution.
278. *Id.*, art. 1.
279. *Id.*, art. 2.
280. *Id.*, art. 5.
281. *Id.*, cl. 2.
282. *Id.*, art. 7.
283. Law No. 8971 (Alimony Law and Inheritance Rights for Domestic Partners), Dec. 29, 1994.
284. *Id.*, art. 1.
285. *Id.*
286. *Id.*, art. 2, cl. I.
287. *Id.*, cl. II.
288. *Id.*, cl. III.
289. Law No. 6515 (Divorce Law), Dec. 26, 1977. This law regulates cases of dissolution of married life and marriage, its effects, related procedures, and other related issues.
290. *Id.*, art. 2.
291. *Id.*
292. *Id.*, art. 4.
293. *Id.*, art. 5.
294. *Id.*, art. 24.
295. *Id.*, art. 31.
296. *Id.*, art. 35.
297. *Id.*, art. 25.
298. *Id.*, art. 7.
299. *Id.*, art. 19.
300. *Id.*, art. 29.
301. *Id.*, art. 9.
302. *Id.* art. 10, introductory part.
303. *Id.*, first ¶.
304. *Id.*, second ¶.
305. BRAZ. CONST., art. 5.
306. *Id.*, art. 189.
307. Law No. 8629/93, promulgated on Feb. 25, 1993.
308. *Id.*, art. 1.
309. See previous section.
310. CIVIL CODE, art. 1744.
311. Draft Brazil chapter, *supra* note 173, at 11.
312. BRAZ. CONST., art. 6.
313. *Id.*, art. 7, cl. XX.
314. *Id.*, cl. XVII.
315. Convention No. 100 of the International Labor Organization, Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, *adopted* Jun. 29, 1951 <<http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm>> (visited Dec. 8, 1997) (*entry into force* May 23, 1953) (ratified by Brazil on Apr. 25, 1957).
316. Convention No. 111 of the International Labor Organization, Convention Concerning Discrimination in Respect of Employment and Occupation, *adopted* Jun. 25, 1958 <<http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/conve.htm>> (visited Dec. 8, 1997) (*entry into force* Jun. 15, 1960) (ratified by Brazil on Nov. 26, 1965).

317. The Unified Labor Law, Decree Law No. 5452, May 1, 1943.
318. *Id.*, tit. III, ch. III.
319. *Id.*, art. 372.
320. *Id.*
321. *Id.*, art. 391.
322. *Id.*, art. 392.
323. *Id.*, art. 393.
324. *Id.*, art. 392, third ¶.
325. *Id.*, art. 395.
326. *Id.*, art. 396.
327. *Id.*, art. 389 first ¶.
328. *Id.*
329. Law No. 8861/94, promulgated on Mar. 25, 1994.
330. Law No. 9029/95, promulgated on Apr. 13, 1995.
331. See also section on marriage.
332. CIVIL CODE, art. 242, cl. IV. See also section on marriage.
333. BRAZ. CONST., art. 206.
334. *Id.*, art. 205.
335. *Id.*
336. BRAZIL HUMAN DEVELOPMENT REPORT, *supra* note 124, at 109.
337. *Id.*, at 38.
338. *Id.*, at 109.
339. *Id.*, at 38.
340. *Id.*
341. Draft Brazil chapter, *supra* note 173, at 23.
342. *Id.*
343. National Human Rights Program (visited Aug. 6, 1997) <<http://www.mj.gov.br/pndh/intro.htm>>
344. *Id.* Women's Section.
345. *Id.*
346. *Id.*
347. *Id.*
348. BRAZ. CONST., art. 5.
349. HUMAN RIGHTS WATCH, CRIMINAL INJUSTICE: VIOLENCE AGAINST WOMEN IN BRAZIL. AN AMERICAS WATCH REPORT, at 14 (1991).
350. PENAL CODE, Tit. VI, Ch. I of Special Part.
351. *Id.*, art. 213.
352. *Id.*
353. *Id.*
354. *Id.*, art. 214.
355. *Id.*
356. *Id.*, art. 215. The Code does not define the term "honesty."
357. *Id.*, art. 216.
358. *Id.*, art. 219.
359. *Id.*, art. 223.
360. *Id.*, art. 226.
361. *Id.*, art. 221.
362. Law No. 8072/90 (Law on Sordid Crimes), Jul. 25, 1990.
363. *Id.*, art. 1 and 2.
364. Draft Brazil chapter, *supra* note 173, at 21.
365. BRAZ. CONST., art. 226, ¶8.
366. Proposed Legislation No. 132, of 1995.
367. Draft Brazil chapter, *supra* note 173, at 18.
368. SILVIA PIMENTEL AND VALERIA PANIARIAN, PERCEPÇÕES DAS MULHERES EM RELAÇÃO AO DIREITO E À JUSTIÇA: LEGISLAÇÃO, ACESSO E FUNCIONAMENTO [PERCEPTIONS OF WOMEN REGARDING LAW AND JUSTICE: LEGISLATION, ACCESS AND OPERATION], at 35 (1996).
369. Passed as Decree Legislation No. 107/95 on Sept. 1, 1995, The Convention of Belém do Pará was incorporated definitively into the internal legal order on Aug. 1, 1996, by Presidential Decree No. 1973, published in the Official Federal Daily Gazette on Aug. 2, 1996.
370. THE WORLD ALMANAC, *supra* note 1, at 746.
371. BRAZ. CONST., art. 227.
372. Law No. 8069/90 (Child and Adolescent Statute), Jul. 13, 1990.
373. *Id.*, art. 2.
374. *Id.*, art. 7.
375. *Id.*, art. 11.
376. *Id.*, art. 8.
377. WOMEN OF THE WORLD, *supra* note 164, at 3.
378. *Id.*
379. *Id.*
380. National Child and Adolescent Comprehensive Care Program, passed as Law No. 8642, Mar. 31, 1993 and its regulation; Decree No. 1056, Feb. 11, 1994.
381. *Id.*, art. 2.
382. *supra* notes 230-238 and accompanying text.
383. National STDs/AIDS Program, *supra* note 232.
384. *Id.*
385. CIVIL CODE, art. 9 and 180, cl. 1.
386. *Id.*, art. 9.
387. *Id.*, art. 183, cls. XII and 185.
388. *Id.*, art. 186.
389. *Id.*
390. BRAZ. CONST., art. 227, ¶4.
391. Draft Brazil chapter, *supra* note 173, at 19.
392. PENAL CODE, art. 213.
393. *Id.*, art. 224, literal a.
394. *Id.*, art. 215, only ¶.
395. *Id.*, art. 216, only ¶. For a definition of this crime, see section on rape.
396. *Id.*
397. *Id.*, Tit. I, Ch. II of Special Part.
398. *Id.*, art. 217.
399. *Id.*, art. 218.
400. *Id.*, art. 220.
401. *Id.*, art. 221.
402. *Id.*
403. Child and Adolescent Statute, art. 53.
404. National STDs/AIDS Program, *supra* note 232.
405. *Id.*
406. *Id.*
407. *Id.*
408. *Id.*